



California State  
University **Chico**

## **Request for Proposals**

# **TASK ORDER-CONSTRUCTION AGREEMENT FOR MULTIPLE PROJECTS— MASTER ENABLING AGREEMENT**

**RFP2021-05MM**

Prepared by:  
California State University, Chico  
Facilities Management and Services

November 17, 2021

**REQUEST FOR PROPOSALS FOR TASK ORDER-CONSTRUCTION AGREEMENT FOR  
MULTIPLE PROJECTS—MASTER ENABLING AGREEMENT  
RFP2021-05MM**

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**REQUEST FOR PROPOSALS  
FOR  
TASK ORDER-CONSTRUCTION AGREEMENT FOR MULTIPLE PROJECTS —  
MASTER ENABLING AGREEMENT  
Bid Solicitation No. – RFP2021-05MM  
CALIFORNIA STATE UNIVERSITY, CHICO  
400 WEST 1<sup>ST</sup> STREET  
CHICO, CA 95929**

**1.00 – INTRODUCTION**

1.01 Seeking Design-Builder/Construction Manager Proposals

The State of California acting through the Board of Trustees of the California State University, hereinafter called the Trustees, on behalf of California State University, Chico, hereinafter called University, is seeking proposals from previously selected Finalists (RFP 1.02) to provide design, preconstruction and construction services with a lump sum price for the Projects referenced herein, hereinafter called the Projects (RFP 1.03).

1.02 Two-Step Process for Selection

The Trustees' selection of the successful Proposer is a two-step process—the Request for Qualifications (RFQ) and Request for Proposals (RFP). In the first step of the selection process, the Trustees focus on selecting the most qualified firms, and the Trustees have already completed this step by issuing an RFQ, to which Respondents submitted Statements of Qualifications (SOQ) to the Trustees. The Trustees scored and ranked the SOQ, resulting in a list of Finalists, whom the Trustees notified. In the second step of the selection process (the RFP Process), the Trustees focus on selecting the firm with team members that are most suited to the project. The Trustees proceeded to the second step of the selection process by issuing this RFP to the Finalists. The University may award up to two (2) TO-CA MEAs.

1.03 Delivery Method

The delivery method for this Contract is Task Order-Construction Agreement for Multiple Projects—Master Enabling Agreement (TO-CA MEA), and it contains two types of agreements for multiple projects as requested by the University and specified herein:

- a Task Order (services agreement) for the design and preconstruction services, and
- a Construction Agreement for the construction services (with a lump sum price).

During the design and preconstruction phase for each project, the selected Proposer may develop the design, perform constructability, cost, and scheduling services and develop a lump sum proposal to construct the Projects. Upon the Trustees' acceptance of the lump sum price and schedule, the Trustees may award a Construction Agreement to the selected Proposer for the construction phase. If the Trustees and the selected Proposer do not agree upon a lump sum and other conditions for a Project, the Trustees will not award a Construction Agreement for the construction phase for that Project.

The selected Proposer(s) for the TO-CA MEA is intended to perform the functions of the following roles:

- Design-Builder - the selected Proposer contracts directly with the design professional(s), and/or,
- Construction Manager - the Trustees contract directly with the design professional(s).

The University will specify in every Task Order Request which of the above delivery methods will be used for the Project.

**2.00 - RFP CONTENTS**

2.01 RFP Sections

Refer to RFP Table of Contents

- Sections of the RFP will be referred to within the RFP as “RFP X.XX”.
- Refer to the first Article in the Contract General Conditions, Definitions, for RFP definitions.

- Refer to this RFP, and the design and preconstruction service agreement, Rider B-Scope of Work, for the design and preconstruction phase scope of work descriptions.
- Refer to this RFP, the Construction Agreement, and the Contract General Conditions for the construction phase scope of work descriptions.

2.02 Standard CSU Documents, Forms, and Project Specific Information

The following documents are a part of this RFP. Proposers are advised to ensure that they have the most recent documents. Documents noted in the Table of Contents with “RFP Copy” are Project specific, and the copies provided as part of the RFP must be used. These documents are attached to the RFP as detailed below under Appendices, and/or are available to download at the following websites:

- [TO-CA Model and Guidelines](https://www.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/project-center/academic-project/Construction/Pages/TOCA-Collaborative-Design-Build/forms.aspx)  
<https://www.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/project-center/academic-project/Construction/Pages/TOCA-Collaborative-Design-Build/forms.aspx>
- [Sample Forms](https://www.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/Pages/cpdc-resource-library.aspx?&FilterField1=GeneralConditions&FilterValue1=TOCA-CDB)  
<https://www.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/Pages/cpdc-resource-library.aspx?&FilterField1=GeneralConditions&FilterValue1=TOCA-CDB>

Projects included in this RFP with total cost exceeding the value of a minor capital outlay project shall be enrolled into the CSU Builders Risk Insurance Program; see the Insurance Requirements provisions of Contract General Conditions, under Conduct of the Work. Information regarding the Builders Risk Insurance Program may also be found on the following website: <https://www.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/operations-center/Pages/construction-insurance-programs.aspx>.

Appendices

1. Bid (Fee) Proposal Form TO-CA (Form 700.05.TO-CA.HR) (RFP Copy)
2. TO-CA MEA Abstract of Fee Proposals (Form 701.01.TO-CA.HR)
3. Notice to Proceed for TO-CA MEA (Form 702.16.TO-CA MEA)
4. TO-CA Task Order Request (Form TO Req.HR)
5. TO-CA Task Order (Form Task Order HR)
6. Notice to Proceed for Task Order (Form 702.16.Task Order)
7. Agreement\_Bonds\_Certification\_Forms\_CDB\_TO-CA (Form 702.01-CDB.TO-CA)
8. Notice to Proceed for DB Construction Agreement (Form 702.16CDB)
9. Procedure Manual for CSU Capital Projects:  
[https://www.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/Documents/Procedure\\_Manual.pdf](https://www.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/Documents/Procedure_Manual.pdf)
10. Prevailing Wage Rates: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>
11. Division One (RFP Copy)
12. Campus Special Conditions (RFP Copy)
13. CEQA Mitigation and Monitoring Program:  
[http://www.csuchico.edu/fms/\\_assets/documents/mmrp.pdf](http://www.csuchico.edu/fms/_assets/documents/mmrp.pdf)

**3.00 – PROJECT DESCRIPTIONS**

3.01 Description

The following Projects are generally described, and are included in this Contract.

No.	Project Description	Delivery		Budget
		DB	CM	
1	Deen House Renovation	x		\$2.5M
2	Orange Street Warehouse/Offices Renovation	x		\$5.5M

3	New Facilities	x		\$4M
4	Site Infrastructure & Energy	x		\$7M
5	Building System Renewal	x		\$3M
6	Building Interior	x		\$9M
7	Building Exterior	x		\$3M
8	Site/Ground Improvements	x		\$2M
9	Subtotal of the value of all projects listed above			\$36M
10	Other projects to be determined (\$ amount NTE 20% of the value in the subtotal above)			\$7.2M
<b>Total for All Projects</b>				<b>\$43.2M</b>

### **New Facilities**

Projects currently being evaluated or under consideration include a Farm Store/Conference Center at the campus farm, FMS Storage Facilities, and relocation of the existing Data Center. Interior and exterior renovation of Deen House.

### **Site Infrastructure and Energy**

Projects currently being evaluated or under consideration include relocation of steam lines, chilled water line repairs, renewal of various domestic services to include water, sanitary sewer and storm drains. Various energy projects are under development which include lighting upgrades and solar panel installations.

### **Building System Renewal**

Projects currently being evaluated or under consideration include replacement of stand-alone boilers and the possible installation of electric boilers, repair and replacement of HVAC systems in various building, new emergency generators, renewal of elevators, upgrading security systems including electronic hardware upgrades and IT infrastructure.

### **Building Interiors**

Projects currently being evaluated or under consideration include various office and classroom refreshes, smart classroom upgrades, area buildout to change use or update facilities.

### **Building Exteriors**

Projects currently being evaluated or under consideration include repair and replacement of building roofs, partial and complete exterior building painting and exterior building skin repair including windows and flashings. Preparation of roofs for solar use.

### **Site/Grounds Improvements**

Projects currently being evaluated or under consideration include concrete flatwork, earthwork, paving, ADA compliance installs and updates, new and temporary parking lot construction and repair, wayfinding and security lighting.

## 3.02 Contract Requirements

- The Trustees' TO-CA MEA is a three-year contract.
- The Trustees may award two agreement types under the TO-CA MEA for each Project:
  - Task Order: The Trustees will initiate each Project with a Task Order, through which all design and preconstruction services will be performed.
  - Construction Agreement: After completion of the design of each Project, and upon agreement of the lump sum price or GMP, the Trustees may initiate the construction phase with a Construction Agreement under the MEA.
- The total maximum Budgeted Cost for all Projects shall not exceed \$30,000,000.

- No project shall exceed \$7,000,000 in total cost.
- The Budgeted Construction Cost for all Projects is the total cost of the work for all Projects, including all design, preconstruction and construction costs, and excluding Service Provider Design and Preconstruction fees, and Contractor Site Management Fee, Overhead and Profit, and Contingency.
- Every project in the TO-CA MEA is subject to prevailing wage rate laws as detailed in the Contract General Conditions (see Article 4.02 (CM) or 36.02 (CDB), Prevailing Wage).
- Liquidated damages for each calendar day the Project construction completion is late shall be as agreed between the Contractor and the Trustees in the Project Task Order, and as documented in the Project Construction Agreement.
- The selected Proposer is required to be licensed in the State of California with a B license. The selected Proposer and all subcontractors of all tiers must register to bid public works projects with the Dept. of Industrial Relations, and obtain and maintain current registration numbers. To register go to <http://www.dir.ca.gov/Public-Works/PublicWorks.html>, and look under “Contractor Registration” for more information and to register.
- The Architect shall be licensed to practice architecture in the State of California.
- The Trustees make no representations regarding the total volume of projects, either Task Orders, or Construction Agreements, that shall be awarded under the MEA. The Trustees may discontinue the use of the MEA at any time with no minimum volume of project awards guaranteed.

3.03 Project Conditions

Conditions for all Projects in this Contract are listed in Division One and Campus Special Conditions.

**4.00 – SELECTION PROCESS AND PROJECT SCHEDULE**

4.01 Selection Process Schedule / Proposed Project Schedule

Below is the Selection Process Schedule and Proposed Project Schedule for the RFP phase through the award of the construction agreement for the first Project. The Selection Process Schedule may be changed by addendum to this RFP. The Trustees may change the Proposed Project Schedules at any time through the Preconstruction Phase.

<b>RFP SELECTION PROCESS SCHEDULE AND PROPOSED PROJECT SCHEDULE</b>	
<b>Schedule Activities</b>	<b>Dates</b>
RFP distributed to RFQ Finalists	Tuesday, November 17, 2021
Site Conference and RFP Review	Tuesday, November 30, 2021 @ 10:00AM via Zoom (Link to follow)
Last day to submit questions	Tuesday, December 7, 2021 by 5:00PM
Last day to issue RFP addendum	Thursday, December 9, 2021
Fee & Technical Proposals due	Thursday, December 16, 2021 by 3:00PM
<b>Proposing firms interviewed (1/2)</b> <b><u>01/05/22</u></b> <b>1:00PM – 2:00PM</b> <b>Swinerton/SH</b> <b>2:30PM – 3:30PM</b> <b>DPR/LPAS</b>	<b>Wednesday, January 5, 2022</b> <b>Kendall Hall, Room 207</b>
<b>Proposing firms interviewed (2/2)</b> <b><u>01/06/22</u></b> <b>1:00PM – 2:00PM</b> <b>Otto/LPA</b> <b>2:30PM – 3:30PM</b> <b>Modern/RGA</b>	<b>Thursday, January 6, 2022</b> <b>Kendall Hall, Room 207</b>

Post Technical scores and open Fee Proposals	Tuesday, January 11, 2022 @ 1:00PM, Location or Zoom TBD
Post Winning Proposer	Wednesday, January 12, 2022
Award TO-CA MEA	January/February 2022
TO-CA MEA fully executed	February 2022
Issue TO-CA MEA Notice to Proceed (to define start/completion of MEA)	February 2022
Issue Task Order Request under the TO-CA MEA for design and preconstruction services for 1 <sup>st</sup> Project	February 2022 or later

Note: Trustees do not intend that Project #1 must be fully completed before Project #2 may start; Projects may run concurrently, and at no time shall the Service Provider’s volume of current construction agreements exceed its prequalification rating. The selected Proposer must track progress for all Projects on the Schedule. Reference Contract General Conditions, Schedule.

**5.00 TO-CA MEA SCOPE OF SERVICES**

**5.01 Contract Scope**

The Trustees, through this RFP, summarize and supplement services specified in the Contract Documents. The Contract Documents are cumulative, and the Trustees require the selected Proposer to provide the services specified in the TO-CA MEA (and its Rider A-General Provisions and Rider B-Scope of Work), this RFP, the selected Proposer’s proposal, the Task Orders, the Construction Agreements, and Contract General Conditions.

Each Task Order issued by the University under the TO-CA MEA may include: design responsibility with an Architect and Engineering consultant under contract to the selected Proposer; preconstruction coordination, scheduling, constructability, and cost estimating services. Design responsibility and scope of services may vary for the selected Proposer on an individual project basis, depending on project needs and in-house capabilities of each University.

Each Construction Agreement issued under the TO-CA MEA shall have separate Budgeted Cost and Direct Construction Cost; Lump Sum Price; Contingency; Construction Documents; Contract (including Payment and Performance Bonds); Insurance\*; Notice to Proceed; Notice of Completion; and Retention.

\*Projects with Budgeted Cost exceeding the value of minor capital outlay projects will be enrolled in the Trustees’ Builders Risk Insurance Program, under which the Trustees provide course of construction insurance.

The Trustees may make changes, additions or deletions to the scope of work described in the RFP, and may add or delete projects from the scope of work by Service Agreement Amendment (for design and preconstruction services) or Contract Change Order (for construction phase services). The total Budgeted Cost and total Budgeted Direct Construction Cost of projects shall remain within the upper limits prescribed in RFP 3.02.

**5.02 No Guarantee for Project Award**

The Trustees do not guarantee a minimum award volume of Task Orders or Construction Agreements.

The selected Proposer is not entitled to recover any unreimbursed costs, anticipated profit, or monetary awards for proposal preparation.

**5.03 Collaboration**

The selected Proposer shall work in collaboration and cooperation with the Trustees towards realizing high quality Projects.

**5.04 Integrated Project Delivery / LEAN Methods**

The selected Proposer shall exercise the highest standards of the industry for Integrated Project Delivery to guide its relationships with the other members of the team, and for incorporating LEAN methods in all processes for all phases of the Project(s).

**5.05 TO-CA MEA and Task Order Scope of Work**

The selected Proposer shall assemble a Project team including consulting Architect and Engineers (AE) as detailed in this RFP, and a team of subcontractors after award of the TO-CA MEA. In general, the Scope of Services under the TO-CA MEA shall include, but shall not be limited to the following:

1. Create a subcontractor pool prior to bidding Projects specified in the Task Order Requests. Advertise and prequalify subcontractors for inclusion in the Project team and for bidding subsequent Projects;
2. When the University specifies in the Task Order Request that the Project is Design-Build, design services are required in the Task Order Request, and the selected Proposer shall contract for those services with its team AE to provide scope definition and code compliance drawings and specifications;
3. Attend meeting(s) with the Trustees to define the scope of the Project(s);
4. Provide proposals for design and preconstruction services for the Project in response to the Trustees' Task Order Request;
5. Provide plan check, building permit coordination and preconstruction management services;
6. Provide estimating, scheduling, constructability, and coordination with AE, Trustees, and subcontractors as required assuring conformance to Project budget, schedule, and design-build responsibilities;
7. Bid the project to Service Provider-prequalified subcontractors for each trade and award to the lowest bidders (Note Rider B, Section 3.4 Subcontractor Procurement). If Service Provider desires to self-perform any portion(s) of the work it must competitively bid to be included in the trade contractor team, and bid against the selected subcontractor(s) during the project bid phase;
8. Assemble a project Lump Sum or GMP proposal for Trustees' approval. If a GMP is submitted, it shall be converted to lump sum by change order during the Phase 2 Construction Agreement, when trade bidding is complete.
9. Acquire a Campus Building Permit for each phase of each Project.

**6.00 – CONSTRUCTION PHASE**

**6.01 Construction Phase Services**

Once Trustees and the selected Proposer have agreed upon a Lump Sum or GMP for a project, the Trustees will award a Construction Agreement to the selected Proposer incorporating the current and applicable Contract General Conditions and Supplementary General Conditions. If a GMP is submitted, it shall be converted to lump sum by change order during the Phase 2 Construction Agreement, when trade bidding is complete.

**6.02 Execute Trade Contracts**

After the Construction Agreement between the selected Proposer and the Trustees is fully executed, the selected Proposer shall enter into subcontracts for the construction phase with the successful subcontractors in each trade.

**6.03 Construct Project**

The selected Proposer shall furnish construction administration and management services and use its best efforts to construct the Project in an expeditious and economical manner consistent with the best interests of the Trustees. The Trustees have established the scope of work for the construction phase services in the construction phase agreement which includes the services specified in this RFP.

**7.00 - RESPONDING TO THE REQUEST FOR PROPOSALS**

**7.01 Clarifications and Questions Regarding this RFP**



All communications regarding this RFP, including requests for information or clarification of the intent or content of this RFP, must be received by the Trustees' Representative in writing no later than the date set for submitting questions stated in RFP Selection Process Schedule (RFP 4.01). Only the Trustees' Representative is authorized to answer questions relative to this RFP. Information obtained verbally from any source has no authority, may not be relied upon, and shall have no standing in any event that may occur. Written addenda will be distributed on or before the date fixed for issuing addenda as stated in the Selection Process Schedule. Failure of Proposer to receive any addenda shall not relieve the Proposer from any obligation therein. Proposers are advised to inquire about addenda prior to submitting a Proposal.

7.02 Managing Office / Trustees' Representative

Questions related to this RFP shall be directed to the Trustees' Representative at the office named below. The contact information for the Managing Office for the RFP is:

Name: Michael McNairn, Contracts Coordinator, Procurement and Contract Services  
Campus: California State University, Chico  
Address: 400 West 1<sup>st</sup> Street, Chico, CA 95929  
Telephone: (530) 898-5237  
E-mail: mjmcnairn@csuchico.edu

7.03 Proposal Submittals

The Trustees will accept Proposals no later than the time and date indicated in Selection Process Schedule. Proposers shall divide Proposals into two separate submittals, the Technical Proposal and the Fee Proposal. Proposers shall submit each Proposal in a separate envelope or package and clearly mark them, as required in this RFP.

7.04 Technical Proposal Submittal

Proposers must submit five (5) complete sets of the Technical Proposal in a sealed package, with the following clearly marked on the outside:

“Proposer’s Firm Name”

“Technical Proposal – *California State University, Chico – TO-CA MEA RFP2021-05MM*”

**In addition, please include:**

One (1) copy in electronic format on a flash drive.

(Non-password protected Adobe Acrobat PDF file is preferred.)

7.05 Fee Proposal Submittal

Proposers must submit one (1) complete set of the Fee Proposal in a sealed envelope with the following clearly marked on the outside:

“Proposer’s Firm Name”

“Fee Proposal – California State University, Chico – TO-CA MEA RFP2021-05MM”

7.06 Delivery of Proposals

Proposers must deliver Proposals to the address below at or before the time and date set in the Selection Process Schedule. Proposals delivered to other places even if on the campus, will not be considered.

Name: Michael McNairn, Contracts Coordinator, Procurement and Contract Services  
Campus: California State University, Chico  
Address: 400 West 1<sup>st</sup> Street, Chico, CA 95929  
Telephone: (530) 898-5237  
E-mail: mjmcnairn@csuchico.edu

**Note: If delivering in person, Proposals should be delivered to Kendall Hall Room 206.**

7.07 Responsibility for Timely Delivery of Proposals

The Proposer is solely responsible for ensuring delivery to the submittal location no later than the date and time specified. Use of the United States Postal Service, campus mail system, express or overnight delivery, or any other service, shall not relieve the Proposer from the requirements of meeting the specified deadline at the specified location. The Trustees shall return unopened, any Proposal received after the due date and time.

7.08 Proposer's Cost

Each Proposer acknowledges and agrees that the preparation of all materials for submittal to the Trustees and all presentations, related costs and travel expenses are at the Proposer's sole expense, and the Trustees are not, under any circumstances, responsible for any cost or expense incurred by the Proposer. In addition, each Proposer acknowledges and agrees that all documentation and materials submitted with their RFP shall remain the property of the Trustees.

**8.00 – SELECTION PROCESS**

8.01 Selection Policy

It is the Trustees' policy to base the selection of the Proposer for these Projects on the quality of the team, i.e. demonstrated competence and experience, and on the proposed cost, in an attempt to ensure the satisfactory performance of the design and construction management services required.

1. Small Business Preference.

The Small Business Preference, if requested, shall be five percent of the highest technical proposal score. If a Non-Small Business claims the Small Business Preference, and is awarded the agreement, it shall subcontract 25% of its contract to California certified small businesses. Reference Contract General Conditions (and Supplementary General Conditions) for:

- Collaborative Design-Build Major Projects, Article 32.10, Small Business Five Percent Proposal Advantage, and

2. DVBE Participation Requirement and Incentive / Sanction for Failure to Achieve the DVBE Incentive.

a. DVBE Participation Requirement and Incentive

The successful proposer shall achieve three percent (3%) DVBE participation in its Phase 2 agreement. The DVBE incentive, if requested, shall be the proposed DVBE incentive percentage of the highest technical proposal score. If the successful proposer proposes a specific amount of DVBE incentive in its GMP, the incentive amount shall be in addition to the required participation amount (3%). The successful proposer shall be held to that level of DVBE participation in its Phase 2 agreement for the total of the Contract value. For more information, reference Contract General Conditions (and Supplementary General Conditions) for:

- Collaborative Design-Build Major Projects, Article 32.12-g, DVBE Incentive, and

b. Sanction for Failure to Achieve the DVBE Incentive.

Reference the Contract General Conditions (and Supplementary General Conditions) for:

- Collaborative Design-Build Major Projects, Article 32.12-i, Sanction for Design-Builder's Failure to Achieve the DVBE Incentive, and

8.02 Evaluation and Scoring of Proposals

The evaluation team shall evaluate each proposal to determine its responsiveness to the Trustees' requirements. The evaluation team will score each question against an ideal Proposal in the opinion of the Trustees' evaluation team; the ideal Proposal would receive the maximum number of points possible, as indicated. If Proposer does not provide all information, the Trustees may decide not to consider its Proposal. Each question is assigned a maximum score in relation to the Trustees' assessment of the associated contribution toward achieving project goals.

8.03 RFP Compliance Check

If the evaluation team finds that proposals do not meet minimum submittal or content requirements herein, do not meet overall qualification standards, take unacceptable exceptions to the RFP requirements, or violate the prohibitions in Public Contract Code section 10832 (statute dealing with conflict of interest), then Trustees may deem them non-responsive and eliminate them from further consideration.

8.04 Proposal Analysis

An evaluation team comprised of the Trustees' representatives will analyze each technical proposal to ensure that the Trustees' needs will be met. Once evaluations are completed, the team will conduct in-person interviews with each Proposer.

8.05 Interviews

After the evaluation of the technical proposals, and as part of the evaluation process, the evaluation team will interview all Proposers. The interview structure will be as follows:

- Proposers shall be randomly selected for time slots for interviews, which shall be held on the date indicated in the Selection Process Schedule. The interviews will be conducted at:

Campus:	California State University Chico, Kendall Hall, Room 207
Address:	400 West 1 <sup>st</sup> Street, Chico, CA 95929
Contact:	Michael McNairn
Telephone/E-mail:	(530) 898-5237, mjmcnairn@csuchico.edu
- Proposers shall each be allotted 30 minutes to make their presentations and 30 minutes for questions and answers from the panel.
- Proposers may arrive 10 minutes before their interview time to set up equipment and materials used for presentation purposes.
- Proposers should feel free to use any form of electronic media or otherwise to make their presentations within the allotted time.
- Proposers are requested to present their approach to the design and construction of the Projects.
- Proposers are required to present at the interview those members of their team that will occupy key positions on the Project such as, but not limited to: Architect and key staff and/or consultants, Preconstruction Coordinators, Project Managers, Projective Executives and other essential team members to ensure that the Trustees are interviewing individuals that will work on the Projects as primary contacts and managers.

8.06 Public Opening of Fee Proposals

After interviews the Trustees will announce technical scores, and then the fee proposals will be publicly opened and scored as outlined in this RFP. After checking the accuracy of each fee proposal, the Trustees will then announce the selected firm. This may occur a day or two after the opening of the fee proposals.

8.07 Scoring Calculation

The Trustees will calculate the technical score in whole numbers, and will calculate the fee score to two decimal places and add it to the technical score. The winner will be the Proposer with the highest combined technical and fee scores. In the event of a tie for first place in the total score, the winner will be the tied Proposer with the lowest proposed fees. If both proposed fees are equal the Trustees will select the winner by a coin toss in the presence of both parties and managed by the Trustees. The tied Proposers will be required to agree to the coin toss procedure in writing before the toss.

8.08 Intent of Technical Proposal

It is the Trustees' position that this project delivery method is of a highly collaborative nature and will require the successful Proposer to work closely with the Architect and the Trustees during the Phases 1 and 2 to deliver high quality Projects on time and within the Construction Budgets. In order for the Trustees to evaluate the Proposer's ability to meet the requirements of this Contract, Proposers shall submit their technical proposal for evaluation and scoring. The Trustees' intend to evaluate the technical proposal to determine the Proposer's ability to successfully deliver the Project using the TO-CA Master Enabling Agreement for Multiple Projects project delivery method and score the technical proposal accordingly.

**9.00 – TECHNICAL PROPOSAL REQUIREMENTS**

9.01 Required Content of Technical Proposals

Proposers shall ensure that the Technical Proposals provide a comprehensive, but concise summary of qualifications and capabilities to satisfy the requirements of the RFP. Proposers shall adhere to the following

organization in the Proposals by providing tabs for sections listed below as noted. Trustees may disqualify any Proposer who fails to provide all of the information described below.

No Tab - Introduction

0 POINTS

- Cover Letter: Proposers shall provide a cover letter that:
  - is signed by an individual authorized to contractually bind the Proposer,
  - references the RFP and confirms that all elements of the RFP have been read and understood,
  - agrees to enter into design/preconstruction and construction contracts if selected, and
  - certifies that all information in the RFP is accurate under penalty of perjury.
- Table of Contents

No Tab - Proposal Interview

70 POINTS

The Proposer's (GC/AE) Project team make-up and its ability to communicate and work effectively with the rest of the team is of critical importance to the Trustees. The interview described is an integral part of the evaluation process. The Proposers presentation should focus on the introduction of the proposed staffing for the Projects. Describe qualities that each proposed staff member bring to the team that will lend to the success of these Projects. Team members proposed to have the most interaction with the University should have larger parts in the interview.

- A. The factors that differentiate the proposing team from the other teams that are proposing. What make your firm uniquely qualified to perform these Projects?
- B. Descriptions by GC /AE staff persons of their previous successes and difficulties with integration into and communications with previous project teams.
- C. Highlight any areas of the teams proposal that warrant the special attention of the evaluation team, especially projects that the team has completed together in the local area that demonstrate their ability to successfully complete these projects.
- D. Project related questions the Proposers team may have for the interview team.

Tab 1 - Project Organization, Personnel Experience

80 POINTS

Provide information for the organization of the Project staff that will be used to successfully deliver these Projects. Define the key personnel of each team, and how the team will be managed, the decision-making process, and the qualifications of the key personnel. At minimum, include the following:

- A. Project Organization – Provide an organization chart that defines the Project management and staffing plan: key personnel for the entire team, both the contractor and the architect, and their consultants, for the preconstruction and construction phases of the Projects and include:
  1. A narrative of how the staff will function during each of the respective phases and any personnel change for the two phases.
  2. Each position within the Project organization and the role and responsibilities of the individuals. Provide a matrix indicating all proposed team members and their joint project experience, if any. Give titles, names and positions.
  3. Provide a listing of all anticipated project staffing. As part of this listing provide a line item breakdown matrix of the anticipated hours each staff member will contribute, based on the identified projects, and the total hours for each category of services as listed on the fee proposal form. The total of all staff hours for each category of services shall equal the assumed hours on the fee proposal form. Highlight the three staff members from each category of services listed on the fee proposal form with the highest number of proposed hours.
- B. Personnel Experience – provide résumés demonstrating the qualifications of the key personnel defined on the organization chart for this Project, and omitting personal information such as home address, phone and e-mail address. Key personnel are defined as, but not limited to the following; GC and AE President/Vice President/Principal In-

Charge, GC and AE Project Manager, Project Planner, Project Engineer, Construction Project Manager, GC and AE Design Phase Project Manager, General Superintendent, Construction Superintendent, Field Superintendent, Field Engineer, Safety Manager, and Quality Manager. Résumés shall include but not be limited to:

1. Experience on Projects of similar size, scope, complexity and budget.
  2. Experience with alternative Project delivery methods where collaboration during the design phase with the Architect is demonstrated.
  3. Professional certifications and technical expertise.
  4. Provide a matrix indicating which key personnel have worked together on previous projects, and list the project information including owner contact information.
- C. In-House Capabilities – Identify those trades and specialty licenses held by the company and describe how they benefit these Projects.
- D. For each individual, indicate the length of employment with the GC and AE firms.

**Tab 2 - Project Approach**

**50 POINTS**

Provide your firm's approach and work plan for the design and preconstruction phase and for the construction phase of the Project. Indicate a clear understanding of the objectives of this Contract and include at a minimum:

**A. Design and Preconstruction Phase Services**

Provide a narrative describing your firm's approach to be used for this phase and include:

1. The approach to review and develop the design and construction documents with the Trustees and the Proposer's design Architect,
2. Your process to confirm the Project budget is sufficient to construct the Project. Describe how design target budgets will be established and monitored.
3. How the Proposer will participate in: scope definition; design; design review; constructability review; estimating; value engineering; scheduling and phasing; construction methods; materials; equipment and systems; recommendation of alternative materials and/or methods to meet the intent of the Trustees and Architect's design, and maximize Project budget.
4. Process for assuring a conservative, code complaint design and submittal to the State Fire Marshal.
5. The process for developing bid packages to define distinct trade packages and provide a competitive bid environment with logical scopes of work.
6. Provide a quality control plan for this phase and include the following at minimum:
  - a. Process to identify constructability issues.
  - b. Process for reviewing the coordination of building system design, and coordination of tolerances in trade contractors work.
7. Describe your process for prequalifying trade contractors based on a point system so that the highest scoring trade contractors will be included in the bidding pool.
8. Describe which trades are candidates for design-assist or design-build on these Projects. Do not propose on specific contractors.

**B. Construction Phase Services**

Provide a narrative describing your firm's approach to be used for this phase and include the following at minimum:

1. Administration of the schedule to verify that all trade contractors are performing expeditiously, in an economical manner and provide problem resolution.
2. Preconstruction conferences to verify that the trade contractors are familiar with the scope of work and process required for the coordination of inspections, field testing, shop drawing approval, and submittal approval as related to their scope of work.
3. Provide a Quality Control plan for this phase and include the following:
  - a. The process and key personnel that will be tasked with the review and coordination of all submittals/shop drawings prior to submitting to the Trustees for review.

- b. The process and key personnel that will be tasked with assessing the craftsmanship/workmanship by all trades and verify that all materials installed are per the approved submittals and shop drawings.
- c. The process that will link the constructability, value engineering and cost control management processes from the design and preconstruction phase to the construction phase for a seamless flow from design to construction between the trades and as coordinated by the Proposer.

**Tab 3- Project Schedule and Plan** **40 POINTS**

Provide an outline / summary level schedule illustrating how the Proposer intends to manage a typical Design/Build Project that includes the following at minimum:

- A. A critical path Project schedule that integrates critical design, preconstruction permitting and construction activities.
- B. Illustrate an understanding of this Contract and CSU processes, required Project approvals, and durations for design reviews.

The Project Schedule and Plan shall show the Proposer understands the overall process and sequencing of activities starting at the beginning of design and preconstruction through the end of construction. These activities may include such items as: scope review and determination; design and contract documents; estimating; Seismic Review Board and Mechanical Review Board recommendations; bidding, lump sum submittal; and construction.

**Tab 4 – Exceptions/Clarifications** **0 POINTS**

Proposer must list any exceptions or clarifications to the RFP on an item-by-item basis and cross-reference them with the RFP document. If there are no exceptions or clarifications, the Proposer must expressly state that no exceptions or clarifications are taken.

**No Tab** **20 POINTS**

Response to RFP was clear, concise, and responsive (No Tab)

MAXIMUM POSSIBLE POINTS FOR TECHNICAL SCORE 260 POINTS

**Separate Submittal- Fee Proposal Form and Breakdown**

Proposer shall submit the contents described in RFP 10.01 as part of the Fee Proposal, not the Technical Proposal.

MAXIMUM POSSIBLE POINTS FOR FEE SCORE 65 POINTS

<b>TOTAL MAXIMUM POSSIBLE POINTS</b>	<b>325 POINTS</b>
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**10.00 – FEE PROPOSAL REQUIREMENTS**

**10.01** Requirements for the evaluation of the Fee Proposal

For evaluation purposes, Proposers shall enter the following into the Fee Proposal Form: the averages of the Proposer’s and AE’s preconstruction and construction staff hourly rates with the highest proposed number of hours as described below; construction phase Overhead and Profit percentages for DB and CM projects; and Proposer’s fee for assembly of subcontractor bidding pool, as detailed in Rider A. The Trustees have assigned 65 points to the Fee Proposal Breakdown and Form, the cost component of this RFP.

The Trustees do not intend that the Proposer’s architectural, consultant, preconstruction and construction hours as proposed herein reflect the actual volume of services to be awarded as part of this Contract. The number of hours identified herein is used only for Trustees’ evaluation of Proposer’s rates and fee structure; no minimum volume of preconstruction or construction services are implied or guaranteed.

- 1. Provide a schedule of hourly rates that expands on the information submitted in Tab 1, item A-3, to include the total billable hourly rates for every staff member.
  - Highlight the three staff in each category with the highest proposed number of hours, to be used for the purposes of the fee proposal. *This is for evaluation purposes only, individual rates shall apply for each project.*

- Provide an average of those three hourly rates to be entered into the fee proposal form. The average rates will be multiplied by the assumed hours for each category to give the total evaluation fee in dollars to be entered into the fee proposal form.
  - The proposed hourly rates must indicate a reasonable spread of rates relative to the responsibilities for each position. Failure to provide a schedule of hourly rates that reflects actual costs relative to responsibilities may render a proposer non-responsive.
2. Provide a markup applied to the basic hourly wages actually paid (or equivalent for salaried employees) to arrive at the billable hourly rates entered on the Fee Proposal Form for each category of services. Enter this markup into the Fee Proposal Form.
    - These markups are not a part of the evaluation.
    - The markup multiplier shall include all fringes, taxes, and insurance that go into a fully burdened, billable rate.
    - The markups are subject to verification by audit against actual payroll. It is understood that there may be variations between employers within the consultants category.
  3. Provide a lump sum fee on the Fee Proposal form for the assembly of the prequalified trade contractor bidding pool.
  4. Provide a total percentage of Direct Construction Cost for Construction Phase Overhead and Profit (OH&P) for each delivery type and project size.

#### 10.02 Contents of Fee Proposal Submittal

The Proposer shall provide a fee proposal package as part of the selection process. The fee proposal package submitted shall contain the following documents:

1. Fee Proposal Breakdown (RFP 10.01) including Table of Staffing Hours and Costs
2. Fee Proposal Form (Use form included in RFP)
3. Certification (Form #702.03)
4. Noncollusion Declaration (Form #701.05)
5. Small Business Preference and Certification Request (Form #701.09)
6. Certification of Appropriate License, DIR Public Works Registration, and California Co. (Form #701.08)
7. Bid Proposal Form Signature Page (Form #701.06).

#### 10.03 Fee Proposal Form

The Fee Proposal form includes tables similar to those on the following page. Refer to RFP 13.01, Classification of Project Costs (Table A) and 13.02, Design Fee Allocation Matrix (Table B), for a description of preconstruction and construction phase costs in each category of fees listed herein.

In the event of an inconsistency in the math on the Fee Proposal form, the individual fee percentages shall govern over the fee in dollars, and the fee in dollars shall be recalculated. All math on the Fee Proposal Form will be checked by the University before award.

1. Overhead and Profit (for DB and CM)
  - Overhead and Profit, per RFP 13.01, Table A.
  - a. Includes Proposer's overhead and profit on Direct Construction Cost, and insurance.
  - b. Propose as a percentage of Direct Cost Budget, and calculate a lump sum based on the Total Project Budget.
  - c. Contract Amount shall be a lump sum based on the Budget that is agreed by the Trustees during Phase 1. Overhead and profit will not be reduced due to bid savings, nor increased for over-bids.
  - d. Payment will be based on the percentage of construction work completed.
2. Payment and Performance Bonds for the Proposer
  - a. Include the cost of the Proposer's payment and performance bonds.
  - b. Propose as a percentage of the Direct Construction Cost Budget and calculate a lump sum for scoring purposes. (Bonds rates are usually quoted on the contract bottom line, but Proposer is asked to convert to effective rate applied to Direct Cost of the Work.)
  - c. Contract will be the proposed percentage on the Actual Value of Direct Construction Cost.

- d. Payment will be made when the bonds are presented, and adjusted to actual cost at contract closeout.
3. Subcontractor Performance Insurance or Bonds
- Include the cost of subcontractor payment and performance bonds or insurance.
  - Propose as a percentage, to be converted to a lump sum contractor allowance.
  - Payment will be based on the actual cost of this protection up to the amount proposed.

<b>Fee Evaluation Worksheet</b>				
	<b>Fees</b>	<b>Average of 3 staff rates with highest # of hours<sup>1</sup></b>	<b>Total Evaluation Fee in Dollars<sup>2</sup></b>	<b>Markup – Multiplier<sup>3</sup></b>
A	Architectural Services Average Fee * 2500 hours	\$0.00	\$0.00	0.00
B	Consultants Services Average Fee * 2500 hours	\$0.00	\$0.00	0.00
C	Preconstruction Services Average Fee * 1000 hours	\$0.00	\$0.00	0.00
D	Construction Phase Site Management Average Fee * 4000 hours	\$0.00	\$0.00	0.00
E	Total of OH&P Fees from OH&P Calculation Worksheet	NA	\$0.00	N/A
F	Fee for Assembly of Initial Subcontractor Bidding Pool	N/A	\$0.00	N/A
<b>Total Fees (A + B + C + D + E + F)</b>			<b>\$0.00</b>	

**Notes for Fee Evaluation Worksheet:**

- Proposer to enter the average of the three (3) staff billable rates with the highest number of proposed hours from the fee proposal. All rates shall include the Markup-Multiplier, described in Note 3 below.
- The Total Evaluation Fee for each category shall be the average staff rate multiplied by the assumed evaluation hours indicated for each category.
- The Proposer shall enter a number for the Markup-Multiplier which shall be multiplied by the base pay for each staff person to determine the fully burdened / billable rate. The Markup-Multiplier will not be used as part of the evaluation, but is subject to audit as described in the RFP, and will be used to determine the billable rate of any future staff not listed in the RFP.

<b>OH&amp;P Fee Calculation Worksheet</b>				
	<b>Overhead and Profit</b>	<b>Proposed % Fee<sup>1</sup></b>	<b>Direct Construction Cost<sup>2</sup></b>	<b>Total Fee in Dollars<sup>3</sup></b>
1	CM / OH&P - Project < or = \$1,000K	0.0%	\$	\$
2	CM / OH&P - Project > \$1,000K or = \$3,000K	0.0%	\$	\$
3	CM / OH&P – Project > \$3,000K or = \$7,000K	0.0%	\$	\$
4	DB / OH&P - Project < or = \$1,000K	0.0%	\$	\$
5	DB / OH&P - Project > \$1,000K or = \$3,000K	0.0%	\$	\$
6	DB / OH&P – Project > \$3,000K or = \$7,000K	0.0%	\$	\$
7	GC Payment & Performance Bonds	0.0%	\$	\$
8	Subcontractor Payment & Performance Bonds	0.0%	\$	\$
<b>TOTAL OH&amp;P FEES</b> (Enter total of Lines 1+2+3+4+5+6+7+8 in Fee Evaluation Worksheet, Row E)				<b>\$</b>



**Is Proposer claiming the Small Business Preference? (circle one) Yes No**  
(If Proposer circles ‘Yes’ and submits the Small Business Preference Form No. 701.09, Trustees will grant a bid preference of 5% of the *highest Technical Proposal Score*.)

**Notes for OH&P Calculation Worksheet:**

1. Proposer to enter proposed fee for each delivery type and project size. Proposed % Fee will be used for each project in the MEA to determine actual OH&P fee.
2. Campus to enter assumed total for direct construction cost for each delivery type and project size. *This is for evaluation purposes only and shall not be assumed to be indicative of actual volume in any category.*
3. Proposer to multiply Proposed % Fee by the assumed Direct Construction Cost and enter the total evaluation fee for each category of delivery type and project size.

Fees will be scored in direct relation to their variance from the lowest fee based on the average fee. The lowest Total Fee will receive the maximum score of 65 points. For example:

Proposed Total Fee in \$	Variation from Lowest Fee= Proposed Fee \$-Lowest Fee \$	% Variation = Variation from Lowest Fee \$/Average Total Fee \$	Points to deduct from 65 points	Fee Score
\$1,500,000	\$1.5M-\$1.1M=\$.4M	\$.4M / \$1.3M=30%	65 x 30%=20	65-20 = 45
\$1,300,000	\$1.3M-\$1.1M=\$.2M	\$.2M / \$1.3M=15%	65 x 15%=7	65-7 = 58
\$1,100,000	\$1.1M-\$1.1M=\$0M	\$0M / \$1.3M=0%	65 x 0%=0	65-0 = 65

Sample calculation: Average total fee =  $(\$1.5M + \$1.3M + \$1.1M)/3 = \$1.3M$

**11.00 – PROJECT AWARD AND COMMENCEMENT**

11.01 Award

The Trustees will award a Task Order-Construction Agreement for Multiple Projects MEA to the *highest scoring Proposer*. This Proposer will be informed in a timely manner and should be prepared to commence work immediately following execution of the MEA and receipt of the Notice to Proceed for the MEA. Failure to execute the agreement within the timeframe identified in the Project Schedule shall be sufficient cause for voiding the award. Failure to comply with other requirements within the set time shall constitute failure to execute the agreement. In the event contract award is unsuccessful with the first selected Proposer, the Trustees may award a contract to the second highest scoring Proposer.

11.02 Design and Preconstruction Services Fee

The Task Order for design and preconstruction services under the MEA shall be the lump sum not-to-exceed maximum amount as detailed herein. It is subject to adjustment for cause as allowed herein and agreed to in advance by the Trustees. It is not subject to adjustment due solely to inflation or costs over or under the Budgeted Direct Construction Costs.

11.03 Construction Agreement

For Collaborative Design-Build projects, the construction agreement Total Contract Amount shall be the Lump Sum or GMP, and is the sum of the Design and Preconstruction Fees, Actual Direct Construction Cost as bid, plus: the Contractor’s contingency, the Contractor’s proposed lump sum for overhead and profit, the Contractor’s proposed lump sum for Phase 2 services — site management fee for each project, subcontractor payment and performance bonds, and Contractor payment and performance bonds. Contractor shall provide 100% payment and performance bonds in the full awarded contract amount for each construction award.

11.04 Contractor Site Management Fee

The Contractor site management fee shall be the lump sum amount as proposed and accepted by the Trustees for each Construction Agreement. It is subject to adjustment for cause as allowed, and agreed to in advance by the Trustees. It is not subject to adjustment due solely to inflation or cost over or under the Budgeted Direct Construction Cost, as amended.

11.05 Contractor Contingency

The Contractor contingency shall be the percentage indicated on the Contingency Schedule (in TO-CA MEA Rider B-Scope of Work, section 3.30) and as negotiated for the Construction Agreement times the Actual Direct Construction Cost shown on the construction agreement.

11.06 Contractor Overhead and Profit

If the Actual Direct Construction Cost portion of the Lump Sum is greater than or equal to the Project Budgeted Direct Construction Cost, as amended, the Contractors OH&P shall be the proposed percentage for OH&P applied to the Project Budgeted Direct Construction Cost, as amended. If the Contractors Actual Direct Construction Cost portion of the Lump Sum is less than the Project Budgeted Direct Construction Cost, The Contractor's overhead and profit shall be the proposed percentage for OH&P applied to the Actual Direct Construction Cost.

**12.00 – MISCELLANEOUS**

12.01 Non-Binding

This RFP and/or the interview process shall in no way be deemed to create a binding contract or agreement of any kind between the Trustees and the Proposers.

12.02 Irregularities

The Trustees reserve the right to reject any or all proposals, to cancel the Project, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the RFP.

12.03 Rejection of Proposal

The Trustees may reject any or all proposals and may waive any immaterial deviation in a proposal. The Trustees' waiver of an immaterial defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the specifications if awarded the contract.

12.04 Disposition of the Proposals

Proposals become the property of the Trustees. The information contained in all proposals shall be held confidential to the extent permitted by law, except that the Total Fee Percentage, separately submitted as part of the Fee Proposal Package of each proposal, shall be publicly opened and read after the Total Quality Points have been tabulated and published. Proposals will become public upon execution of the Contract between the Trustees and the successful Proposer. All materials, ideas, and formats submitted in response to this RFP will become the property of the Trustees upon receipt and may be returned only at the Trustees' option.

12.05 Cancellation

While it is the intent of the Trustees to award to the successful Proposer, this solicitation does not obligate the Trustees to enter into an agreement for design and preconstruction services or the construction contract. The Trustees reserve the right to cancel this RFP at any time, in the best interest of the Trustees. No obligation, either expressed or implied, exists on the part of the Trustees to make an award or to pay any costs incurred in the preparation or submission of a proposal in response to this RFP.

Continue on to RFP 13.00.

**13.00 – CLASSIFICATION OF PROJECT COSTS AND DESIGN FEE ALLOCATION MATRIX**

13.01 – CLASSIFICATION OF PROJECT COSTS (Table A) — Page 1 of 4

In the following, Table A, the Trustees indicate the appropriate category for preconstruction and construction phase costs and fees.

<b>TABLE A</b>					
<b>Project Jobsite Staff</b>		<b>Direct Cost of Work</b>	<b>Preconstruction &amp; Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
1	Project Manager		X		
2	Project Superintendent		X		
3A	Project Engineer		X		
3B	Architect’s Staff		X		
3C	Architect’s consultants’ staff		X		
4	Scheduling Engineer		X		
5	Field Engineer		X		
6	Drafting & Detailing		X		
7	As-Built drawings and specifications		X		
8	Field Accountant		X		
9	Time Keeper			X	
10	Secretarial			X	
11	Clerk/ Typist			X	
12	Independent Surveyor	X			
13	Job Assigned Safety &. E.E.O. Officer			X	
14	Jobsite Laborer & Runner		X		
15	Fringe Benefits for Staff		X		
16	Vacation Time for Staff		X		
17	Sick Leave for Staff		X		
18	Subsistence for Staff		X		
19	Bonuses for Staff			X	
<b>Cost of the Work</b>					
1	Wages of Construction Labor	X			
2	Labor Fringe Benefits & Burden	X			
3	Subcontract Costs	X			
4	Material	X			
5	Equipment	X			
6	Small Tools – Purchase			X	
7	Small Tools – Rental			X	
8	Warranty Work & Coordination			X	
9	Protection of installed work	X			
10	Corrective Work damaged by Contractor or his subs, unless covered by insurance			X	
11	Corrective Work Non-Conforming with Specs			X	

13.01 – CLASSIFICATION OF PROJECT COSTS (TABLE A) — Page 2 of 4

<b>Job Site Temporary Facilities</b>		<b>Direct Cost of Work</b>	<b>Preconstruction &amp; Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
1	Contractor Office Trailers	X			
2	Office Trailers - Inspectors / Owners	X			
3	Storage Trailer & Tool Shed	X			
4	Office Furniture & Equipment			X	
5	Copy machine & Printer			X	
6	Postage/UPS/FedEx	X			
7	Project Photographs	X			
8	Temporary Toilets	X			
9	Project Sign	X			
10	Scaffolding	X			
11	Temporary Fencing & Enclosures	X			
12	Covered Walkways	X			
13	Barricades	X			
14	Temporary Stairs	X			
15	Opening Protection	X			
16	Safety Railing & Nets	X			
17	Drinking Water/Cooler/Cup			X	
18	Safety/First Aid Supplies			X	
19	Fire Fighting Equipment			X	
20	Security Guards	X			
21	Watchman Service (Day or Night)	X			
<b>General Requirements Temporary Utilities And Cleaning</b>					
1	Telephone Installation	X			
2	Telephone Monthly Charges			X	
3	Electric Power Installation	X			
4	Electric Power Dist. Wiring	X			
5	Construction Electric Power Monthly Charges / Allowance	X			
6	Construction Water Service – Installation	X			
7	Construction Water Service - Monthly Costs / Allowance	X			
8	Heating & Cooling Costs			X	
9	Light Bulbs & Misc. Supplies	X			
10	Periodic Job Site Clean-Up	X			
11	Final Clean	X			
12	Dump Permits & Fees	X			
13	Trash Removal & Hauling	X			
14	Flagman & Traffic Control	X			
15	Dust Control	X			
16	SWPP Installation & Maintenance	X			
17	SWPP Inspection				X
18	Temporary Road Construction	X			
19	Temporary Road Maintenance	X			
20	Trash Chute & Hopper	X			

13.01 – CLASSIFICATION OF PROJECT COSTS (TABLE A) — Page 3 of 4

Indirect and Miscellaneous Costs		Direct Cost of Work	Preconstruction & Construction Phase Svcs	Overhead & Profit	Paid by Owner
1	Bond premium for Contractor’s bonds	See Note below			
2	Insurance premium for Contractor. See Contract General Conditions.			X	
3	Bond premium for trade contractor bonds / Allowance	See Note below			
4	Insurance premium for trade contractors. See Contract General Conditions.	X			
5	Premium for Builders Risk Insurance for major capital outlay projects (Owner provided.)				X
6	Premium for Builders Risk Insurance for minor capital outlay projects (If Contractor provides.)			X	
7	Insurance deductible by Contractor or trade contractor			X	
8	Printing plans and specifications			X	
9	Initial Soils Investigation				X
10	Testing and Inspection				X
11	Maintenance after occupancy				X
12	Facility operator training by Contractor or trade contractor	X			
13	Fees- Plan Check				X
14	Fees- Building Permit				X
15	Fees- Sidewalk Permit				X
16	Fees- Water Connection Permit				X
17	Fees- Water Meter				X
18	Fees- Sanitary Sewer				X
19	Fees- Storm Drain				X
20	Fees- Gas Service				X
21	Fees- Power Service				X
22	Fees- Curb & Gutter permit				X
23	Fees- Sign				X
24	Elevator Inspection and Permits	X			
25	Fees, assessments, licenses, inspections required for Construction	X			
26	Business Licenses and Fees			X	

NOTE: The General Contractor and Subcontractor bond premiums shall be as proposed per RFP 10.03.

13.01 – CLASSIFICATION OF PROJECT COSTS (TABLE A) — Page 4 of 4

		<b>Direct Cost of Work</b>	<b>Preconstruction &amp; Construction Phase Svcs</b>	<b>Overhead &amp; Profit</b>	<b>Paid by Owner</b>
	<b>Hoisting</b>				
1	Hoist & Tower Rental	X			
2	Hoist Landing & Fronts	X			
3	Hoist Operator	X			
4	Hoist Material Skips/ Hoppers	X			
5	Erect & Dismantle Cranes and Hoists	X			
6	Crane Rental	X			
7	Crane Operators	X			
8	Crane Raising/ Jumping Costs	X			
9	Temporary Elevator Rental	X			
10	Elevator Operation Costs	X			
11	Cage Rider at Elevator	X			
12	Forklift Rental	X			
13	Forklift Operator	X			
14	Safety Inspections			X	
15	Fuel, Repairs, Maintenance, Service	X			
	<b>Main Office</b>				
1	Corporate Executives			X	
2	Principal in Charge			X	
3	Operation Manager			X	
4	Project Executive			X	
5	Estimating			X	
6	Value Engineering			X	
7	Scheduling			X	
8	Drafting and Detailing			X	
9	Purchasing & Writing Contracts			X	
10	Accounting & Bookkeeping			X	
11	Safety & E.E.O Officer			X	
12	Secretarial			X	
13	Clerk/Typist			X	
14	Computer/Data Processing			X	
15	Legal - General and Pertaining to Project			X	
16	Travel & Subsistence			X	
17	Fringe Benefits & Burden			X	
18	Vacation Time/Main Office			X	
19	Bonuses/Main Office			X	

End of RFP 13.01, Table A

Continue onto RFP 13.02, Table B

13.02 – DESIGN FEE ALLOCATION MATRIX (Table B) — Page 1 of 2

In the following Table B, the Trustees indicate the appropriate cost category for certain design fees. Fees not listed are to be included in Contractor’s proposal

Item	Design Element	Include in Proposal	Include in Direct Cost	Owner Allowance	Paid by Owner
1	Architectural	X			
2	Structural	X			
3	Mechanical	X			
4	Electrical	X			
5	Plumbing	X			
6	Data and Tel-com design and coordination	X			
7	Data and Tel-com Equipment Selection				X
8	AV Design (Conference Rooms)	X			
9	Interior Design	X			
10	Not Used				
11	Lighting (for scope not completed per appendix)	X			
12	Code Analysis	X			
13	Not Used				
14	Distributed Antenna System and Two Way Communications design and rough-in coordination.				X
15	Distributed Antenna System and Two Way Communications system design and installation				X
16	Fire Protection	X			
17	Fire Alarm	X			
18	Security - Access Control/CCTV	X			
19	Curtain Wall Systems		X		
20	Pre-Engineered Pipe Systems		X		
21	Seismic Bracing		X		
22	Pre-Engineered Products		X		
23	Manufacturer's Proprietary Eng		X		
24	Modular workstation conceptual design and move coordination – by PhaseSix (see Appendix 9)				X
25	Steelcase modular workstation final Design, installation documents, and specifications.	X			
26	Elevator Design Coordination and engineering (see appendix for elevator design completed)	X			
27	Landscape & Irrigation	X			
28	IT termination at workstations (port assignments by CSU)		X		
29	FFE Design Coordination	X			
30	FFE Selection	X			
31	Energy Modeling (Title 24)	X			

13.02 – DESIGN FEE ALLOCATION MATRIX (Table B) — Page 2 of 2

<b>Item</b>	<b>Design Element</b>	<b>Include in Proposal</b>	<b>Include in Direct Cost</b>	<b>Owner Allowance</b>	<b>Paid by Owner</b>
32	BMS Controls	X			
33	OFOI Equipment				X
34	Commissioning Agent - Enhanced for LEED				X
35	Commissioning Coordination	X			
36	Foundation Structural Design	X			
37	Dewatering System Engineering		X		
38	Not Used				
39	Not Used				
40	Not Used				
41	Not Used				

End of RFP 13.02, Table B

-End of Request for Proposals-



## Task Order-Construction Agreement for Multiple Projects— Master Enabling Agreement

This AGREEMENT is made and entered into this this [Day] day of [Month], [Year], pursuant to the Public Contract Code 10700, et seq., by and between the Trustees of the California State University on behalf of

<i>Campus, hereafter referred to as Trustees,</i> <b>California State University Lorem Ipsum</b>	Agreement No.: <b>123456</b>	Amendment No.: <b>123456</b>	CSU Vendor ID No.: <b>123456</b>
<i>and Service Provider, hereafter referred to as Service Provider.</i> <b>Ipsum Lorem Service Provider, Inc.</b>		CSLB License No.: <b>123456</b>	DIR Public Wks Reg No.: <b>123456</b>

WITNESSETH: That the Service Provider in consideration of the statements and conditions herein contained, agrees to furnish labor, materials, and equipment and to perform work necessary to complete, in a skillful manner, the following:

- The Service Provider shall provide the services described in the Request for Proposals for the Task Order-Construction Agreement for Multiple Projects — Master Enabling Agreement, consisting of [number (#)] pages, which by this reference is incorporated herein and made part of this Agreement for projects located at above-named Campus.
- The Service Provider shall provide such services as more fully described in the following Riders and Exhibits, which by this reference are incorporated herein and made part of this Agreement:
  - Rider A Agreement General Provisions, consisting of four (4) pages;
  - Rider B Scope of Work, consisting of [Number] pages;
  - Exhibit A Service Provider’s Proposed Rate Schedule in response to Request for Proposals for this Agreement consisting of [Number] pages.
- The term shall begin once University Counsel has fully executed this Agreement, and shall end three (3) years thereafter. Work elements started during the term shall continue to their completion and acceptance by the Trustees.
- The Service Provider shall not perform services in excess of the Agreement as authorized by individual Task Order without prior written authorization to proceed from the Trustees’ Representative.
- Service Provider shall report to [Name of Project Administrator]. The Trustees may designate an alternate contact for administration of individual Task Orders.
- The basic services amount to be expended under this Agreement shall not exceed [Thirty Million Dollars (\$30,000,000.00)]. Issuance of Task Orders is not guaranteed, and the maximum cumulative contract amount budgeted for services may not be achieved. Payment shall be made in accordance with Riders A and B, and Exhibit A.

Trustees of the California State University							Service Provider					
Campus <b>California State University Lorem Ipsum</b>							Firm Name <b>Ipsum Lorem Service Provider, Inc.</b>					
By (Trustees’ Authorized Signature)							By (Authorized Signature)					
Printed Name and Title of Person Signing <b>John Smith, Campus Representative</b>							Printed Name and Title of Person Signing <b>Jack Smith, Service Provider Authorized Signatory</b>					
Address of Campus Project Administrator <b>99999 Lorem Ipsum Drive, Ipsum, CA 99999</b>							Address of Service Provider <b>11111 Ipsum Lorem Drive, Lorem CA 11111</b>					
SCO Acct Data: N/A	Fund *	Sub Fund *	Agency *	Yr. *	Ref/Item *	Category *	Program *	Element *	Component *	Chapter *	Fiscal Yr. *	Legal Ref. *
Fund Name <b>N/A</b>				PS Account *	PS Fund *	PS Dept. ID *	PS Program *	PS Class *	PS Project/Grant *			
Amount Encumbered <b>N/A</b>		<i>I hereby certify upon my personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.*</i>										
Amount of Increase <b>N/A</b>		<b>*Trustees’ Accounting Officer will certify funding for each Task Order and Construction Agreement.</b> Signature of Trustees’ Accounting Officer										
Amount of Decrease <b>N/A</b>		<i>I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of California State University Contract Law. G. ANDREW JONES, General Counsel</i>										
Total Amount Encumbered <b>N/A</b>		By Trustees’ Attorney [Name]									Date	

*This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same Agreement. The exchange of copies of this Agreement by electronic mail in “portable document format” (“.PDF”) form or by other similar electronic means shall constitute effective execution and delivery of this Agreement and shall have the same effect as copies executed and delivered with original signatures.*

## Rider A - Agreement General Provisions

1. Service Provider Relationship. Service Provider, in the performance of this Agreement, is an independent contractor and is not an employee, agent, or officer of the Trustees.
2. Payments.
  - a. Trustees agree to pay for the services and materials to be furnished by Service Provider as provided by this Agreement. Payment in arrears shall be made upon Service Provider's completion of the services required by this Agreement to the satisfaction of the Trustees and upon Service Provider's submission of billings as shall be prescribed by the Trustees.
  - b. Trustees shall make payment to Service Provider in accordance with the schedule of payments below. As all of the phases described below may not exist on a simplified Project, the Trustees' may approve condensed multiple payments into one phase, as appropriate and reflective of the actual Scope of Work.

End of Schematic Design Phase,	20% of the task order amount
End of Preliminary Design,	20% of the task order amount
End of Construction Documents,	50% of the task order amount
End of Trade Contractor Bidding Phase and Agreement on lump sum price or GMP,	10% of the task order amount.
3. Services. Trustees may issue a written order with respect to the services to be performed under this Agreement at any time before the completion of the services. Trustees shall pay Service Provider an amount for such services as provided in this Agreement, or if not so provided, Trustees shall pay Service Provider a reasonable amount, which shall be agreed upon by the parties.
4. Service Provider shall not utilize any information, not a matter of public record, which is received by reason of this Agreement, for pecuniary gain not contemplated by the terms of this Agreement, regardless of whether Service Provider is or is not under contract at the time such gain is realized (Education Code Section 89006).
5. Ownership. The report, survey, or other product developed by Service Provider pursuant to this Agreement is the property of Trustees, and shall not be disseminated to others by Service Provider unless authorized by Trustees.
6. Termination for Convenience. Trustees may terminate this Agreement upon a three (3) business-day advance written notice to Service Provider. In the event of such termination, Service Provider shall be paid only for the work satisfactorily completed.
7. Termination for Cause. Trustees may terminate this Agreement for cause should Service Provider fail to perform as herein provided. In the event of such termination, Trustees shall be relieved of the obligation to make any payment to Service Provider and Trustees may proceed by other means with the work in any manner the Trustees deem proper.
8. Indemnification. The Service Provider agrees to hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, the University, and the officers, employees representatives, and agents of each of them from any and all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, including, but not limited to, attorneys' fees and costs resulting from or in any manner arising out of or in connection with any negligent act or omission or willful misconduct on the part of the Service Provider, its officers, agents, and employees, in the performance of this Agreement. This provision shall survive the expiration or termination of this Agreement.
9. Insurance Provisions. The Service Provider shall not commence work until the Trustees have received evidence of the insurance required in this section and approved it.

Service Provider shall obtain the following policies and coverage. The insurance furnished by the Service Provider under this section shall provide coverage in amounts not less than the following, unless a different amount is stated in Exhibit A, Scope of Work Description:

- a. Comprehensive or Commercial Form General Liability Insurance:  
On an occurrence basis, cover work done or to be done by or on behalf of the Service Provider and shall provide insurance coverage for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Limits of Liability:  
\$2,000,000            General Aggregate  
\$1,000,000            Each Claim - combined single limit for bodily injury and property damage.
- b. Business Automobile Liability Insurance:  
On an occurrence basis, cover owned, scheduled, hired, and non-owned automobiles used by or on behalf of the Service Provider and shall provide insurance coverage for bodily injury, property damage, and contractual liability. Use Insurance Service Office (ISO) Form Number CA 0001 covering any automobile. Limits of Liability:  
\$1,000,000            Each Accident - combined single limit for bodily injury and property damage.
- c. Workers' Compensation Insurance:  
This insurance shall include Employers Liability limits of \$1,000,000 and other limits required under California law.
- d. Professional Liability Insurance:  
Professional liability (errors and omissions) insurance on an occurrence basis is preferred, covering work done or to be done by or on behalf of the Service Provider and providing insurance for professional liability in the amount of \$1,000,000 each occurrence. The Service Provider shall obtain and maintain professional liability insurance on a claims-made basis for no less than \$1,000,000 each claim and \$2,000,000 annual aggregate, and certification of coverage shall be submitted to the Trustees upon signing of this Agreement. If the total contract amount exceeds \$1,000,000 the Service Provider shall renew and keep such insurance in effect for at least ten (10) years after the recordation of the notice of completion.

Insurers shall be authorized in the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than **A: VII** or alternatively a carrier acceptable to the Trustees.

Verification of coverage shall be provided as follows:

- a. The Service Provider shall submit to the Trustees copies of certificates of insurance and endorsements to the policies of insurance required by the Agreement as evidence of the insurance coverage.
- b. The scope of coverage shall be shown on the certificate of insurance.
- c. The Service Provider shall provide written notice of cancellation of coverage within thirty (30) days to the Trustees.
- d. The Service Provider shall notify the Trustees in writing of any material change in insurance coverage.
- e. Renewal certifications shall be timely filed by the Service Provider for coverage until the work is accepted as complete.

Insurance policies except for Workers Compensation and Professional Liability insurance shall contain, or be endorsed to contain, the following provisions:

- a. For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be covered as additional insureds.
- b. For claims related to the work, the Service Provider's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Service Provider's insurance and shall not contribute with it.
- c. The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

#### Additional Insurance Provisions

- a. Any deductible under any policy of insurance required in this section shall be the Service Provider's liability.
  - b. Acceptance of certificates of insurance by the Trustees shall not limit the Service Provider's liability under the Agreement.
  - c. The Service Provider's obligations to obtain and maintain required insurance are non-delegable duties under this Agreement.
10. **Personal Eligibility Certification.** If the Service Provider is a natural person, the Service Provider certifies by signing this Agreement that s/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69), State of California Governor's Executive Order W-135-96. Corporate Eligibility Certification. If the Service Provider is a corporation, the Service Provider certifies and declares by signing this Agreement that it is eligible to contract with the State of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code Section 10286, *et seq.*).
11. **Nondiscrimination.** In the performance of this Agreement the Service Provider and its consultants shall not deny the Agreement's benefits nor shall they discriminate unlawfully against any person on the basis of religion, color, ethnic group identification, sex, actual or perceived gender identity, age, physical or mental disability, medical condition, marital status, or age (over 40). Additionally, the Service Provider and its consultants shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination as well.
- a. Service Provider shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, *et seq.*), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0, *et seq.*), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5).
  - b. Service Provider shall permit access by representatives of the California Department of Fair Employment and Housing and the Trustees upon reasonable notice at times during normal business hours with at least 24 hours' notice, to its books, records, accounts, other sources of information, and its facilities as the Department or Trustees shall require to ascertain compliance with this Agreement.
  - c. Service Provider and its consultants/subcontractors shall give written notice of their obligations under this Agreement to labor organizations with which they have a collective bargaining or other agreement.
  - d. Service Provider shall include the nondiscrimination and compliance provisions of this Agreement in subcontracts to perform work under the Agreement (Government Code Sections 12990, 11135, *et seq.*, Title 2, California Code of Regulations, Section 11105)
12. **Drug Free Workplace Certification.** The Service Provider hereby certifies compliance with Government Code Sections 8355, 8356, and 8357 in matters relating to providing a drug-free workplace. In accordance with Government Code Section 8355, the Service Provider shall:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations;
  - b. Establish a Drug-Free Awareness Program to inform employees about all of the following:
    1. The dangers of drug abuse in the workplace,
    2. The Service Provider's policy of maintaining a drug-free workplace,
    3. Any available counseling, rehabilitation, and employee assistance programs, and
    4. Penalties that may be imposed upon employees for drug abuse violations;
  - c. Require that each employee engaged in the performance of the Agreement be given a copy of the statement required by subpart A, and require that each employee, as a condition of employment on the Agreement, agree to abide by the terms of the statement.

13. Disabled Veteran Business Enterprise. Responsive to direction from the State Legislature (Public Contract Code Section 10115, *et seq.*), the Trustees are seeking to increase the statewide participation of disabled veteran business enterprises in contract awards. To this end, Service Provider shall inform the Trustees of any contractual arrangements with consultants or suppliers that are certified disabled veteran business enterprises.
14. Assignment. Service Provider shall not assign benefits or delegate duties under this Agreement in whole or in part, nor assign any moneys due or to become due hereunder without the written consent of Trustees.
15. Successors. The provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the parties hereto.
16. Notice. Notice for either party may be served by delivering it in writing to the party or by depositing it in a U.S. mail deposit box with postage fully prepaid addressed as shown within the information block of the Agreement page. Nothing herein shall preclude the giving of notice by personal service.
17. Audit. If the Agreement exceeds \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor of the State of California and the California State University Auditor for a period of three years after final payment under the Agreement. This examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement (Government Code Section 8546.7).
18. DIR Registration. In accordance with Labor Code Section 1720, *et seq.*, the Service Provider shall register with the Department of Industrial Relations (DIR) for this project and pay at least the prevailing wages on services/work aspects where a prevailing wage applies. Such services and/or work aspects include, but are not limited to, the Service Provider or its sub-consultant's provision of geotechnical studies, potholing involving digging, site surveying and/or construction IOR services as defined by the DIR.
19. Agreement Changes. Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed and dated by the parties. Oral representations, understandings, or writings not expressly incorporated in the Agreement are void. Unless identified within Exhibit A, Scope of Work under a separate sub-heading entitled 'Modifications to Agreement', it is the intent of the Trustees to use the standard published form of this Agreement and Rider A without modification. The Agreement and Rider A shall not be modified without review and concurrence by CSU Office of General Counsel.

-End of Rider A-

## Rider B – Scope of Work (*Hourly Rate*)

### 1.0 Task Order- Construction Agreement for Multiple Projects—Master Enabling Agreement

#### 1.1 General

The Task Order-Construction Agreement for Multiple Projects—Master Enabling Agreement (TO-CA MEA) uses both a Design-Build project delivery method, under which the Design-Builder contracts directly with the design professional, and/or as required, a Construction Manager project delivery method, under which the Trustees contract directly with the design professionals (AE). The University will specify in each Task Order Request whether the Project delivery method is Design-Build or Construction Manager.

#### 1.2 Contract Documents by Delivery Method

The Contract General Conditions differ based on the delivery method; following are the two project delivery methods and the respective versions of the Contract General Conditions and Supplementary General Conditions.

##### A. Design-Build Projects:

1. Contract General Conditions for Collaborative Design-Build Major Projects
2. Supplementary General Conditions to Contract General Conditions for Collaborative Design-Build Major Projects (for use with TO-CA MEA only)
3. If the University specifies in a Task Order Request that a Project's delivery shall be Design-Build, delete and replace all references to "Service Provider", or "Contractor" in all task orders and construction agreements with "Design-Builder".

##### B. Construction Manager Projects:

1. Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects
2. Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects (for use with TO-CA MEA only)
3. For Construction Manager projects, the preconstruction and construction contract documents shall be further modified as follows:
  - a. The Architect and/or Design Consultants (AE) under contract to the Service Provider shall not be used for that project, except as specified in the Task Order. The Architect or specialty consultants under contract to the Trustees will be responsible for the design of the project, as specified in the Task Order Request.
  - b. Where specified in the Contract Documents for the Service Provider to:
    - (1) Collaborate and work with the Trustees on design, constructability, schedule, estimates, and incorporation of Trustees' input, the Service Provider shall do so, collaborating with the Trustees and the Trustees' AE.
    - (2) Manage the Services Provider's team; it shall be understood that the CM shall manage the preconstruction and construction process and collaborate with the Trustees and the Trustees' AE to deliver a successful project.
    - (3) Develop the design and construction documents; or perform the technical design of the Project, and correct design errors, i.e. elements shown and/or designed incorrectly; or shall be responsible for interpretation of design issues, it shall be understood that these responsibilities shall be performed by the AE under contract to the Trustees with collaboration by the Service Provider to provide all other specified functions.
    - (4) Revise the Service Provider and Contractor Warranty and Eligible Uses of Contingency in all places to a Construction Manager Warranty by eliminating the following provision and its associated responsibilities: "Design Errors, work elements or components shown and/or designed incorrectly" which shall become the responsibility of the Trustees and the Trustees' AE.
  - c. If the University specifies in a Task Order Request that a Project' delivery shall be Construction Manager, delete and replace all references to "Service Provider", or "Contractor" or "Design-Builder" in all task orders and construction agreements and replace with "Construction Manager".

All Task Order services not specifically identified herein will vary based on delivery method and shall remain the responsibility of the Service Provider and Contractor.

### 1.3 Post TO-CA MEA Award Requirements

After Trustees award the TO-CA MEA, and prior to bidding the first Project, the Service Provider shall assemble a team of subcontractors as follows:

- A. The Service Provider shall advertise each Project, or type of projects the trades required for each Project, and the prequalification and bonding requirements for each trade.
- B. Service Provider shall prequalify all potential subcontractors for all required trades based on a point system, and include the highest scoring subcontractors in the bidding pool for subsequent projects, as agreed upon by the Service Provider and Trustees. Minimum subcontractor prequalification criteria are contained in the Trustees' trade prequalification documents at <http://www.calstate.edu/cpdc/cm/task-order-construction-agreement-for-multiple-projects.shtml>.
- C. Service Provider may advertise and prequalify additional subcontractors and add them to the bidding pool as required for subsequent projects.
- D. If Service Provider desires to self-perform any portion(s) of the work, it must competitively bid against the other selected subcontractor(s) during the project bid phase.
- E. Once Service Provider lists trade contractors for a Project, the provisions of the Subletting and Subcontracting Fair Practices Act contained in Public Contract Code sections 4100 *et seq.* would apply to any proposed substitution of trade contractors/subcontractors.

### 1.4 Task Order Documents

#### A. Task Order Request.

The Trustees will initiate each project by issuing a Task Order Request. The services requested on each Task Order Request may vary depending on the Project and the Trustees' needs. The Task Order Request shall contain the following:

1. Design narrative description for a Minor Project (total Project budget less than or equal to \$<insert current minor cap limit>).
2. Design criteria documents for a Major Project (total Project budget greater than \$<insert current minor cap limit>).
3. Project Budget (not to exceed \$7,000,000 in total Project costs).
4. Project Schedule including preconstruction and construction milestone dates.
5. The determination of the Project delivery as Design-Build or Construction Manager.
6. Detailed description of the required preconstruction and design services for the Project.

#### B. Task Order Proposal.

After meeting with the Trustees to further define Project scope and preconstruction services, the Service Provider shall submit a Task Order Proposal to the Trustees, which shall contain:

1. Service Provider's proposed design phase fees, negotiated lump sum, or hourly, based on the RFP proposed rates and the Task Order Request description of services.
2. Service Provider's proposed preconstruction services fees, negotiated lump sum, or hourly, based on proposed rates and the Task Order Request description of services.
3. Proposed milestone project schedule including preconstruction and construction phases.
4. Service Provider's description of project scope if there is any variance from the Task Order Request.
5. Proposed project budget updated to reflect proposed scope and the Service Provider's opinion of cost.
6. Service Provider shall not receive added mark-up on its consulting AE fees.

If the Trustees find the Service Provider's Task Order Proposal acceptable, a Task Order will be executed for design and preconstruction services for that project.

#### C. Task Order.

Service Provider will perform the design and preconstruction services as detailed by the Trustees in the Task Order. Service Provider shall:

1. Meet with Trustees to collaborate on design and to document project scope as the design develops.
2. Provide estimates as required during the design phase to update the budget and keep the Trustees informed about expected construction costs.

3. Meet with the Trustees to assure budget and schedule parameters are met.
4. Provide constructability input as required to conform to the TO-CA MEA requirements. Manage the Service Provider team to assure that all appropriate input, including that from the Trustees, is incorporated into the Construction Documents.
5. Assess the site to assure that all necessary site surveys and investigations have been performed to mitigate potential unforeseen site conditions.
6. Perform pursuant to Contract warranty requirements.
  - a. For a Design-Build Task Order, the Construction Agreements will be Design-Build to the extent that change orders will be limited to unforeseen site conditions and Trustees or Regulatory Agency changes, as specified in the Contract General Conditions.
  - b. For a Construction Manager Task Order, the warranty requirement, "Design Errors, work elements or components shown and/or designed incorrectly", will be removed from the warranty, and all costs related to design errors shall be the Trustees, as it is the AE's responsibility.
7. Upon completion of the Construction Documents and regulatory plan checks, coordinate and obtain the building permit from the Trustees, and from other agencies as required.

#### 1.5 Bidding Trades—Lump Sum Construction Proposal/Construction Agreement/Project Completion

##### A. Bidding Trades—Lump Sum Construction Proposal

After the Trustees provide the Service Provider a Project approval to bid, the Service Provider will bid the Project to the previously prequalified pool of subcontractors and award to the lowest bidders, as agreed upon by the Trustees. Following the determination of low bid subcontractors, the Service Provider will submit a Lump Sum Construction Proposal, and if acceptable, the Trustees will issue a Construction Agreement for the work and proceed to construction. The Lump Sum Construction Proposal is based on the following, and these shall be detailed in the subsequent Construction Agreement:

1. Low bid lump sum prices for all trade contractor bids.
2. Service Provider Lump sum site management fee based on proposed hourly rates and as approved by Trustees.
3. Service Provider's proposed level of DVBE participation.
4. Service Provider Lump Sum OH&P based on the proposed percentage of Direct Construction Cost as proposed in the RFP.
5. Service Provider and/or Trustees' Allowances as required, and as negotiated and approved by the Trustees.
6. Contingency as specified in the Contingency Schedule, and approved by the Trustees.
7. Project specific, 100% payment and performance bonds, based on proposed percentage.

In the event that the Trustees elect not to proceed with the Construction Agreement for the Project, the Service Provider will still earn preconstruction fees for that Project.

##### B. Construction Agreement

The Service Provider shall sign the Project Construction Agreement and return it, along with the required insurance and bonds to the Trustees within ten (10) calendar days of written intent to accept the Lump Sum Construction Proposal. No agreement shall be binding upon the Trustees until it has been executed by the Proposer and the Trustees and approved by the Trustees' attorney appointed according to law and authorized to represent the Trustees (Public Contract Code section 10820).

If the Trustees and the Service Provider do not agree upon a Lump Sum, the Trustees will not award the Project Construction Agreement to the Service Provider. In that event, the Trustees may award the construction phase through other means which could include going out to public bidding or may take other recourse which could include canceling the Project or a portion of it.

##### C. Project Completion.

When each Project is completed the Trustees will certify completion and file a Notice of Completion with the County Recorder.



## 2.0 General Requirements

During the term of the TO-CA MEA, the Trustees may issue individual Task Orders for the provision of preconstruction and/or professional services, and Construction Agreements for the construction of various projects on campus per the scope of services as described herein.

### 2.1 General Scope of Work

Refer to Project Information in the RFP

### 2.2 Task Orders

The University shall develop a Task Order in consultation with the Service Provider, and in response to the Task Order Request. Once the University and Service Provider agree to scope and fee, the University shall present a Task Order to the Service Provider for signature.

Service Provider shall not commence performance of services prior to receipt of a fully executed Task Order and Notice to Proceed.

### 2.3 Standard Forms

Standard forms and documents provided by the Trustees shall be used in providing services required by this Agreement including, but not limited to invoices for services, and various construction management forms as may be required. Reference the Request for Proposals and CSU's website, Sample Forms.

### 2.4 Extra Services

Extra services require preauthorization, in writing, by the Trustees. When extra services are pre-authorized, they shall be provided by Service Provider and paid for by the Trustees as provided in Riders A and B, and the individual Task Order. Although the TO-CA MEA allows for the provision of extra services, the Trustees will usually issue additional Task Orders for extra services.

### 2.5 Compensation

A. The TO-CA MEA identifies the maximum cumulative amount that may be authorized for Preconstruction Services. Individual Task Orders may be issued for any amount up to the balance available under this Agreement. Each Task Order shall identify the Service Provider's fee for professional or preconstruction services to be rendered to the University. The University shall authorize work for each Task Order either on a lump sum or progress payment basis.

B. When hourly charges are to be used, they shall be as specified in the Rate Schedule as proposed in response to the RFP (Exhibit A, Service Provider's Proposed Rate Schedule).

### 2.6 Reimbursable Expenses

Unless otherwise stated in the Task Order, in addition to the Service Provider's fees for services, the Trustees will reimburse certain Project-related expenditures. Service Provider's claims for reimbursable expenses shall reflect actual expenditures without a mark-up made by Service Provider, its employees, or its consultants working on the Project. The Service Provider shall document claims by providing appropriate billing and supporting receipts. Unless otherwise stated within an individual Task Order, the Trustees will pay reimbursable expenses as follows:

#### A. Travel and Mileage:

Service Provider's travel from its office to the Project site or to the CSU Chancellor's Office are not reimbursable. When pre-authorized in writing by the Trustees, other travel expenses in connection with the services provided in the Task Order shall be reimbursable. Travel reimbursement shall be limited to the amounts that would be authorized for employees of the California State University at the time of travel as specified in the CSU Travel Procedures and Regulations. University will provide Service Provider this document upon request.

#### B. Reprographics as Deliverables:

Reproduction of drawings, specifications, calculations, cost estimates, program analysis, photos, renderings, plots or similar reproductive instruments presented by the Service Provider and preapproved by the Trustees as a deliverable to the Trustees is reimbursable.

#### C. Reprographics for Development of Deliverables:

Reproduction for internal use by Service Provider and its consultants is not reimbursable.

D. Incidental Items:

Incidental office supplies, letter postage, telephone calls, facsimile transmissions, computer use charges and similar attendant expenses are not reimbursable.

E. Reprographics for Plan Check Review:

Reproduction of documents for submittals to review agencies (Division of the State Architect, plan checking firm, State Fire Marshal, etc.) is reimbursable.

F. Reprographics for Bidding:

Reproduction of construction documents for bidding when pre-approved in writing by the campus project administrator is reimbursable. The Trustees encourage Service Provider to distribute bid documents electronically.

G. Package Delivery/Courier Services:

Express package deliveries (USPS, FedEx, UPS or similar carriers) and judicious use of courier services for design deliverables to campus, plan review agencies, clarifications to Contractor inquiries (shop drawings, RFI responses), or similar actions to facilitate timely responses during the construction phase are reimbursable when pre-approved by the campus project administrator.

2.7 Construction Documents/Plans and Specifications

Construction Documents/Plans and Specifications provided under this agreement for construction projects shall be complete and accurate and shall give such direction as will enable any competent builder to carry them out (Public Contract Code section 10720).

2.8 Ownership and Use of Documents

A. Service Provider agrees that designs, drawings, specifications, electronic equivalents and other technical data produced in the performance of this Agreement shall become the property of the Trustees. The Trustees grant Service Provider the right to reuse aspects (i.e. details and design elements) of the design developed for this Project in other designs for other future projects including those with other clients.

B. Service Provider agrees that the Trustees shall have access at reasonable times to inspect and make copies of notes, designs, drawings, specifications, electronic files, calculations and other technical data pertaining to the work performed under this Agreement.

C. Use of Documents

The Trustees retain the right to utilize documents prepared under this Agreement regardless of whether the Agreement is terminated or the project is suspended or abandoned. The Trustees may use these documents in the future for the same project, a modified version of it, or for one that is similar.

D. Reuse of Documents

The Trustees' reuse of the documents on another project without the approval of Service Provider relieves the Service Provider of liability resulting from their use.

**3.0 Preconstruction Phase Services**

3.1 A. Services during Preconstruction Phase

During the preconstruction phase the Service Provider shall:

1. Perform the services that are required by the Task Order.
2. Work closely with the Trustees to bring best value to the Project, as defined by the Trustees.

All preconstruction phase services are more fully described in the following sections. Service Provider shall only provide services required by each Task Order.

B. Preconstruction Agreement

The Service Provider will be required to sign a Task Order with the Trustees to perform design and/or preconstruction services. The University will identify the amount of the Task Order agreement. A sample preconstruction services Task Order is included in the RFP [Appendices](#). The Service Provider will sign and return the Task Order, along with the required submittals, to the Trustees within fourteen (14) calendar days of Trustees' issuance of Task Order for signature. No Task Order shall be binding upon the Trustees

until it has been executed by the Service Provider and the Trustees. The Service Provider shall provide Preconstruction Phase insurance coverage in accordance with the Agreement General Provisions, Rider A.

### 3.2 Design

#### A. Life Cycle Cost.

Service Provider shall develop and review the design and construction documents, taking into account the quality of the materials and equipment, to ensure the most efficient design and minimum life cycle cost. The Service Provider shall evaluate Life Cycle Cost and Value options including, but not limited to: building envelope, HVAC, and lighting. Service Provider shall develop/update and submit a Life Cycle Cost Analysis as a part of each design submittal if required by the Service Order.

#### B. Quality Building.

Service Provider shall provide information, estimates, schemes, and make recommendations regarding construction materials, methods, systems, phasing, schedules, and costs, and shall participate in design decisions to provide the highest quality building within the budget and schedule.

#### C. Regulatory Approvals.

Service Provider shall monitor all regulatory approvals required during the design phase.

#### D. Technical Design.

The Service Provider shall perform the technical design of the Project, and correct design errors, i.e. elements shown and/or designed incorrectly. The Service Provider shall be responsible for the technical design, and for interpretation of design issues. These responsibilities shall be performed by the AE under contract to the Service Provider, unless specified to be a CM project when the AE will be under contract to the Trustees. The Service Provider shall coordinate and cooperate with the AE to assure that the drawings are coordinated, constructible, complete, and on budget, and shall be responsible for the work as indicated in the Construction Agreement Warranty.

#### E. Document Development.

The Service Provider shall develop documents in accordance with the scope description in the Task Order Request and the [Procedure Manual for CSU Capital Projects](#), found online.

### 3.3 Cost Monitoring

The Trustees require that the Service Provider monitor costs incurred for the Preconstruction Phase separately. At the request of the Trustees, the Service Provider may be required to provide a cost report supporting Preconstruction Phase costs incurred by the Service Provider. Should the Trustees determine that the Service Provider did not staff the Preconstruction Phase as represented by the Service Provider's proposal the Trustees will be entitled to recover unsupported payments to the Service Provider.

### 3.4 Subcontractor Procurement

The Service Provider shall recommend to the Trustees the most beneficial and appropriate method to procure the trade contractors required to construct the Project(s). All Trade contractors must be procured through competitive means, either competitive bid or best value selection. Recommendations for trade contractor participation may include design-assist, design-build, competitive bids to prequalified bidders on complete construction documents, or a combination of methods. Once the Trustees approve the recommended procurement methodology, the Service Provider shall prepare the necessary bid packages and procure the trade contractors. Service Provider may structure trade contractor bid proposals to allow for independent design phase participation, and subsequent construction phase participation if a Construction Agreement is awarded to the Service Provider. Service Provider shall include in their proposals suggestions for all design-assist and/or design-build trade participation, but shall not include specific contractors as part of the Task Order Proposal. The Task Order Proposals, and proposed percentage fees shall include all preconstruction costs for the proposed design-assist or design-build trades.

### 3.5 Project Phasing

The Trustees may benefit from dividing the Project(s) construction into phasing components. Examples of possible phasing components are: demolition, hazardous material abatement, relocation of underground utilities, site preparation, separated buildings, interior finishes of shelled space, parking lots, and landscape. During

design phase, the Service Provider shall identify and propose phasing components to the Trustees. The Trustees are not obligated to accept proposed phasing components or revise specified Project phases.

### 3.6 Project Phasing Documents

Upon Trustees' acceptance of the Service Provider-recommended construction phasing components, the Trustees will direct the Service Provider to provide documents to facilitate construction of the Project in accordance with the accepted phases, and the Service Provider will include the phases in the Lump Sum Construction Proposal submission to the Trustees indicating separate pricing, schedule, liquidated damages, and other conditions for each phase to allow each phase to be initiated, completed, and accepted in accordance with the Contract General Conditions. The Trustees may adjust the Service Provider Construction Phase Services-Site Management Fee based on the impact of accepted construction phases.

### 3.7 Proposed Project Schedule

The Trustees may change the Proposed Project Schedule for construction during the design phase. The Service Provider is encouraged to suggest ways to save time or cost by phasing, re-sequencing the construction phase, or changing the construction durations. The Trustees will identify the schedule commitments in the Task Orders and Construction Agreements (if awarded). The Trustees may authorize construction components prior to acceptance of the Lump Sum Construction Proposal for construction of the entire Project.

### 3.8 Scheduling

Service Provider shall develop the initial Project Schedule. Service Provider shall provide a Project Schedule during the Preconstruction Phase at each of the design milestones representing all tasks necessary to complete the Project within the Project durations as indicated in the Task Order. The Service Provider shall include the following in the schedule as appropriate: tasks by all parties, regulatory and Trustees' approvals, Board of Trustees meeting dates (if required), sufficient periods of time for document review, campus activities affecting the Project, significant milestones, training, consultant selection, phasing, bidding, Notice to Proceed, construction duration and activities, occupancy milestone, commissioning, and an allowance for weather losses. The Service Provider shall update the schedule as necessary to reflect the current schedule and recent Project developments. Service Provider shall monitor all regulatory approvals required during the design and construction phase. The Service Provider shall develop the construction portion of the Project Schedule in sufficient detail to be used in trade contractor bidding. This schedule shall be reviewed with the University at all project meetings and updated by Service Provider at each submittal.

### 3.9 Identify Potential Risk Factors

The Service Provider shall identify schedule or other Project risks, which are conditions or events that could negatively affect the Project scope, quality, schedule or cost. The Service Provider shall present the risk analysis in a risk matrix format when significant risks become apparent. Service Provider shall evaluate the risk to include severity of impact, probability of occurrence, and other factors as Service Provider deems appropriate and recommend ways to manage or mitigate each risk.

### 3.10 Schedule Risks Review

The Service Provider shall review the Proposed Project Schedule, and notify the Trustees of potential schedule risks in the risk matrix. If warranted, Service Provider shall recommend modifications to the schedule that would expedite the Project Schedule based on normal production rates.

### 3.11 CEQA Mitigation Monitoring

Mitigation Monitoring and Reporting Programs (MMRP), which are included in CEQA documentation if required in the RFP Appendices, provide a description of required mitigation measures associated with the Project(s). The Service Provider shall implement mitigation measures identified in the MMRP and/or in the Task Order Request. In addition, during the design phase of project(s), the Service Provider shall identify in the Project Schedule the specific timing related to the planning and implementing of these mitigation measures.

### 3.12 Constructability Review

The Service Provider shall check the construction documents for design errors, completeness, coordination, ambiguities, and ability to bid, and make recommendations to the Trustees' Representative. Service Provider shall perform constructability reviews continuously and issue constructability reports and comments at: 100%

Schematic; 100% Design Development; and 95% Construction Documents, or as documented in the Task Order. Service Provider shall perform during the design and preconstruction services phases cognizant of the design-build warranty requirements in the Construction Agreement.

### 3.13 Cost Control Management

As an initial task, the Service Provider shall review the Budgeted Direct Construction Cost and determine if it is sufficient to construct the Project. The Service Provider shall prepare a cost estimate and evaluate the estimate against the construction budget and recommend, if necessary, the appropriate action to avoid potential cost overruns. The Service Provider shall establish target values for the cost of each Project element to be used as a basis of design and cost monitoring. The Service Provider shall monitor the budget as compared to the Project scope through the preconstruction phase. If changes are suggested to the Project scope that may cause Project cost overruns Service Provider shall notify the Trustees in writing as part of the regular Project development meetings. If the estimate is above the Project budget, the Service Provider shall participate in value engineering to lower the Project cost to within the budget, and recommend the appropriate action to avoid potential cost overruns.

### 3.14 Construction Cost Estimates

#### A. Form and Timing

The Service Provider shall provide full and complete estimates of the total construction cost of the Project, and summarize cost information in a CPDC form 2-7 format, as detailed in the Task Order. These estimates may occur at:

1. 100% Schematic Design.
2. 100% Preliminary Design.
3. 50% and 95% Construction Documents.

#### B. Contents

Each cost estimate shall:

1. Be in a format acceptable to the Trustees (Unifomat, CSI or similar) as detailed in the Task Order.
2. Reflect the best professional estimate of actual costs anticipated.
3. Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate. Do not include a discrete line-item allowance for 'contingency.'
4. Provide a line item adjustment for inflation to the bid date as appropriate to the project delivery schedule. Trustees' authorization for Service Provider to proceed with the next step in the design process is contingent on the acceptance of the building cost estimates as compared to the Trustees' Construction Budget. Refer to the design "Procedure Manual for CSU Capital Projects" (RFP-Appendices) for a description of the design documents at each phase.

### 3.15 Project Savings

Project savings identified during design as part of the Service Provider value engineering process are owned by the Trustees. It is one of the collaborative responsibilities of the Service Provider to look for ways of reducing Project construction costs. Proposed cost reductions shall not reduce the Project program requirements, reduce quality of materials or craftsmanship, increase life-cycle costs, negatively affect the architectural aesthetics or design intent, or adversely affect the Project completion.

### 3.16 Design Phase Investigation Work

Service Provider shall access the type, quantity, and quality of the available information describing existing site conditions. If Service Provider requires additional information in order to develop complete Project scopes, the Service Provider shall make recommendations to the Trustees regarding supplemental site surveys. If the Trustees deem it necessary to investigate conditions at the Project site or have Project incidental construction work performed during the design phase of the Project, the Trustees will issue a limited scope Construction Agreement to the Service Provider, per the Contract General Conditions.

### 3.17 Develop Trade Contractor Bid Packages

The Service Provider shall determine the number and make-up of the trade contractor bid packages, produce the Bid Packages, and obtain Trustees' review and approval of the proposed trade contractor bid documents and trade contractor agreements. Reference section 3.4 of this Rider B.

- A. The Bid Packages shall incorporate the Service Provider's subcontract agreement requirements, any Project specific requirements such as site access and phasing, and the relevant sections of the Trustees' bidding requirements and Contract General Conditions requirements such as DVBE, Small Business, assignment clauses, the Subletting and Subcontracting Fair Practices Act (PCC section 4100 *et seq.*), and Division One.
- B. The Service Provider shall develop the most logical, competitive, seamless and distinct trade contractor bid packages with all scopes of work included in the packages. Include bid alternatives, as appropriate, (deductive or additive) in each trade contractor bid package to enable full utilization of the Project budget. Include the current Trustees' Service Provider MEA Contract General Conditions in trade contractor bid packages. If required by the Task Order, the Service Provider shall develop Supplementary General Conditions (with the Trustees' participation and subsequent approval) and include any special conditions in Division One, that address the trade contracts, schedule for trade contracts, and the responsibilities of all parties under the TO-CA MEA procurement method, where the Service Provider bids the Project elements and enters into contracts with the trade contractors. Include in the trade contractor bid packages that portion or subset of the initial Project Schedule that applies to that trade.

### 3.18 Contract General Conditions

For the Construction Agreement, the Trustees will require the Service Provider to use the current, appropriate version of the Contract General Conditions in effect at the time the Service Provider solicits trade bids, or in effect at the time the Construction Agreement is issued.

### 3.19 Prequalify Trade Contractors

The Service Provider shall prequalify its trade contractors (mechanical, electrical, plumbing and trades where the estimated cost of the trade work is greater than five percent (5%) of the Construction Budget) utilizing the CSU Trade Contractor Prequalification document (RFP-Appendices) or similar, and include any additional prequalification processes required by the Service Provider. Service Provider shall prequalify subcontractors using a point system for scoring the prequalification questionnaires, making the highest scoring subcontractors eligible to bid the subsequent TO-CA MEA projects. Once this process is completed, the Service Provider shall provide a list of prequalified trade contractors to the Trustees.

### 3.20 Minimum Bidding Pools

The Service Provider shall obtain a minimum of three qualified trade contractor bids for each trade bid package, and solicit bids from the all of the members of each trade bid pool for the projects under the TO-CA MEA. If after soliciting bids from the trade bid pool for a specific project, Service Provider receives less than three bids, the Trustees may agree to the bids, or require Service Provider to obtain additional bids. The Service Provider may solicit bids only from trade bid pools, and in a manner most appropriate to obtain competitive trade bids.

### 3.21 DVBE Participation and Prevailing Wage Requirement

The Trustees require the Service Provider to achieve a minimum of three percent (3%) DVBE participation for each individual Construction Agreement awarded under the TO-CA MEA. If Service Provider has elected to implement the DVBE incentive then Service Provider is required to achieve the incentive amount of DVBE participation in addition to the three percent required DVBE participation for each Construction Agreement awarded under the TO-CA MEA. Final determination of DVBE participation attainment by the Service Provider shall be at the Trustees' sole discretion.

If the Service Provider meets or exceeds the proposed DVBE participation percentage amount for the entire TO-CA MEA at any time before the expiration of the initial Contract term, the Trustees may waive the DVBE participation requirement for subsequent Construction Agreements awarded. Service Provider shall continue to satisfy the DVBE participation requirement until the Trustees waive this requirement in writing.

If the Service Provider does not realize the DVBE participation percentage identified for the incentive in its technical proposal for each Construction Agreement awarded under the TO-CA MEA, the Trustees shall assess a penalty of \$50,000 per one percent shortfall, prorated, and deduct it from the Contract Amount due.

The Service Provider shall include prevailing wage rates that are current when the Notice to Bidders is first distributed to the trade subcontractors for bidding each Project. Apprenticeship ratios shall be tracked for the entire TO-CA MEA contract, not for each individual Construction Agreement. Prevailing wage rates are available for downloading on DIR website at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.

### 3.22 Contractor Contingency

The Service Provider shall include Project construction contingency in its Task Order fee proposal as indicated in the contingency schedule and as negotiated with the Trustees as part of the Task Order Request process. Uses of contingency shall be as approved by the Trustees, and as described in this document. Any unused portion of the contingency shall be returned to the Trustees. Service Provider shall be responsible for any contingency overruns. The Service Provider shall not cause, or allow, the trade contractors to include any construction contingency or allowances in their bids, unless it is itemized as a Service Provider Allowance.

### 3.23 Bid Phase Services

Once the Trustees have approved individual or multiple trade contractor bid packages, the Service Provider shall bid these packages competitively, complying with the applicable state statutes, using the current, appropriate Supplementary General Conditions and current, appropriate Contract General Conditions as agreed upon and approved by the Trustees. Bids may be in the form of lump sum, or best value for Design-Assist or Design-Build trades, as approved by the Trustees. If the Trustees and Service Provider mutually agree bid package bidding and award may be phased to accommodate project schedule.

### 3.24 Bid Advertisement

When advertising to prequalify, assemble, and add to the TO-CA MEA bidding teams, the Service Provider shall issue a notice to bidders for the required trade bids, and in that notice provide that the Project is a public works Project, and as such is subject to prevailing rate wages in addition to Service Provider prequalification requirements. This notice may be placed electronically by the campus on the CSU CPDC website on the "[PlanetBids CSU Public Solicitation Portal](#)".

However, if Service Provider wishes to place the advertisement for the trade bids using the "[PlanetBids Subcontractor Solicitation Portal](#)", please contact Alan Zavian (by email: [alan@planetbids.com](mailto:alan@planetbids.com) or by telephone: (818) 992-1771, ext. 112). Regardless of the PlanetBids platform used for advertising the trade bids, the trades will need to register on PlanetBids, and once registered, they will be able to search for projects bidding.

### 3.25 Receive bids

The Service Provider shall receive bids from trade contractors, or work with the Trustees on best value selections, and review the bids and proposals with the Trustees towards identifying the lowest responsible bidder for each trade, including alternatives for that trade. Trade bids may be normalized, and Service Provider shall review and confirm scope of work with trade contractors before the Lump Sum is submitted to the Trustees. Service Provider shall invite the Trustees' representative to the bid openings and to participate in bid normalization.

### 3.26 Submittal of Project Lump Sum or GMP

A. The project Budgeted Direct Construction Cost is provided in the Task Order Request project description. The Trustees may revise the project Budgeted Direct Construction Cost during the design phase. Upon bidding the Project and receiving all trade contractors' bids, or prior to receiving all bids as approved by the Trustees, the Service Provider shall submit to the Trustees a Lump Sum or GMP Construction Proposal for the construction of the Project.

The Service Provider shall submit the Lump Sum or GMP based on the Design-Build Documents submitted to the Trustees during Design Development, and as indicated in the Schedule. The Design-Builder shall include in its submittal:

1. a line item breakdown showing each subcontract amount;
2. the number of bidders to date for each trade and a bid breakdown summary sheet for each trade,
3. detailing bid amounts for all bidders and all normalization;
4. all allowances, which may include allowances for trades which have not yet been competitively bid;
5. all other items included in the Direct Construction Cost;
6. Design Fees;

7. the Service Provider's site management fee;
8. the Service Provider's contingency;
9. the Service Provider's overhead and profit; and
10. the Service Provider's bonding costs.

- B. If the Agreement is based on a GMP, a contract change order shall convert the contract to a lump sum price. If the final trade bids result in a project savings the change order will adjust the GMP to that final Lump Sum price amount. The Design-Builder / General Contractor shall be responsible for any GMP cost overruns.
- C. If the Trustees accept the Service Provider's Lump Sum or GMP Construction Proposal, the Trustees shall award a Construction Agreement to the Service Provider to construct the Project for the aggregate of the direct cost of the work, plus the Service Provider's fee for Construction Phase Services, Contingency, and Overhead and Profit, as agreed upon, and proposed in the RFP phase. Payment and performance bonds shall be written for the full amount of the Lump Sum Construction Proposal. The Service Provider's overhead and profit shall be the proposed percentage for overhead and profit applied to the Actual Direct Construction Cost.

### 3.27 Service Provider Allowances

For minor trades where the Service Provider may not have received a bid, when the Service Provider is self-performing work that was not competitively bid, or when bid normalization reveals necessary work that is not included in trade bids, the Service Provider may include allowances for the work per the Contract General Conditions. Allowances should not exceed 15% of the contract amount, except as necessary for scopes of work included in a GMP that will be bid during Phase 2 prior to conversion to lump sum, and shall be approved by the Trustees.

### 3.28 Trustees' Allowances

The Trustees may insert a Trustees' Allowance into the Lump Sum agreement, or may keep it outside of the Lump Sum, whenever they have a scope of work that is indeterminate at the time of bidding. An example of a Trustees' Allowance would be for the Service Provider or the Trustees to purchase an unspecified quantity of an item. The Trustees are responsible for the estimate on a Trustees' Allowance. If included in the Lump Sum agreement, the Service Provider shall return unused portions of the Trustees Allowance to the Trustees with a credit change order.

### 3.29 Allowance Process

The Service Provider shall carry both its allowances and Trustees' allowances as directed by the Trustees, in its Schedule of Values as part of the Direct Construction Cost, and the Service Provider will apply its fees to them. Allowances shall only be used for their identified specific and discrete purpose. Allowance balances may not be used to make up deficits on other line items. The Trustees shall authorize use of Allowances with a Field Instruction and/or change order. The charges against either allowance shall consist of either time-and-material or Trustees-approved lump sum direct costs from trade contractors. These cost items shall have direct costs and trade contractor mark-up in accordance with the Contract General Conditions; however, Service Provider will not be awarded additional fees on allowances. Upon completion of an allowance item, and if the allowance has not been fully expended, the Trustees shall process a credit change order for the unused balance of the allowance plus the Service Provider's overhead and profit, site management fee, and Service Provider and subcontractors' payment and performance bonds on the remaining balance. If a Trustees' Allowance is exceeded the Trustees shall process a change order to the Construction Agreement in accordance with the Contract General Conditions to compensate the Service Provider for the overrun.

### 3.30 Service Provider's Contingency

The Service Provider shall be allowed a Project contingency as negotiated with the Trustees based on Project size, type and complexity, and, as suggested in the contingency schedule below, the contingency may vary from the schedule below based on the risks inherent in the Project. The schedule does not dictate minimum contingencies. This contingency shall be used to pay costs as detailed herein. The use of the Service Provider's contingency shall require approval by the Trustees, but no reasonable use shall be disallowed. When contingency use is approved, the Service Provider shall pay the trade contractors in accordance with the Contract General Conditions for the additional work, and the Service Provider shall receive proposed percentages for site



management fee and payment and performance bonds, but shall not receive overhead and profit for the added work. The Service Provider shall itemize the use of the contingency and account for the contingency balance on a separate accounting accompanying the monthly payment request. Service Provider shall return to the Trustees the Trustees' share of the unused portion of the contingency, plus proposed costs for site management fee and payment and performance bonds. Contingency-eligible costs in excess of the contingency amount shall be borne by the Service Provider. Unused contingency shall be split: Trustees, 80%, Service Provider, 20%.

<b>Contingency Schedule</b>					
<b>Project Size</b>	<b>&lt;\$250,000</b>	<b>&lt;\$500,000</b>	<b>&lt;\$1,000,000</b>	<b>&lt;\$4000,000</b>	<b>≤\$7,000,000</b>
DB Projects	8%	7.5%	7%	6.5%	6%
CM Projects	5%	4.5%	4%	3.5%	3%

3.31 Eligible uses of Contingency:

The following are examples of eligible and ineligible uses of contingency and owner paid change orders:

- A. Design Errors, work elements or components shown and/or designed incorrectly. (DB only)
- B. Re-work due to ambiguities or conflict in construction documents. (DB and CM )
- C. Constructability, and coordination of construction tolerances between trade contractors. (DB and CM )
- D. Work shown or inferred on construction documents but missing from bid packages. (DB and CM)
- E. Work shown or inferred in the construction documents, but not described to the extent that it is sufficient to obtain competitive bids. (DB and CM )
- F. Overages on Service Provider allowances. (DB and CM)
- G. Security personnel to control unexpected union picketing. (DB and CM )
- F. Expenditures suggested by Service Provider and agreed to by Trustees for the benefit of the Project. (DB and CM)

3.32 Ineligible uses of Contingency:

- A. Additional Project management staff.
- B. Weather protection of work or materials for the benefit of subcontractors.
- C. Insurance co-pay (BRIP deductible co-pay) costs.
- D. Any item listed in Classification of Project Costs RFP Table A as Overhead & Profit or Construction Phase Services.

3.33 Trustees' responsibility for Change Order:

- A. Cost of work not shown or inferred in the construction documents.
- B. Trustees requested changes or additional work.
- C. Unforeseen site conditions if not able to be discovered with a reasonable preconstruction site investigations.

3.34 Warrant Documents

The Service Provider shall warrant the construction and bid documents that the items described in this Rider B, section 3.31 shall be paid from and will not exceed the Service Provider construction contingency.

3.35 Liquidated Damages

Liquidated Damages, as described in the Contract General Conditions, shall be a part of each Construction Agreement. Liquidated Damages shall be as proposed by the Trustees in the Task Order Request, agreed to between the Trustees and Service Provider in the Task Order, and as documented in the Construction Agreement.

3.36 Fees and Mark-ups

- A. Design/Builder Contingency: Lump Sum Allowance, based on agreed upon percentage of proposed Direct Construction Cost.
- B. Overhead and Profit: Lump sum based on proposed percentage of Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1, per RFP 10.03.
- C. Site Management Fee: Proposed lump sum based on Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1. Includes overhead and profit per RFP 10.03.

- D. Subcontractor Payment and Performance Bonds: Lump sum allowance based on proposed percentage of Direct Construction Cost as proposed in Phase 1 per RFP 10.03.
- E. Contractor Payment and Performance Bonds: Lump Sum Allowance based on proposed percentage of Proposed Direct Construction Cost as proposed in Phase 1 per RFP 10.03. Amount of each bond shall equal 100% of the awarded contract price per Contract General Conditions.
- F. Collaborative Design-Build only — Design Fees: Proposed lump sum, based on Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1. 65% of the proposed Design Fee shall be allocated to the Preconstruction Phase 1 service agreement, 35% of Proposed Design Fee, 10% of which is allotted to Construction Administration shall be allocated to the Phase 2 Design-Build agreement. Includes overhead and profit per the RFP. Lump sum amount unless adjusted for change in scope.
- G. Preconstruction Services Fee: Proposed lump sum based on Direct Construction Cost Budget, unless adjusted for change in scope during Phase 1.

3.37 Failure to Agree on Lump Sum Contract

If Trustees and Service Provider cannot agree on a Lump Sum Contract amount, or other conditions, the Trustees may terminate the preconstruction agreement and proceed with the construction phase through other means.

- End of Rider B, Scope of Work -

**Exhibit A – Rate Schedule**

*(Insert below all of the Service Provider's Rate Schedule pricing from Service Provider's response to the RFP.)*

-End of Exhibit A-

**CONTRACT  
GENERAL CONDITIONS  
FOR  
COLLABORATIVE DESIGN-BUILD  
MAJOR PROJECTS**



**THE CALIFORNIA STATE UNIVERSITY**

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

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

Revised June, 2019

Contract General Conditions for Collaborative Design-Build Major Projects Revisions Made Since Last Major Update:	
Article No.	Revision Description
36.06-b	Owner Controlled Insurance Program, revised June, 2019.
General	Supplementary General Conditions were incorporated into this document.
General	Many passages reworked from passive to active voice.
31.00	Definitions: added BRIP, OCIP, Sample Forms.
32.02-a(2)	Dept. of Industrial Relations Public Works Registration: refreshed web link.
32.06-a	Cost Proposal, sections (1)-(3).
32.10	CA Company, etc. Renumbered section from 32.11 to 32.10.
32.11	Small Business. Renumbered section from 32.10 to 32.11. Deleted and replaced 32.11-b (2), Penalty, with new section (2), Failure to Subcontract with Listed Small Business.
35.09	Contract Bonds: refreshed web links to CA Department of Insurance and to US Treasury listing.
36.02-b	Nondiscrimination. Deleted and replaced with updated language.
36.03-f	Archaeological Finds. Added web link to California Archaeological Inventory.
36.03-h	Buy Clean California Act. New section added per Public Contract Code section 3500 <i>et seq.</i> (per enactment of AB262).
36.08-a	Quality Control. Deleted "or registered Civil Engineer (pre-1982 license)".
36.08-d	Safety. Broke out the requirements into six numbered sections.
36.15-c	Adjustment of Contract Time due to Acts of God, etc.: listed causes for delay for clarity (was in paragraph form).

**CONTRACT GENERAL CONDITIONS  
FOR COLLABORATIVE DESIGN-BUILD MAJOR PROJECTS**

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**CONTRACT GENERAL CONDITIONS  
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**CONTRACT GENERAL CONDITIONS  
FOR COLLABORATIVE DESIGN-BUILD PROJECTS**

**31.00 - DEFINITIONS**

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

**Addendum** - A document issued to Design-Builder by the Trustees, prior to the agreement on the GMP that modifies or supersedes portions of the Contract Documents.

**Agreement** - One of two separate forms that are executed by both the Design Builder and the Trustees, that provides the Work will be done in accordance with the Contract Documents or Design-Build Contract Documents as specified, as approved and on file with the Trustees and as incorporated into the Contract Documents or Design-Build Documents by reference. Reference Contract Documents, Design-Build Documents, Design-Build Contract Documents, Design Services Agreement and Design-Build Agreement.

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

**Architect** - A California-licensed architect employed by Design-Builder, who is responsible for all engineering and architectural services to be performed in connection with the Project. For projects on which an engineer or landscape architect is employed instead of an architect, the term "Architect" shall mean the design professional so employed for the Project.

**Bid Date** - The date for submission of technical and cost proposals; same as proposal due date.

**Bid Date for Subcontractors** - The date for submission of subcontractor bids for the Direct Construction Cost of the Project.

**Budgeted Direct Construction Cost** - The budgeted total cost of the Work, excluding Design Fees, Preconstruction Fees, Design-Builder's site management fee, Design-Builder's contingency, and Design-Builder's overhead and profit.

**Bidder** - Any individual or business entity acting directly or through an authorized representative that submits a technical and cost proposal for the Work in response to a Request for Proposals. "Bidder" and "Proposer" are synonymous.

**BRIP** - The Trustees' Builders Risk Insurance Program. Reference Article 36.06-c, Builders Risk Insurance Program.

**Building Official** - Trustees-appointed, the senior building official for the California State University (the Chief of Architecture and Engineering) is responsible for the overall administration and operational control of the building code. (reference Campus Deputy Building Official).

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

**Campus** - The California State University campus on which the Project is located.

**Campus Deputy Building Official** - A campus-appointed individual responsible for campus-specific building code administrative and operational control. This individual acts as a deputy under the authority of the Building Official.

**Capital Planning, Design and Construction (CPDC)** - Department within Business and Finance, a division in the Office of the Chancellor of the California State University, responsible for all major capital outlay projects.

**Change Order** - A written agreement entered into after the award of the Design-Build Agreement that alters or amends the executed agreement.

**Construction Administrator** - The person designated by the Trustees to manage the construction phase of the Project, and authorized to approve changes to the Contract.

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

**Construction Inspector** - The Inspector on the Project Site who works under the direction of the Construction Administrator.

**Construction Phase Services** - Those costs incurred by Design-Builder in the field management, supervision, and administration of the Work and further defined in the Request for Proposals under Classification of Project Costs (Table A).

**Construction Schedule** - Design-Builder's time use plan for completing the Work within the Contract Time.

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

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

**Contract Documents** - The Proposal Documents, Plans, Specifications, Addenda, Agreement, Bonds, Contract General Conditions, Supplementary General Conditions, Special Conditions, Change Orders, and any other documents so designated by the Trustees.

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

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

**Design-Build Agreement** - Awarded after acceptance of the GMP in accordance with the Design-Build Contract Documents for completion of design services and Construction of the Project.

**Design-Builder** - The individual or business entity that has entered into a Design Services Agreement or a Design-Build Agreement with the Trustees.

**Design-Builder Contingency** - Budgeted funds used to cover the cost of unforeseen factors related to the Work that arise after a Design-Build Agreement is awarded, such as an ambiguity in the Construction Documents. Eligible uses of this Contingency are specified in the Request for Proposals-Rider A, Scope of Work.

**Design-Build Contract Documents** - Combination of the Design-Build Documents and Contract Documents.

**Design-Build Documents** - A product of the Design Services Agreement, the progress design documents prepared by Design-Builder, used as the basis of the Design-Build Agreement. A product of the Schematic design Documents and GMP approved by the Trustees. The Design-Build Documents shall be further developed through the date of the final approval by the University immediately prior to execution of the Design-Build Agreement.

**Design Services Agreement** - For performance of design services Work in accordance with the Contract Documents through the acceptance of the GMP.

**Direct Cost of the Work** - Costs necessarily incurred by Design-Builder to perform the construction Work shown on the Construction Documents, usually performed by the trade contractors.

**Engineer** - A California-licensed engineer employed by Design-Builder or Architect, who is responsible for engineering services. There may be more than one engineer, depending on the Work required, (*i.e.*, civil, structural, electrical, geotechnical, mechanical).

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

**Field Instruction** - A written order from the Trustees to Design-Builder, signed by the Construction Administrator.

**Final Contract Amount** - The final amount Trustees and Design-Builder agree upon as payment for completing the Contract Work to the satisfaction of the Trustees. Reference Article 40.05, Payment, for more information.

**Guaranteed Maximum Price (GMP)** - Design-Builder's not-to-exceed sum for the performance of the Work shown in the Design-Build Contract Documents, as agreed upon by the Trustees.

**GMP Budget** - The total of the Budgeted Direct Construction Cost, Design-Build site management fee, Design-Build Contingency, and the Design-Build overhead and profit.

**OCIP** - The Trustees' Owner Controlled Insurance Program. Reference Article 36.06-b, Owner Controlled Insurance Program.

**Plans** - The drawings prepared by Design-Builder and approved by the Trustees, which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions of any of these, and which show the location, character, dimension, or details of the Work.

**Prevailing Wages** - The general prevailing rate of wages in effect when Design-Builder advertises the trade contractor bidding, and identified by the Director of the Department of Industrial Relations of the State of California pursuant to section 1770 of the Labor Code.

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

**Project** - The total Work to be designed and constructed as approved by the Trustees and as required by the Contract.

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

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

**Proposal** - The technical and cost proposal packages submitted by the proposers on the bid date. A bid may be considered a proposal.

**Proposal Documents** - Request for Qualifications (Advertisement), Request for Qualifications, Statements of Qualifications, Request for Proposals, and the Technical and Cost Proposals.

**Proposer** - Any individual or business entity acting directly or through an authorized representative that submits a technical and cost proposal for the Work in response to a Request for Proposals. “Proposer” and “Bidder” are synonymous.

**Request For Proposals (RFP)** - The documents that the Trustees issue to the Proposers describing and specifying the requirements of the design services Work and the Design-Build Work.

**Request for Qualifications (RFQ)** - The documents requesting submittal of Statements of Qualifications to the Trustees from interested and qualified Design-Builders to provide design and construction services for the Project.

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

**Site** - The area specified in the Contract Documents for the Project and the area made available for Design-Builder’s operation.

**Specifications** - The instructions and requirements that complement the plans and describe the manner of performing the Work or the quantities, qualities, and types of materials to be furnished.

**State** - State of California.

**Subcontractor** - Contractor that is under contract to Design-Builder or another subcontractor for completion of a portion(s) of the Work. Same as Trade Contractor.

**Superintendent** - The representative of Design-Builder at the construction Site who is authorized to receive instructions from the Trustees, and who is authorized to direct the performance of the Work on behalf of Design-Builder.

**Supplier or Vendor** - Any individual or business entity that contracts with Design-Builder or Trade Contractor to provide materials or equipment.

**Trade Contractor** - Contractor that is under contract to Design-Builder or another subcontractor for completion of a portion(s) of the Work. Same as Subcontractor.

**Trustees** - The Board of Trustees of the California State University and their authorized representatives who act on behalf of the Trustees. Reference Executive Facilities Officer and Construction Administrator.

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

**Work** - That total work required to be performed, or done under the Contract, including the furnishing of all design services, labor, materials, and equipment.

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

## 32.00 - PROPOSALS

### 32.01 Duty to Carefully Examine These Instructions

Design-Builder and the trade contractors for this Project shall carefully examine the instructions contained herein and be cognizant of the conditions that must be satisfied before submitting a proposal, and the conditions that affect the award of the Contract.

### 32.02 Competence of Proposers

a. License and Public Works Registration.

(1) License.

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

(2) Public Works Registration with Department of Industrial Relations

The Trustees will only issue public works bids and award public works contracts to currently registered contractors and subcontractors on the Trustees’ public works projects. All proposers and subcontractors of all tiers must register to bid public works projects with the Department of Industrial Relations (DIR), and obtain and maintain current registration numbers (Labor Code section 1725.5). Note: DIR will assess a penalty on any public works contractor who allows its registration to lapse. DIR will also assess a penalty on any contractor who subcontracts to any contractor who is not registered with the DIR for each day the subcontractor is not registered. For more information, review the DIR public works registration requirements at <https://www.dir.ca.gov/Public-Works/Contractors.html>.

The following applies to this Contract:

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

b. Prequalification Rating.

The Trustees shall issue a RFQ to all interested Design-Builders who have prequalified with the Trustees. Only the resulting short-listed Design-Builders (Proposers) will be allowed to respond to the RFP for design and construction services for the Project (Public Contract Code section 10764). To prequalify, all Proposers must file their prequalification applications online; and the application includes Proposers' responses to a standard questionnaire, a statement of financial condition and previous experience in performing public works, all in accordance with the instructions contained in the Proposal Documents.

Proposers shall go to: <http://www.calstate.edu/contractor-prequalification>, under 'Contractor Prequalification' and login to the database using the link provided ([PlanetBids](#)). Proposers shall verify the information contained in the prequalification application under oath and submit the completed prequalification application online at least ten (10) Business Days prior to the deadline identified in the Proposal Documents and approved not less than one Business Day prior to the deadline identified in the Proposal Documents.

The Trustees' Prequalification Coordinator will review the Proposer's statement of experience and financial condition upon receipt of a complete application, check Proposer's references, and notify the Proposer of the rating established based on the information contained in the application. The Proposer's assigned prequalification rating will be the maximum amount of a contract or contracts that the Proposer may undertake with the Trustees. Proposer may request an increase in its rating from the Trustees' Prequalification Coordinator. The request shall be in writing, and specify the reason(s) for increase. The Trustees' Prequalification Coordinator will review Proposer's request, check new references submitted and notify Proposer of the resulting decision. The Prequalification Coordinator's decision is final. The Trustees shall disregard any proposal received either from a Proposer that is not currently prequalified, or from a Proposer that is prequalified but the rating is not high enough to accommodate its proposal. Although this prequalification permits participation in the submitting of a proposal for the Project, it does not mean that the proposer satisfies the requirements of being a "responsible" bidder. This determination occurs later in the process (reference Article 32.09, Failure to be a Responsible Bidder).

c. Joint Ventures.

If two or more prospective Proposers desire to submit a proposal as a joint venture on a single project, they must file an affidavit of joint venture form [703.12](#) with the Trustees at least five (5) Days prior to the date and time set for opening the Statements of Qualifications, submitted in response to the Request for Qualifications. The affidavit of joint venture is valid only for the specific project for which it is filed. Each party to the joint venture must be prequalified, as provided herein, at least one Business Day prior to the deadline identified in the Request for Qualifications document.

After Trustees' tabulation of the apparent finalist in response to the Request for Proposals, and if the Trustees announce that the joint venture is the successful Proposer, the joint venture shall, prior to the Trustees' award of the Contract:

- (1) obtain the joint venture license (Business and Professions Code sections 7029 and 7029.1), and
- (2) register the joint venture with the Department of Industrial Relations (reference Article 32.02-a (2)).

d. Trade Contractor Prequalification.

Design-Builder shall require prequalification of the trade contractors [at least the mechanical, electrical, plumbing and trades where the estimated cost of the trade work is greater than five percent of the construction budget] utilizing the Trade Contractor Prequalification document found in the Request for Proposal documents and any additional documents or process required by Design-Builder. Once this process is completed, Design-Builder shall provide a list of the prequalified trade contractors to the Trustees.

### 32.03 Necessity for Careful Examination of Site, Plans, and Specifications

Design-Builder and trade contractors shall carefully examine the Site, the plans, and specifications for the Project. Design-Builder shall be satisfied as to the conditions to be encountered, and shall also investigate:

- the character and quantity of surface and subsurface materials or obstacles to be encountered,
- rights of way and easements at or near the Site,
- the Work to be performed, and

- materials to be furnished and as to the requirements of the proposal, plans, and specifications for the Project (reference Article 36.11, Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.

Design-Builder certifies that Design-Builder has complied with the requirements of this provision by the submission of its bid.

Any failure by Design-Builder and trade contractors to acquaint themselves with information that is available or with reasonable investigation may be available will not relieve them from responsibility to estimate properly the difficulty or cost to perform the Work. Such examination does not require independent underground soil borings unless required elsewhere in the Contract Documents.

a. Subsurface Investigations.

Where the Trustees have made investigations of subsurface conditions and makes that information available to Design-Builder, such information is limited in scope to that which the Trustees actually encountered in the investigations, and is included only for the convenience of Design-Builder.

The Trustees assume no responsibility whatsoever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations or any interpretation of the above. There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the Site or that unforeseen conditions or developments may not occur. Making such information available to Design-Builder is not to be construed in any way as a waiver of this provision. Design-Builder must satisfy itself through its own investigations as to the actual conditions to be encountered.

b. Differing Site Condition.

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

### **32.04 Clarification during Bidding**

The Proposer shall examine the RFQ/RFP documents in preparing its proposal and shall report to the Construction Administrator any omissions, discrepancies, or errors found in the RFQ/RFP. Before the date of opening proposals, the Proposer shall submit a written request for clarification to the Construction Administrator who may give such clarification in the form of an addendum to all Proposers if time permits. Otherwise, in estimating the cost of the Project, the Proposer shall consider that any conflicts shall be governed by Article 37.01, Interpretation of Contract Requirements.

Proposers are advised that the time period for submitting a proposed product as “an equal” is no later than 35 Days after the award of Contract, unless otherwise specified in the Supplementary General Conditions (Public Contract Code section 3400) Reference Article 37.04-c, Alternatives or Equals.

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

The Proposer is required to acknowledge each addendum on the Cost Proposal Form. Therefore, Proposer is responsible for assuring receipt of all addenda. Proposer shall confirm all addenda with designated Trustees’ official one (1) Business Day prior to opening proposals.

### **32.05 Proposal Documents**

Once the Trustees have completed the review of the responses to the RFQ and published the list of qualified proposers, the Trustees will issue an RFP to only the qualified proposers. In response to the requirements of the RFP, each Proposal will consist of two separate submittals, the cost proposal and the technical proposal.

Following are forms that Proposer shall tender with its Proposal:

a. Cost Proposal.

The Trustees will furnish a cost proposal package, which when completely filled out and executed by Proposer, may be submitted as its cost proposal. Cost Proposals not presented using the furnished cost proposal package shall be disregarded (Public Contract Code section 10764). Proposer may not transfer the cost proposal package to another Proposer, and must submit it in the same name as is used on the Proposer’s license and prequalification.

The Trustees' cost proposal package contains a standard cost or fee proposal form that shall be used for Proposer's proposal. Each proposal shall give the prices proposed in the manner required by the proposal and shall be signed by the Proposer or by the Proposer's duly authorized representative, with its address and telephone number.

- If an individual makes the proposal, the individual's name, postal address, and telephone number must be shown.
- If made by a partnership, a limited partnership, or other type of legally recognized partnership, the proposal shall have the signature of all partners, or an affidavit signed by all partners empowering one partner as an agent to act in their behalf, and shall include the address and telephone number of the partnership.
- A proposal submitted by a corporation, or a limited liability company (LLC), or other type of legally-recognized firm shall show the name of the state in which the firm is chartered, the name of the firm, its address and telephone number, and the title of the person who signs on behalf of the firm. The firm shall also submit a certified copy of the firm's board action that identifies and authorizes the person who may sign and submit bids for the firm. The Trustees shall reject any proposal submitted that is not signed by the Proposer or by the Proposer's duly authorized representative.

b. Listing of Trade Contractors.

Proposer is not required to submit a List of Proposed Trade Contractors with its proposal.

As soon as each trade contractor is selected, the successful Proposer shall submit it to the Trustees by adding it to and resubmitting the List of Subcontractors for Design-Build and Collaborative Design-Build Projects form [701.04A.DB/CDB](#). The Proposer shall list the following for each trade contractor that will perform Work or labor or render services for Design-Builder in excess of one-half of one percent of Design-Builder's total GMP (Public Contract Code section 4100 *et seq.* and section 10708). For each alternative Proposer shall also list any trade contractor not included in the base contract Work trade contractor listing.

- trade contractor's name,
- California Contractors State License Board-issued license number,
- California Dept. of Industrial Relations Public Works Registration number,
- the location of the place of business,
- the portion of Work to be done by each trade contractor, and other requested information,

Once the trade contractors are listed, the trade contractors shall have the rights provided in the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*). Reference Article 35.07, Listing of Trade Contractors.

c. Proposer's Bid Security.

No bid security is required for this Project.

### 32.06 Proposal Regulations

a. Submission of Proposals.

Proposers shall submit proposals as instructed in the RFP. It is the Proposer's responsibility to ensure that its proposal is received in the proper time and location. Delays in timely receipt of the proposal caused by the United States or the Trustees' mail system, independent carriers, acts of God, or any other cause shall not excuse late receipt of the proposal. The Trustees shall return unopened any proposal received after the time specified in the RFP or in any addendum (Public Contract Code sections 4104.5 and 10766).

All proposals shall be submitted to the Trustees under sealed cover, shall be identified plainly as a proposal for the Project, and shall be addressed as directed in the RFP. The Trustees will disregard proposals not marked properly.

b. Withdrawal of Proposals.

Any proposer may withdraw its proposal at any time prior to the time fixed in the public notice for the opening of proposals, but only by a written request from the Proposer or its authorized representative. The request shall be executed by the Proposer or its authorized representative, and filed with the Trustees. A request to withdraw a proposal that is communicated orally, either in person, or by the use of telegram or telephone, is not acceptable. The withdrawal of a proposal shall not prejudice the right of a Proposer to file a new proposal. This paragraph does not authorize the withdrawal of any proposal after the time of the public notice for the opening of proposals (Public Contract Code section 10767).

c. Public Opening of Cost Proposals.

Cost proposals will be publicly opened and read at the time and place indicated in the RFP. Proposers or their agents are invited to be present.

d. Rejection of Irregular Cost Proposals.

The Trustees may reject any cost proposal if it shows any alterations of forms, additions not called for, conditional proposals, incomplete proposals, unsigned proposals, erasures, or irregularities of any kind. If Proposer changes the proposal amount after the amount has been inserted, Proposer shall initial the change.

- e. Power of Attorney or Agent.  
When an agent signs the proposal, a power of attorney shall either be on file with the Trustees before the opening of proposals, or be submitted with the proposal. Failure to submit a necessary power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a general partner of a partnership.
- f. Waiver of Irregularities.  
Trustees reserve the right to waive minor irregularities in proposals submitted.

### **32.07 Competitive Bidding**

Proposer shall submit only one proposal. A party who has quoted prices on materials or Work to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a bid directly for the materials or Work.

All Proposers are hereby notified that any collusive agreement fixing the prices to be bid in order to control or affect the awarding of this Contract may render void any Contract awarded under such circumstances. The Proposer, by act of submitting a proposal, certifies that in the preparation of the proposal, no bid was received by the Proposer from a bid depository, which depository, as to any portion of the Work prohibits, or imposes sanctions for, the obtaining by the Proposer, or the submission to the Proposer by a subcontractor or vendor or supplier of goods and services, of a bid outside the bid depository. The certification shall constitute a warranty, the falsity of which shall entitle the Trustees to pursue any remedy authorized by law and shall include the right at the option of the Trustees of declaring any Contract made as a result thereof to be void (Business & Professions Code section 16600 *et seq.*).

### **32.08 Mistake in Proposal**

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

### **32.09 Failure to be a Responsible Bidder**

In order to be considered for award of a Contract, a Proposer must be a responsible bidder (Public Contract Code section 10780). To be responsible, a Proposer, in the judgment of the Trustees, must be sufficiently trustworthy and possessed of the requisite quality, fitness, capacity and experience to satisfactorily perform the Work (Public Contract Code section 1103). Should the Trustees question the Proposer's responsibility, the Proposer shall be given an opportunity to rebut any evidence of non-responsibility, and to present evidence of responsibility. The hearing shall be informal, and may be conducted in whole or in part in writing by an individual appointed by the Trustees to hear the matter. A decision concerning the Proposer's responsibility shall be mailed to the Proposer within ten (10) Days of the conclusion of the hearing.

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

The Trustees shall grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor who is the selected Proposer, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both.

Each Proposer shall certify at the time of proposal opening that the Proposer qualifies as a "California company," which means a business entity licensed in California on the date of bid opening and which is one of the following:

- a. a business entity with its principal place of business in California,
- b. an out-of-state contractor whose state does not provide a local contractor preference, or
- c. an out-of-state contractor that has paid at least \$5,000 in sales or use taxes in the immediately preceding five years.

If Design-Builder does not qualify as a California company, then it shall indicate the name of the state in which its principal place of business is, and the amount of the local contractor preference in that state (Public Contract Code section 6107).

### **32.11 Small Business Five Percent Proposal Advantage**

The Trustees calculate the small business preference as a percentage of the highest technical proposal score. For bid evaluation purposes only, if the highest scoring proposer is a California certified small business, the only proposers eligible for the DVBE incentive will be California certified small businesses.

- a. Preference for Small Businesses.

The Trustees shall give a small business proposal advantage of five percent of the highest technical proposal score to contracting firms that have been certified as a "Small Business" by the Office of Small Business & DVBE Services, in the Procurement Division of the Department of General Services. Reference Government Code section 14835 *et seq.*, and Title 2, California Code of Regulations, section 1896 *et seq.* To receive the five percent advantage, the certified small businesses shall:

- (1) Submit with the proposal a completed form of “Request for Small Business Five Percent Preference – Certification” form 701.09;
- (2) Be certified Small Business upon verification in accordance with California Code of Regulations, Title 2, section 1896.2, having applied for certification no later than 5:00 p.m. on the proposal due date;
- (3) Submit a timely and responsive proposal;
- (4) Be determined to be a responsible Proposer.

b. Preference for Non-small Businesses.

(1) Preference.

The application of the five percent small business bidding preference is also extended to any non-small business that commits to subcontracting at least 25% of its net proposal price to California certified small businesses and/or microbusinesses. To receive this preference the non-small business must satisfy the following criteria:

- (a) Indicate in its proposal its commitment to subcontract at least 25% of its net proposal amount with one or more small businesses [submit the “Request for Small Business Bidding Preference” form 701.09],
- (b) Submit a timely and responsive proposal,
- (c) Be determined to be a responsible Proposer, and
- (d) Submit the California certified small businesses on the List of Subcontractors for Design-Build and Collaborative Design-Build Projects form 701.04-DB.CDB and specify the dollar amount of each small business subcontractor’s bid thereon.

(2) Failure to Subcontract with Listed Small Businesses.

Failure of the non-small business contractor to subcontract with the small businesses listed on its bid, or follow the substitution provisions identified in Article 36.04-b, may be grounds for the Department of General Services to impose sanctions pursuant to Government Code section 14842.5 and California Code of Regulations section 1896.16. In the event such sanctions are to be imposed, the contractor shall be notified in writing and entitled to a hearing pursuant to California Code of Regulations, sections 1896.18 and 1896.20.

c. Trustees’ Reporting of Small Business Participation.

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

**32.12 Disabled Veteran Business Enterprise Participation Requirement and Incentive**

California state law requires that its state agencies achieve three (3) percent participation for disabled veteran business enterprises (DVBE) in state contracts. Failure of Design-Builder to achieve three (3) percent DVBE participation on this Project will cause the Trustees to assess a penalty in accordance with the Contract Documents.

The successful Proposer understands and agrees that the DVBEs identified on the [List of Subcontractors for Design-Build and Collaborative Design-Build Projects form 701.04A.DB/CDB](#) may only be replaced by another DVBE, and that the Trustees and the Department of General Services (DGS) must approve the substitution. Trustees will document changes to the scope of Work that impact the DVBEs identified in the GMP by Contract Change Order, and will provide their decision on DVBE substitutions in writing via the subcontractor substitution process per Public Contract Code section 4100.

Failure of Design-Builder to seek substitution and adhere to the DVBE participation level identified in its Proposal may be cause for Contract termination, recovery of damages under rights and remedies due the State, and penalties as outlined in Military and Veterans Code section 999.9, Public Contract Code section 10115.10 or section 4110, and California Code of Regulations, section 1896.73.

a. Special Definitions

- (1) “Disabled veteran” as used herein, means a veteran of the military, naval or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, “New Scouts,” and who has at least a ten (10) percent service-connected disability and who is domiciled in the State of California.
- (2) “Disabled veteran business enterprise contractor, subcontractor, or supplier” means any person or entity that has been certified by the Office of Small Business & DVBE Services and that performs a “commercially useful function,” as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:
  - (a) A person or an entity is deemed to perform a “commercially useful function” if a person or entity does all of the following:
    - (i) is responsible for the execution of a distinct element of the Work of the contract;
    - (ii) carries out the obligation by actually performing, managing, or supervising the Work involved;
    - (iii) performs Work that is normal for its business services and functions;



- (iv) is responsible, with respect to products, inventories, materials, and supplies required for the Contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and
  - (v) is not further subcontracting a portion of the Work that is greater than that expected to be subcontracted by normal industry practices.
- (b) A contractor, trade contractor, or supplier will not be considered to perform a “commercially useful function” if the contractor’s, subcontractor’s, or supplier’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.
- (c) Equipment Brokers
- (i) A DVBE that rents equipment to the Trustees shall be deemed an equipment broker, unless one or more disabled veterans have 51-percent ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to the Trustees a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner.
  - (ii) A DVBE that rents equipment to the Trustees shall, prior to performing the contract, submit to the Trustees a declaration signed by each disabled veteran owner and manager of the enterprise stating that the enterprise obtained the contract by representing that the enterprise was a DVBE meeting and maintaining all of the requirements of a DVBE. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the contract.
  - (iii) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the DVBE participation requirement.
  - (iv) A DVBE that is a broker or agent and that obtains a contract pursuant to these provisions shall, prior to performing the contract, disclose to the Trustees that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.
- (3) (a) DVBE as used herein, means a business concern certified by the Office of Small Business & DVBE Services as meeting all of the following:
- (i) The business is:
    - at least 51 percent owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51 percent of its stock is unconditionally owned by one or more disabled veterans;
    - a subsidiary that is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans; or
    - a joint venture in which at least 51 percent of the joint venture’s management, control and earnings are held by one or more disabled veterans.
  - (ii) The business is one or more disabled veterans who manage and control the daily business operations. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
  - (iii) The business is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign-based business.
- (b) Notwithstanding subdivision (3)(a), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a DVBE prior to that death or certification of a permanent disability, that business shall be deemed to be a DVBE for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons. A business is a DVBE pursuant to this subdivision under either of the following circumstances:
- (i) for the duration of any contract entered into prior to the death or certification of permanent medical disability for the sole purpose of fulfilling the requirements of that contract;
  - (ii) after the date of the majority owner’s death or certification of permanent medical disability established by this subdivision for the sole purpose of providing sufficient time to make orderly

and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a DVBE for purposes of the program if the contract would not be completed within the three-year period.

b. Participation Requirement.

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

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

c. Documentation Requirements.

Design-Builder must document its satisfaction of the DVBE participation requirement. Final determination of DVBE Participation by Design-Builder shall be at the Trustees' sole discretion.

(1) Required Documentation.

In addition to documentation submitted with the GMP on the List of Subcontractors for Design-Build and Collaborative Design-Build Projects form [701.04A.DB/CDB](#) (reference Article 32.05-b), Design-Builder must complete the following DVBE documentation forms. Instructions for completing the required forms correctly are included to assist Design-Builder.

(a) DVBE Transmittal Form.

Design-Builder must fill out the DVBE transmittal form as a cover sheet to the required documents, attach and submit it and the additional required documentation. Design-Builder must complete all requested DVBE documentation on the forms provided and submit with the DVBE Transmittal Form.

(b) Summary of Disabled Veteran Owned Business Participation (Attachment 1).

Summary of Disabled Veteran Owned Business Participation, Attachment 1, must be completed showing the type of Work and company proposed for DVBE participation, their trade contractors (if any), and other related information. Complete the form providing the following information:

- (i) Company Name: List the name of the company proposed for DVBE participation. If the prime contractor is a DVBE, list its name in order to receive participation credit.
- (ii) Nature of Work: Identify the proposed Work or service to be provided by the listed company.
- (iii) Contracting With: List the name of the party with which the company listed is contracting.
- (iv) Tier: Identify the contracting tier using the following level designations:  
0=Prime contractor;  
1=First tier trade contractor/supplier;  
2=Second tier subcontractor/supplier of first tier subcontractor/supplier;  
3=Third tier subcontractor/supplier of second tier subcontractor/supplier; etc.
- (v) Claimed DVBE Value: State the total dollar amount of the DVBE's bid.
- (vi) Percentage of Bid: State the percentage (%) of the claimed DVBE's bid as it relates to Design-Builder's total project bid.
- (vii) DVBE Certification: Design-Builder must include one copy of the DVBE certification from the Office of Small Business & DVBE Services for each DVBE listed on the Summary of Disabled Veteran Owned Business Participation.

(c) Design-Builder's Certification (Attachment 2).

Design-Builder must sign and include the Bidder's Certification, certifying that each DVBE listed on the Summary of Disabled Veteran Owned Business Participation (Attachment 1) complies with the legal definition of DVBE.

(d) Disabled Veteran Business Enterprise Declarations (STD. 843).

The disabled veteran owner(s) and disabled veteran manager(s) of the DVBE must complete this declaration when a DVBE contractor or trade contractor will provide materials, supplies, services or equipment.

(2) Timeframe for Submitting Documentation.

Design-Builder must submit the full DVBE participation documentation with the GMP to the Construction Administrator. If Design-Builder fails to submit full and accurate documentation with the GMP, the Trustees will deem the GMP nonresponsive, and thus eligible for a penalty assessment as identified in the Contract Documents.

- d. Use of Proposed DVBE.  
If awarded the Contract, the successful Design-Builder must use the DVBE suppliers and/or trade contractors proposed in its GMP unless it has requested substitution and has received approval of the Trustees in compliance with the Subletting and Subcontracting Fair Practices Act. Reference Article 36.04, Substitution of Trade Contractors, subsection c, Substitution of a Disabled Veteran Business Enterprise.
- e. Trustees' Reporting of DVBE Participation.  
Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of DVBE in contract awards. To this end, the successful Design-Builder shall inform the Trustees of any contractual arrangements with trade contractors, consultants or suppliers that are certified DVBE.
- f. Additional DVBE Information Sources.  
For more information regarding DVBE certification, directories or for general DVBE information, contact:  
Office of Small Business & DVBE Services  
Department of General Services, Procurement Division  
707 Third Street, West Sacramento, CA 95605  
Telephone number: (916) 375-4940; E-mail: [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov), or,  
Via Internet at <https://www.dgs.ca.gov/PD/Services>, and search on "DVBE".
- g. Incentive.  
In accordance with Government Code section 14838(f), and Military and Veterans Code sections 999.5(a) and 999.5(d), the Trustees are granting a bid incentive for bid evaluation purposes only to Proposers that exceed the three percent DVBE participation requirement. The level of DVBE incentive will correlate to the level of participation; that is, the more DVBE participation proposed, the higher the incentive.

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

The Trustees calculate the DVBE bid incentive as a percentage of the highest technical proposal score. If the lowest responsive, responsible proposer is a California certified small business, for bid evaluation purposes only, the only proposers eligible for the DVBE bid incentive will be California certified small businesses. Reference also the Request for Proposals, RFP 6.21 and RFP 7.04.

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

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

- i. Sanction for Design-Builder's Failure to Achieve the DVBE Incentive.  
The Trustees will sanction any Contractor (Design-Builder) who receives the DVBE incentive and does not contract the incentive percentage dollar amount of its net GMP to DVBEs.

If by the end of construction Design-Builder does not realize the incentive DVBE percentage identified in its proposal, the Trustees shall assess an amount of \$50,000 per one percent shortfall down to the minimum of three percent, prorated, and deduct it from the Contract Amount due.

### 33.00 – ACCEPTANCE OF PROPOSAL - DESIGN SERVICES AGREEMENT

#### 33.01 Award of Design Services Agreement

If the Trustees deem the acceptance of a proposal or proposals is not in the best interests of the State, the Trustees may reject

all proposals (Public Contract Code section 10785). If the Trustees accept the proposal(s) and award a design services agreement, the Trustees' award shall be made to the Proposer whose proposal complies with all the requirements prescribed and whose proposal is determined to be the best value among the submitted proposals.

### **33.02 Execution of Agreement**

The design services agreement shall be signed by the successful Proposer and returned to Trustees, along with other requisite documentation such as the certificates evidencing the required insurance coverage (reference Article 36.06, Insurance Requirements), within ten (10) Business Days of receipt from Trustees. If the successful Proposer is a joint venture, then the joint venture shall submit with the Contract certification form a formal resolution designating the person authorized to sign on behalf of the joint venture. No Contract will be binding on Trustees until it has been executed by Design-Builder and Trustees and approved by the attorney appointed according to law and authorized to represent the Trustees (Public Contract Code section 10820).

After the Trustees' Office of General Counsel has fully executed the Design Services Agreement, Design-Builder can expect to start Work within 30 days. The Trustees will issue to Design-Builder a written Notice to Proceed that authorizes the start of design Work only. Design-Builder may not begin Work before receiving the Trustees' written Notice to Proceed. Any Work performed by Design-Builder before receipt of the written Notice to Proceed shall be considered as having been done at Design-Builder's own risk.

## **34.00 - DESIGN REQUIREMENTS**

### **34.01 Scope of Work**

Design-Builder shall furnish programming, architectural, landscape architectural, furniture and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. Design-Builder shall furnish all labor, materials, equipment, services, and transportation necessary to complete the design and construction of the Project, including Sitework, interior finishes, structures, utilities, furniture and landscaping.

### **34.02 Intent of the Contract Documents**

The intent of the Construction Documents is to provide the Trustees with full, complete, and accurate Project documentation, giving such directions as will enable any competent mechanic or other builder to carry them out, resulting in a Project that is complete in all respects. The Construction Documents shall identify that all items necessary or reasonably required to produce a complete and operational Project shall be provided.

### **34.03 Laws and Codes**

#### **a. Codes.**

The Construction Documents and resulting construction shall comply with all laws, ordinances, rules and regulations of the state of California, including:

- (1) The California Building Standards Code (CBC), in Title 24 of the California Code of Regulations, as adopted and published by the California Building Standards Commission.
- (2) Compliance with the Department of State Architect, Access Compliance Unit's accessibility regulations in the California Code of Regulations Title 24 (Parts 2 and 3); 2010 federal ADA standards for accessible design; standards for state and local government facilities – Title II (where more restrictive than CBC).
- (3) Compliance with the Office of the State Fire Marshal, fire and life safety regulations, including the most recent editions of NFPA 101, Life Safety Code and NFPA Fire Protection Handbook.
- (4) Compliance with the California State University Seismic Review Board seismic project peer review comments.
- (5) Other agencies (as may apply) elevators and escalators, Division of Occupational Safety & Health (DOSH), county health department (food and aquatics).

Codes and specifications incorporated by reference shall be those of the latest edition at the time of receiving proposals, unless otherwise specified. Reference Article 34.08, Standard Specifications.

#### **b. Plan Review Related Appointments by Trustees.**

##### **(1) Plan Check Service Provider.**

The Trustees shall appoint a plan check service provider for the Project from the Trustees' approved list of such firms. The selected service provider will review the Project Plans and Specifications for adherence to applicable codes and standards, providing an assessment of code compliance to the Campus Deputy Building Official. The service provider is solely responsible to the Trustees in the provision of these services.

##### **(2) Seismic Peer Reviewer.**

Per the Trustees' Seismic Policy, the California State University Seismic Review Board shall appoint a seismic peer reviewer for the Project.

(3) Materials Testing and Inspection Services.

The Trustees shall appoint a firm(s) to provide materials testing and inspection services during construction. The testing and inspection services firms are solely responsible to the Trustees for observation of construction, determination of adherence to the Construction Documents (including approved Plans and Specifications) and compliance with the applicable codes and standards.

c. Plans and Specifications – Miscellaneous Requirements.

The Plans and Specifications shall identify the design codes, standards, and requirements used for the development of the plans, including the edition and applicable sections.

The Construction Documents shall include a quality control program and an implementation plan to ensure that the completed Project complies with the approved Project criteria. The design professional-of-record shall specify within the Construction Documents all tests and inspections that are required by the building code and those that are appropriate to achieve compliance with the Contract. Design-Builder shall retain the design professional-of-record to provide in a professional capacity, timely construction administration services. These services shall include shop drawing review, response to requests for information regarding the Construction Documents, and periodic visits to the Site to observe the quality of the Work.

The final, approved-for-construction set of Construction Documents shall be signed and stamped by the respective California-licensed professionals who prepared the documents, certifying their compliance with codes, standards, practices and regulations. The design professionals-of-record shall retain full responsibility for the design.

d. Plan Check Review.

Design-Builder shall submit to the Trustees three copies of the completed Plans and Specifications and two copies each of the structural calculations and soils report, for code review, and shall coordinate, monitor and secure all required review approvals. The Trustees will provide contact information for the individual review agencies and support in status inquiries for the Project reviews. When submitting these documents, Design-Builder must allow sufficient time to conduct the reviews and to correct identified deficiencies before construction. For construction projects with an estimated cost exceeding ten million dollars, the minimum review time for the completed design documents is 31 Days, 21 Days for projects less than ten million dollars. These durations may vary. Design-Builder shall allocate appropriate additional time for resolution of back check review comments for all reviews.

Design-Builder is encouraged to seek guidance and clarification of Project-specific code compliance issues from the respective agencies and/or assigned plan review firm.

The Trustees shall pay plan check fees and seismic peer review fees associated with the Project, either directly or as a reimbursable item.

Design-Builder shall incorporate changes, if any, resulting from plan reviews, and/or Campus Deputy Building Official code determinations into the final design without additional cost to the Trustees. Such final drawings and specifications shall be resubmitted to the Trustees for approval.

The final authority for code interpretations shall be as follows for:

- Exiting and fire-life-safety issues, The Office of the State Fire Marshal
- Access compliance issues, the Division of the State Architect Access Compliance Unit
- All other items, code issues shall be issued by the Campus Deputy Building Official, with the Building Official as the final authority.

e. Seismic Safety Structural Peer Review.

Design-Builder shall direct its design team to interact with the appointed Seismic Safety Peer Reviewer at the beginning of the design process, as required by Trustees' policy, and continue at regular intervals during the design process and during construction as required. Design-Builder shall submit one (1) set at each submittal point within the peer review process (Schematic, Preliminary Design, and Construction Documents). Seismic Peer Review comments shall be resolved before the start of construction.

In the event that there are disputes over interpretation of the Trustees' seismic safety policy, the full California State University Seismic Review Board shall make a final determination under the authority of the Building Official.

f. Access Law Compliance.

For all new, alteration or remodeling projects, the Trustees must be in compliance with access requirements. Compliance must be certified by the State of California, Department of General Services, and Division of the State Architect. The appointed plan review firm will coordinate the access compliance submittal.

Design-Builder shall supply one (1) copy of the Construction Documents (structural calculations are not required) for certification of access compliance (Government Code section 4450 *et seq.*). Design-Builder shall incorporate

modifications required in the Construction Documents without additional cost to the Trustees. Access compliance review and certification can take six to eight weeks or more. The Trustees will consider administrative appeals in the event that Access Compliance review extends beyond eight weeks when due to reasons outside the control of Design-Builder.

g. State Fire Marshal.

Design-Builder shall direct its design team to interact with the appointed State Fire Marshal Reviewer at the beginning of the design process, as required by Trustees' policy, and continue at regular intervals during the design process and during construction as required. Design-Builder shall submit copies of the Construction Documents as required (structural calculations are not required) for review and approval by the State Fire Marshal. Design-Builder shall incorporate modifications required in the Construction Documents without additional costs to the Trustees. Complex code issues will increase State Fire Marshal plan review times.

During construction, the State Fire Marshal will conduct periodic field reviews of the construction. Notwithstanding State Fire Marshal stamped and approved plans, the State Fire Marshal has the authority to require revisions/corrections to secure code compliance, based on their field review inspection findings. These corrections, when ordered by the State Fire Marshal to achieve code compliance, shall be provided by Design-Builder without additional costs to the Trustees.

h. Plan Approval by Campus Deputy Building Official.

Plans for construction require the express written approval of the responsible Campus Deputy Building Official, who will require resolution of issues from building code, accessibility, Fire Marshal and Seismic Peer Review and other agency reviews as may apply, as a prerequisite to the approval of documents for construction.

Design-Builder shall address all review comments and appropriately reserve Project schedule time for their completion. Delays in meeting the schedule are the responsibility of Design-Builder, not the Trustees.

Changes, alterations, substitutions, or modifications made to previously stamped and approved Plans during construction that affect code compliance must be approved in writing by the Campus Deputy Building Official.

Design-Builder shall incorporate without additional cost to the Trustees any changes, alterations, substitutions, or modifications made to the approved Plans that are required during construction to satisfy code requirements, including those not previously identified in the approved Plans, or to properly implement the approved Plans, or where observed workmanship and/or discovered conditions so require.

As a prerequisite to the Trustees filing the Notice of Completion for the Project, the Campus Deputy Building Official will issue a certificate of completion when satisfied that the approved Plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

#### **34.04 Trustees' Review of Construction Documents**

Design-Builder shall submit to the Trustees for approval Construction Documents necessary to construct the Project, including drawings and detailed Specifications for Site layout, utilities, and landscaping. It is required that these Construction Documents be prepared under the supervision of a California licensed architect, and shall be signed or sealed by the architect (and respective engineers), responsible for the preparation thereof.

During the course of the development of the Construction Documents, the Trustees will review the Construction Documents and respond with desired corrections/adjustments.

Design-Builder shall check the review response of the Trustees to ascertain if notations result in a claim for extra cost and shall notify Trustees in writing of any such claim before proceeding with Work. Proceeding with the Work included without prior notification constitutes waiver of claim for any extra cost. Design-Builder shall coordinate with the Trustees to then identify any scope revisions and associated costs.

Design-Builder shall promptly make code/peer review corrections and agreed scope revisions (if any) to the Construction Documents and resubmit them to the Trustees for approval. Such review does not constitute approval or acceptance of variations from the Design-Build Contract Documents, as modified and detailed in the Technical Proposal, unless such variations specifically have been identified with special emphasis in writing by Design-Builder and specifically have been approved in writing by the Trustees.

#### **34.05 Partial Permit Approvals**

Review and approval of Construction Documents shall be obtained from the Trustees before the start of construction. The Trustees will consider design submissions for Site development and, if found satisfactory, may allow Design-Builder to proceed with preliminary grading, foundations, and other elements of Site development while completing final Construction Documents for the balance of the Work.

Design-Builder is responsible for final approvals per Articles 34.03 and 34.04, and approval of portions of the Work by the

Trustees does not relieve Design-Builder of responsibility for construction should changes be required due to items disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the Contract Documents shall remain with Design-Builder.

#### **34.06 Submittals**

Design-Builder shall submit shop drawings, samples, material lists, and manufacturer's equipment brochures setting forth in detail the Work as it is to be performed by Design-Builder. Submittals shall be made in accordance with Article 37.04-a, Submittal Procedure. Design-Builder shall secure Trustees' written approval of submittals prior to use of the materials for the Work.

#### **34.07 Divisions of the Performance Specifications**

The performance specifications are divided into sections for convenience. The actual limitations of Work in the various trades and/or sections of the specifications remain the responsibility of Design-Builder.

#### **34.08 Standard Specifications**

Standard specifications such as ASTM, ANSI, AASHTO, AWWA, AISC, Commercial Standards, Federal Specifications, NBFU, NEMA, UL, and the like, incorporated in the requirements by reference, shall be those of the latest edition at the time of receiving proposals, unless otherwise specified.

#### **34.09 Layout of the Work**

Design-Builder shall employ, at its own expense, a California-registered civil engineer or California-licensed land surveyor to layout the Work of the Project and establish reference points and elevations required for the construction. Reference points for the construction shall be set in accordance with layout control points identified in the Request for Proposals.

On projects with new foundations (for buildings, Site improvements, bridges, light poles, others), Design-Builder shall prepare a survey illustrating dimensions, locations, angles and elevations of the construction associated with the new foundation, and shall show the as-built location of the construction on the Project Site Boundary drawing provided by the Trustees. Design-Builder shall specify the horizontal location using California Coordinate System, NAD 83 Coordinates. A California-licensed land surveyor shall certify the survey with its stamp and signature, after which Design-Builder shall submit it promptly to the Trustees.

Design-Builder shall prepare surveys and design for excavations and shorings, where required, for the Project.

The Trustees have the right, but not the obligation, to check the location and elevation of such stakes and reference points and/or to check Work constructed from such stakes or reference points. Work that is not correctly located shall be rejected.

Design-Builder shall provide to the Trustees the record survey and a copy of the closure data of the layout of the Project showing the ties to the University layout control points. The information shall be provided in the form of a CD-ROM containing "PDF" and "CAD" files of the same.

#### **34.10 Ownership and Use of Documents**

Design-Builder agrees and shall secure like agreement from the Project Architect/Engineer that designs, drawings, specifications, electronic equivalents and other technical data produced in the performance of this Agreement become the property of the Trustees upon payment of Work completed. The Trustees grant Design-Builder and the Project Architect/Engineer the right to reuse aspects (i.e. details and design elements) of the design developed for this Project in other designs for other future projects including those with other clients.

Design-Builder agrees that the Trustees shall have access at reasonable times to inspect and make copies of notes, designs, drawings, specifications, electronic files, calculations and other technical data pertaining to the Work performed under this Contract.

a. Use of Documents.

The Trustees retain the right to utilize documents prepared under the Agreement regardless of whether the Agreement is terminated or the Project is suspended or abandoned. This right allows the Trustees to use these documents in the future for the same Project, a modified version of it, or for one that is similar.

b. Reuse of Documents.

Reusing the documents on another project without the approval of Design-Builder relieves Design-Builder of liability resulting from their use.

### **35.00 - AWARD AND EXECUTION OF DESIGN-BUILD AGREEMENT**

#### **35.01 Direct Cost of the Work**

The costs included in the Direct Cost of the Work (reference Article 31.00, Definitions, and the RFP, under Classification of Project Costs (Table A)) shall not be at rates higher than the standard paid at the place of the Project, except with prior written consent of the Trustees. Design-Builder shall include only the following items in the Direct Cost of the Work.

- a. Labor Costs.
  - (1) Wages of construction workers directly employed by Design-Builder to perform the construction of the Work at the Site or, with the Trustees' agreement, at offsite workshops.
  - (2) Actual costs paid or incurred by Design-Builder for taxes, insurance, contributions, assessments and benefits, associated with the construction workers directly employed by Design-Builder, and as required by law.
- b. Trade Contractor Cost.  
Payments made by Design-Builder to trade contractors in accordance with the requirements of the subcontracts.
- c. Cost of Materials and Equipment Incorporated in the Completed Construction.
  - (1) Actual costs, including transportation of materials and equipment incorporated or to be incorporated in the completed construction.
  - (2) Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Trustees at the completion of the Work or, at the Trustees' option, shall be sold by Design-Builder. Any amounts realized from such sales shall be credited to the Trustees as deduction from the cost of the Work.
- d. Cost of Other Materials and Equipment and Related Items.
  - (1) Actual costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by Design-Builder at the Site and fully consumed in the performance of the Work. Cost for items previously used by Design-Builder shall mean fair market value. The Trustees reserves the right to dispose of all temporary structures and small tools that have been purchased but are no longer required for the Work.
  - (2) Costs of removal of debris from the Site.
- e. Miscellaneous Costs.
  - (1) Sales taxes imposed by a governmental authority which are related to the work and for which Design-Builder or Owner is liable.
  - (2) Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming work for which reimbursement is excluded by Article 36.06, Testing Materials, Articles, Equipment and Work, or other provisions of the Contract Documents.
  - (3) Deposits lost for causes other than Design-Builder's fault or negligence.
  - (4) Cost of surveys if required for the Work.
  - (5) Costs of obtaining and using all utility services required for the Work, if not paid directly by the Trustees.
- f. Other Costs.  
This category includes other costs incurred in the performance of the Work if approved by the Trustees in advance and in writing. Design-Builder shall include items such as crane rental/operation in the GMP as general requirements.
- g. Excluded from Direct Construction Cost of the Work.
  - (1) Costs in repairing or correcting work damaged or improperly executed by construction workers in the employment of Design-Builder and/or trade contractors, resulting from the fault or negligence of Design-Builder and/or trade contractors or Design-Builder's and/or trade contractors' employees, foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel.
  - (2) Costs in repairing damaged work other than that described in Article 35.01-g (1), resulting from the fault or negligence of Design-Builder or Design-Builder's personnel, and only to the extent that the cost of such repairs is not recoverable by Design-Builder from others and Design-Builder is not compensated therefor by insurance or otherwise.
  - (3) Design-Builder's site management fees, bonds, design, OH&P, and contingency reserve.

### **35.02 Construction Phase Services**

Design-Builder's fee percentage for Construction Phase Services, as included in the cost proposal, shall include the following items:

- a. Labor Costs
  - (1) Wages or salaries of Design-Builder's supervisory and administrative personnel when stationed at the Site with the Trustees' agreement.
  - (2) Wages and salaries of Design-Builder's supervisory or administrative personnel engaged at factories, workshops (not including Design-Builder's principal or branch offices) or on the road expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
  - (3) Wages or salaries of Design-Builder's Project manager, whether stationed at the Site or in Design-Builder's principal office or branch offices, but only for that portion of his/her time required for the Work.



- b. Travel and Subsistence.  
That portion of the reasonable travel and subsistence expenses of Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work.
- c. Miscellaneous Costs.
  - (1) That portion of premiums for insurance and bonds directly attributable to the Contract.
  - (2) Fees and assessments for the building permit and for other permits, licenses and inspections for which Design-Builder is required by the Contract Documents to pay.

**35.03 Costs Not Included in Construction Phase Services**

The cost of the Work shall not include:

- a. Any costs incurred by Design-Builder in providing pre-construction services specified under a separate service agreement executed between Design-Builder and the Trustees.
- b. Salaries and other compensation of Design-Builder's personnel stationed at Design-Builder's principal office or offices other than the Site office, except as specifically provided in Articles 35.01 and 35.02.
- c. Payments to Design-Builder's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.).
- d. Expenses of Design-Builder's principal office and offices other than the Site office.
- e. Overhead and general expenses, except as may be expressly included in Articles 35.01 and 35.02.
- f. Design-Builder's capital expenses, including interest on Design-Builder's capital employed for the Work.
- g. Except as provided in Article 35.01, costs due to the fault or negligence of Design-Builder, trade contractors, anyone directly or indirectly employed by Design-Builder or trade contractors, or for whose acts Design-Builder or trade contractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- h. Electronic processing and personnel cost incurred by Design-Builder in preparing the Project schedule and schedule updates, payroll, project cost reports or project status reports and any other reports necessary to the progress of the Work.
- i. Any costs based on percentages, rather than actual costs paid by Design-Builder, unless specific percentages are documented and approved by the Trustees.
- j. Any fees paid to Contractor/Design-Builder organizations (AGC, ABC, AIA etc.)
- k. Contractor's business license.
- l. Any cost not specifically and expressly described in Articles 35.01 and 35.02.
- m. Costs that would cause the Guaranteed Maximum Price to be exceeded.

**35.04 Discounts, Rebates and Refunds**

- a. Cash discounts obtained on payments made by Design-Builder shall accrue to the Trustees if:
  - (1) Before making the payment, Design-Builder included them in a payment request and received payment therefor from the Trustees, or
  - (2) The Trustees have deposited funds with Design-Builder with which to make payments; otherwise, cash discounts shall accrue to Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Trustees, and Design-Builder shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to Design-Builder, it shall be credited to the Trustees. Labor Costs.
- b. Amounts, which accrue to the Trustees in accordance with the provisions of Article 35.04-a, shall be credited to the Trustees as a deduction from the cost of the Work.

**35.05 Clarification Prior to Preparing the Guaranteed the Maximum Price**

Design-Builder shall examine the Design-Build Contract Documents in preparing the GMP and shall report to the Architect any omissions, discrepancies, or errors found in the plans and specifications. Before the date of agreeing to the GMP, Design-Builder shall submit a written request for clarification to the Architect who may give such clarification in the form of an addendum. Otherwise, in obtaining the cost of the Project, Design-Builder shall consider that any conflicts shall be governed by Article 37.01, Interpretation of Contract Requirements.

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

### **35.06 Guaranteed Maximum Price (GMP)**

Design-Builder shall guarantee the Contract Amount for the Project not to exceed the GMP, as set forth in the Agreement. Design-Builder shall support the GMP by a line item cost breakdown for each trade, allowances, bonds, site management fees, OH&P, contingency, and any other cost necessary to complete the Project. The GMP shall be subject to additions and deductions by change order as provided in Article 38, Change Orders.

If the cost of the Work, together with Design-Builder's fee, exceeds the GMP, adjusted from time to time by change order, Design-Builder shall pay the overrun without reimbursement by the Trustees. If the actual cost of the Work, plus Design-Builder's fee, is less than the GMP, as adjusted from time to time by change order, then Design-Builder shall pay the Trustees the difference. Design-Builder agrees to use all reasonable efforts to maximize the cost savings for the mutual benefit of the parties.

### **35.07 Listing of Trade Contractors**

Design-Builder shall solicit a minimum of four qualified trade contractors in a manner most appropriate to obtain competitive bidding. Identify in the trade contractor solicitation the construction budget for that trade, and clearly state the amount of bonds required by the trade contractors, and whether Design-Builder or the trade contractor will be responsible for the cost of the bonds (Public Contract Code section 4108).

Upon award of a trade contract, Design-Builder shall update and submit a List of Trade Contractors to the Construction Administrator whereon Design-Builder shall list the names and addresses, telephone numbers, license numbers, Contract amount, DVBE status, and other requested information, of each trade contractor that will perform Work or labor or render services for Design-Builder in excess of one-half of one percent of Design-Builder's total GMP. This list shall be kept current and accurate by Design-Builder. Design-Builder shall also state the portion of Work or labor or rendition of services that each such trade contractor will do (Public Contract Code sections 4104, 4105 and 4106). For each alternative Design-Builder shall list any trade contractor not included in the base Contract Work trade contractor listing.

a. Non-small Business — Claiming the Small Business Preference.

If Design-Builder is a Non-small Business and claimed the small business preference, Design-Builder shall list all trade contractors certified as California small businesses, and the total of these subcontracts shall be at least 25% of the total GMP, including awarded alternatives.

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

Design-Builder is required to achieve three percent DVBE participation in its GMP and, if Trustees awarded Design-Builder a DVBE incentive, Design-Builder is required to achieve that level of DVBE participation in its GMP. The Trustees calculate the DVBE incentive at cost proposal opening, and is calculated as a percentage of the highest Technical Proposal Score. The resulting number of points are added to each proposer's technical score.

Design-Builder shall list on the List of Trade Contractors for Design-Build and Collaborative Design-Build Projects form [701.04A.DB/CDB](#), the DVBEs participating in the GMP and the dollar amount of participation by each DVBE. The total of the DVBE participation amounts that Design-Builder provides on the List of Trade Contractors for Design-Build and Collaborative Design-Build Projects form shall equal at least Design-Builder's proposed percentage of participation. For each alternative Design-Builder shall list any DVBE participating in work to be performed on the alternative. If the Trustees granted the DVBE Bid Incentive to Design-Builder, the total amount of DVBE participation shall equal at least the incentive percentage of the total GMP, including awarded alternatives.

c. Subcontractor Directory.

Design-Builder shall maintain current information requested on the Subcontractor Directory for all tiers of subcontractors working on the Project, and shall submit the Subcontractor Directory with its signed construction Contract and with all payment requests. In accordance with Article. 32.02-a (2), Public Works Registration with the Department of Industrial Relations (DIR), all tiers of subcontractors working on the Project shall register with the DIR.

### **35.08 Award of Design-Build Agreement**

The Trustees and Design-Builder have agreed to a schedule, design, specifications, and a Guaranteed Maximum Price (the Design-Build Contract Documents) and, the Trustees have awarded a Design-Build Agreement to Design-Builder to complete the design and construct the Project.

### **35.09 Contract Bonds**

Design-Builder shall furnish, for each counterpart signed, two surety bonds in the form prescribed by the Trustees. Each bond shall be in an amount equal to 100 percent of the awarded Contract Amount and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Reference the following websites:

- State of California Department of Insurance at: <http://interactive.web.insurance.ca.gov/companyprofile/companyprofile>, and

- US Treasury listing at: <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html>.

One of the surety bonds shall guarantee faithful performance of the Contract by Design-Builder and the other shall secure payment of laborers, mechanics, or materialmen employed on the Project. Such bonds are subject to the approval of the Trustees. Contract bonds shall remain in full force and effect during the term of the Contract including the one-year guarantee period, and through the ten-year limit on latent defects (Public Contract Code sections 10821-10824, Code of Civil Procedure section 337.15).

The Trustees will not accept Riders or modification of any kind on original performance bonds and payment bonds provided at award. Bond document forms approved by the Trustees must be used without alteration.

The Trustees shall make all alterations, extensions of time, extra and additional Work, and other changes authorized by the Trustees for any part of the Contract, including determinations made under Article 39.01, Claims, without securing the consent of the surety or sureties on the Contract bonds.

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

### **35.10 Execution of Design-Build Agreement**

Design-Builder shall sign each Design-Build Contract counterpart and return the Contract counterparts to the Trustees, together with the Contract bonds and certification, along with other requisite documentation such as the Subcontractor Directory and certificates evidencing the required insurance coverage (reference Article 36.06, Insurance Requirements) within ten (10) Business Days of receipt from the Trustees. Reference the following Article 35.11 for the failure of Design-Builder to execute the Contract timely. If Design-Builder is a joint venture, then the joint venture shall submit with the Contract certification form a formal resolution designating the person authorized to sign on behalf of the joint venture. Design-Builder and the Trustees shall each sign two sets of plans, specifications, and addenda (usually at the preconstruction conference)--one set for each party to be filed with the Contract. No Contract shall be binding upon the Trustees until it has been executed by Design-Builder and the Trustees and approved by the Trustees' attorney (in the Office of General Counsel) appointed according to law and authorized to represent the Trustees (Public Contract Code section 10820).

After the Trustees' attorney has fully executed the Design-Build Agreement, Design-Builder can expect to start Work within 30 Days. The Trustees will issue to Design-Builder a Notice to Proceed for the design-build Work and a separate Notice to Proceed for construction. Any Work performed by Design-Builder before the Project start date as specified on the written Notice to Proceed shall be considered as having been done at Design-Builder's own risk.

### **35.11 Failure or Refusal to Execute Design-Build Agreement**

Failure or refusal by Design-Builder to execute the Design-Build Agreement within the time set in Article 35.10, Execution of Design-Build Agreement, shall be just cause for the rescission of the award. Failure or refusal to file acceptable bonds and insurance within the time set in Article 35.10, Execution of Design-Build Agreement, constitutes a failure or refusal to execute the Contract.

## **36.00 - CONDUCT OF THE CONSTRUCTION WORK**

### **36.01 Laws to be Observed--Generally**

a. State and Federal Laws.

Design-Builder shall observe all state and federal laws that affect the Work under this Contract. Design-Builder shall hold harmless, defend and indemnify the Trustees against any claim arising from the violation of any law, whether by itself or its agents, employees, or subcontractors. If a conflict arises between the provisions of this Contract and a law, Design-Builder immediately shall notify the Trustees' Construction Administrator in writing. "Law" as used in this paragraph includes statutes and regulations adopted, as well as executive orders, authoritative interpretations, and other rules and directives issued by legally constituted authority.

b. National Labor Relations Board-Compliance with Order.

In executing this Contract, Design-Builder swears, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Design-Builder within the immediately preceding two-year period because of Design-Builder's failure to comply with an order of a federal court which directs Design-Builder to comply with an order of the National Labor Relations Board. The Trustees may rescind this Contract if Design-Builder falsely swears to this statement (Public Contract Code section 10296.)

- c. **Child and Family Support Obligations.**  
Design-Builder acknowledges the policy of the state of California regarding the importance of child and family support obligations expressed in Public Contract Code section 7110(a). Design-Builder acknowledges that to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the State's Employment Development Department.
- d. **Audit Provisions.**  
The contracting parties shall be subject to examination and audit by both the Trustees (or designee) of the California State University and the Auditor General of the State of California at any time during construction and for a period of three (3) years after final payment of the Contract (Government Code section 8546.7). Such examination and audit shall include access to Design-Builder and the subcontractor records as delineated in the following:
- (1) Design-Builder's records which shall include but not be limited to accounting records (hard copy, as well as electronic data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful proposers, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Trustees/Auditor General to substantiate charges related to this Contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) Design-Builder's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by Design-Builder or any of his payees. Design-Builder is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the Project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total Project costs by cost codes; and a subcontractor history report including each subcontract amount and change orders issued thereto.
  - (2) Inspection and copying from time to time and at reasonable times and places any and all information, materials and data of every kind and character, including but not limited to records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this contract.
  - (3) The Trustees/Auditor General shall be allowed to interview any of Design-Builder's employees, pursuant to the provisions of this article throughout the term of this Contract and for a period of three years after final payment or longer if required by law.
  - (4) Design-Builder shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Design-Builder and payee. Such requirements will also apply to subcontractors and sub-subcontractors, etc. Design-Builder will cooperate fully and will cause all related parties and all of Design-Builder's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making any and all such information, materials and data available to Trustees/ Auditor General from time to time, whenever requested, in an expeditious manner.
  - (5) The Trustees/Auditor General shall have access to Design-Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
  - (6) If an audit inspection or examination in accordance with this Article discloses overcharges (of any nature) in excess of one-half of one percent (.5%) of the total Contract billings by Design-Builder to the Trustees, Design-Builder shall reimburse to the Trustees the reasonable actual cost of the Trustees/ Auditor General audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Design-Builder's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 Days) from presentation of the Trustees/Auditor General findings to Design-Builder.
  - (7) If an audit discloses overcharges on change orders, where a Design-Builder has submitted costs and has received payment of costs for a subcontractor's Work, but has not passed on such payment to the subcontractor (including mark-up charged), and Design-Builder's records do not reflect offsetting back charges, Design-Builder shall reimburse the Trustees for such overcharges upon receipt of a request from the Trustees.

- e. Personal Responsibility and Work Opportunity Reconciliation Act of 1996.  
If Design-Builder is a natural person, Design-Builder certifies in accepting this Contract that it is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).
- f. Declaration of Eligibility to Contract with the State.  
If Design-Builder is a corporation, Design-Builder certifies and declares by signing the Agreement that it is eligible to contract with the state of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code section 10286 *et seq.*).

**36.02 Laws to be Observed--Regarding Labor**

- a. Prevailing Wage.  
The Work under this Contract is a public works project (reference definition of public works, Labor Code section 1720 *et seq.*) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8 California Code of Regulations sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Design-Builder and all subcontractors must comply with all applicable laws and regulations, and perform all obligations required by the DIR pursuant to such authority.

The prevailing wage rates set forth are the minimum that must be paid by Design-Builder on a public works contract. Nothing herein contained shall be construed as preventing Design-Builder from paying more than the minimum rates set forth. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, Design-Builder is liable for any penalties under section 1775(a), if Design-Builder fails to comply with the requirements of section 1775(b). Design-Builder shall periodically review and monitor all subcontractors' certified payroll records. If Design-Builder learns that any subcontractor has failed to comply with the prevailing wage requirements herein, Design-Builder shall take corrective action.

Design-Builder represents and warrants that the Contract Amount includes sufficient funds to allow Design-Builder and all subcontractors to comply with all applicable laws and contractual agreements. Design-Builder shall defend, indemnify and hold the Trustees of the California State University, the University, its officers, employees and agents harmless from and against any and all claims, demands, losses, liabilities, and damages arising out of or relating to the failure of Design-Builder or any subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. Design-Builder agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against the Trustees in relation to such failure.

- (1) Hours of Labor.  
Eight (8) hours of labor constitutes a legal day's work. Design-Builder or any subcontractor shall forfeit, as a penalty to State, \$25.00 for each worker employed in the execution of the Contract by Design-Builder or any subcontractor, for each Day during which the worker is required or permitted to work more than eight hours in any one Day and forty hours in any one calendar week, in violation of the provisions of the Labor Code sections 1810 to 1814, thereof, inclusive. Notwithstanding the provisions of Labor Code sections 1810 to 1814, Work performed by employees of Design-Builder or any subcontractor in the execution of the Contract in excess of eight hours per Day, and forty hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per Day at not less than one and one-half times the basic rate of pay as provided in Labor Code section 1815.
- (2) If it becomes necessary to employ crafts other than those listed, Design-Builder shall notify the Trustees immediately, and the Trustees will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.
- (3) Pursuant to Labor Code section 1770, the Director of the DIR has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime Work for each craft needed in execution of the Contract as set forth in the Notice to Contractors. Design-Builder shall post a schedule showing all applicable prevailing wage rates at appropriate and conspicuous locations on the Project Site in accordance with Labor Code section 1773.2. The Trustees shall maintain copies of the prevailing rate of per diem wages, and shall make them available to any interested party upon request. Design-Builder shall also post jobsite notices as required by the DIR pursuant to Labor Code section 1771.4 (a) (2) and applicable regulations.
- (4) Design-Builder and any subcontractor under subcontract to Design-Builder on the Project shall comply with Labor Code section 1775, and Design-Builder shall include provisions in its Contract with its subcontractors that will require compliance with Labor Code section 1775. As required by section 1775(b) Design-Builder shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the Contract

between Design-Builder and the subcontractor. Design-Builder shall monitor its subcontractors' compliance with the prevailing wage law as required by section 1775(b). In accordance with section 1775, Design-Builder and any subcontractor under Design-Builder shall forfeit as a penalty to the State not more than \$200 for each Day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the Contract by it or, except as provided in section 1775(b), by any subcontractor under it. In addition to this penalty, Design-Builder or subcontractor shall pay each worker the difference between the prevailing wage rates and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate.

- (5) In accordance with Labor Code section 1776, Design-Builder and subcontractors shall keep an accurate payroll record on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division). The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified herein.

Payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the public work. Each payroll record shall contain verification by written declaration under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor and subcontractors have complied with the requirements of Labor Code sections 1771, 1776, 1777.5, 1811 and 1815 for any work performed by its employees on the Project.

- (a) Design-Builder, and all subcontractors must furnish payroll records to the Labor Commissioner at least monthly and in a format prescribed by the Labor Commissioner, as required by Labor Code section 1776.
- (b) Design-Builder and subcontractors' certified payroll records shall be available for inspection at all reasonable hours, or certified copies furnished upon request to the following requesting parties:
- (i) the employee or his or her authorized representative,
  - (ii) the Trustees, the Division of Labor Standards Enforcement (DLSE), the Division of Apprenticeship Standards (DAS),
  - (iii) the public; however, a request by the public shall be made through the Trustees or the DLSE or DAS. If the requested payroll records have not been provided pursuant to paragraph (ii) above, Design-Builder shall collect from the requesting party the costs of preparation by Design-Builder subcontractors, and the Trustees. The public may not be given access to the records at the principal office of Design-Builder.
- (c) Records made available for inspection as copies and furnished upon request to the public or any public agency by the Trustees or the DLSE or the DAS shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of Design-Builder or subcontractor awarded the contract or subcontractor performing the contract shall not be marked or obliterated.
- (d) Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c) (5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number.
- (e) Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 75a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.
- (f) Any copy of records made available for inspection by, or furnished to, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code, and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records.
- Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.
- (g) Design-Builder or subcontractor shall file a certified copy of the payroll records with the requesting entity within 10 Days after receipt of a written request. In the event Design-Builder or subcontractor fails to comply within the 10-Day period, Design-Builder or subcontractor shall, as penalty to the state or Trustees, forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the DLSE or the DAS, these penalties shall be withheld from progress payments then due. Design-Builder is not subject to a penalty assessment pursuant to this

section due to the failure of a subcontractor to comply with this section. Design-Builder or subcontractor may be subject to debarment by the Labor Commissioner for failure to submit certified payrolls timely.

- (6) Design-Builder is required to submit to the Trustees a minimum of the first two weeks of certified payroll and the Hourly Labor Rate Worksheet for its workers and all subcontractors included in change orders. Additional weeks of certified payroll records may be required at the discretion of the Trustees.
- (7) Consistent with Public Contract Code section 6109, Design-Builder is prohibited from performing a portion of Work with a subcontractor who is debarred pursuant to Labor Code section 1777.1 or 1777.7.
- (8) Apprentices.  
If Design-Builder or any subcontractor employs workers on the Project in any apprenticeable craft, it may apply to any apprenticeship program in the craft in the area of the Work for a certificate approving Design-Builder or subcontractor for the employment and training of apprentices. Design-Builder or subcontractor shall employ the number of apprentices or the ratio of apprentices to journeymen specified in the certificate unless the conditions set out in Labor Code section 1777.5 excuse it from this requirement.

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which they are employed and shall be employed only in the Work of the craft or trade to which they are indentured. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship agreements under which a person is training.

Design-Builder or subcontractor employing journeymen or apprentices in any apprenticeable craft or trade shall contribute to the fund or funds set up in the area of Work to administer the apprenticeship program in each trade in which it employs such journeymen or apprentices in the same amount and manner as the contributing contractors.

Special attention is directed to Labor Code sections 1777.5, 1777.6 and 1777.7, and California Code of Regulations, Title 8, section 200 *et seq.* Each Design-Builder and subcontractor must, before commencement of Work under this Contract, contact the Division of Apprenticeship Standards, 455 Golden Gate, 8<sup>th</sup> Floor, San Francisco, California, 94102, or one of its branch offices to ensure compliance and understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor. Reference the following Division of Apprenticeship Standards website for contacts and other pertinent apprenticeship information, [https://www.dir.ca.gov/das/das\\_contactUS.html](https://www.dir.ca.gov/das/das_contactUS.html).

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

b. Nondiscrimination

- (1) During the performance of this Contract, the recipient, Design-Builder, and its subcontractors shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Design-Builder shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.  
"Recipient" means any contractor, local agency, or person, who regularly employs five or more persons, and who receives State support, as defined in this Section, in an amount in excess of \$10,000 in the aggregate per State fiscal year or in an amount in excess of \$1,000 per transaction. For more information, reference California Code of Regulations, Title 2, section 11150.
- (2) Design-Builder shall comply with the following:
  - the provisions of the Fair Employment and Housing Act (Government Code, section [12900 et seq.](#)),
  - the regulations promulgated thereunder (California Code of Regulations, Title 2, section [11000 et seq.](#)),
  - the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code, sections [11135-11139.8](#)), and
  - the regulations or standards adopted by the Trustees to implement such article.
- (3) Design-Builder or Recipient shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees upon reasonable notice at any time during the normal business hours, but in no case

less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Trustees shall require to ascertain compliance with this clause.

- (4) Recipient, Design-Builder and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (5) Design-Builder shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

c. **Workers' Compensation.**

The Design Builder shall be required to secure payment of Workers' Compensation to its employees in accordance with Labor Code section 3700 and shall file the certification required in Labor Code section 1861 with the Trustees prior to performing the Work (reference Article 36.06-a (1), Policies and Coverage, herein).

d. **Education, Counseling, and Training Programs.**

All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs, under this Contract, shall be open to all qualified persons, without regard to race, sex, color, religion, national origin or ancestry. Such programs shall be conducted to encourage the fullest development of the interests, skills, aptitudes, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers of participants from these segments of the labor force where the need for upgrading levels of skills is the greatest.

e. **Occupational Safety and Health.**

The Design Builder shall comply with all the provisions of the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. section 651 *et seq.*) and all rules, regulations, and orders adopted pursuant thereto. The Design Builder shall comply with all the provisions of the California Occupational Safety and Health Act of 1973 (Labor Code section 6300 *et seq.*) and all rules, regulations and orders adopted pursuant thereto. These laws provide for job safety and health protection for workers.

Design Builder shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations. The Design Builder shall fully inform each subcontractor and materials supplier as to the requirements of the applicable safety orders.

f. **Assignment of Rights Relating to Federal and State Anti-Trust Actions.**

The Design Builder and all subcontractors shall be bound by the provisions of Public Contract Code section 7103.5 as follows: in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Design Builder or subcontractor offers and agrees to assign to the Trustees all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (Chapter 2, (commencing with section 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Trustees tender final payment to the Design Builder, without further acknowledgment by the parties.

### **36.03 Environmental Requirements**

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

a. **Air Pollution Control.**

Design-Builder shall comply with all air pollution control rules, regulations, ordinances and statutes that apply to the Work performed under the Contract, including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of section 11017 of the Government Code. Design-Builder must be eligible to perform work for the State, and is deemed eligible if not found to be in violation of any order, resolution, or regulation relating to air or water pollution adopted in accordance with Government Code section 4477.

(1) **Solvents.**

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, Design-Builder shall ensure that all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Project, comply with the applicable material requirements of the Air Quality Management District (AQMD). All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.



- (2) Disposal of Material.  
Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.
- (3) Fugitive Dust.  
A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (reference Article 36.08-c, Protection of Facilities).
- (4) Construction Vehicles and Equipment.  
Trucks hauling dirt from the Site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

b. Water Pollution Control

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

(1) Storm Water Pollution Prevention Plan.

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

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

Design-Builder shall pay all costs associated with development and implementation of the SWPPP. Reference Specifications for additional requirements.

(2) Compliance.

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

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

(3) Maintenance Manual for Post-construction BMPs.

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

c. Sound Control Requirements.

Design-Builder shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Work. In the absence of any such rules, regulations and ordinances, Design-Builder shall conduct its Work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Trustees' requests to reduce noise levels.

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

Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without a muffler.

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

d. Environmental Clearances.

Design-Builder shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this Project. Design-Builder shall comply with the provisions, including giving

notices during construction when so required. Design-Builder shall not be compensated for the delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions in Article 36.15-g, Adjustment of Contract Time Due to Reasons Beyond Trustees' Control, if Design-Builder demonstrates to the satisfaction of the Trustees that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.

e. Source of Aggregates.

The Public Contract Code section 10295.5 requires that no State agency shall purchase or utilize sand, gravel, aggregates, or other minerals unless the source is on an eligible list identifying operations that have met certain requirements of the Surface Mining and Reclamation Act of 1975 (Public Resources Code section 2710 *et seq.*). Accordingly, Design-Builder shall submit to the Trustees documentation that it is complying with the requirements of this law in purchasing these materials.

f. Archaeological Finds.

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

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

g. Integrated Waste Management.

Pursuant to the State Agency Integrated Waste Management Plan (Public Resources Code, Division 30, Part 3, Chapter 18.5), the California State University shall divert 50% of all solid waste generated in construction activities from landfill disposal or transformation facilities through source reduction, recycling and composting. Design-Builder shall report all source reduction, recycling and composting relative to this Project to the Trustees. Reference Contract Documents for further requirements.

h. Buy Clean California Act.

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

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

For product category rules and more information on applicable materials or products, go to:

<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Buy-Clean-California-Act>

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

January 1, 2019 – EPDs will be requested by the state.

January 1, 2020 – EPDs will be required by the state.

January 1, 2021 – DGS publishes the maximum acceptable GWP for eligible materials.

July 1, 2021 – EPDs will be required and used to gauge GWP compliance of eligible materials.

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

(1) Definitions.

- Environmental Product Declaration (EPD). Independently verified document created and verified in accordance with International Organization for Standardization (ISO) 14025 for Type III environmental declarations that identifies the global warming potential emissions of the facility-specific material or product through a product stage life cycle assessment.
- Product Category Rule. Program operator established rule based on the science of life cycle assessment that governs the development of the environmental product declaration for the material or product.
- Product Stage. Boundary of the environmental product declaration that includes: (1) raw material supply, (2) transportation processes, and (3) processing operations, including operations such as melting, mixing, fabrication, finishing, curing, cooling, trimming, packaging and loading for transport delivery. Commonly referred to as a "cradle-to-gate" life cycle assessment.

- Program Operator. Independent agency that supervises and confirms the full environmental product declaration development process in accordance with ISO 14025.
  - Raw Material Supply. Upstream processes which can include allocations, extraction, refinement, reclamation, handling and processing of the constituents used in producing the material or product.
  - Transportation Processes. Includes transportation of raw, reclaimed or recycled material constituents from the supplier to the gate of the manufacturer, producer or fabricator. Includes transport of related waste products.
- (2) Submittals to the Trustees.  
Design-Builder shall submit EPDs to University as a part of the submittal process for eligible materials. University shall compile EPDs for submission to CPDC as a part of project closeout.

#### **36.04 Substitution of Trade Contractors**

Once the trade contractors have been listed (reference Article 32.05-b) the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*) apply to any proposed substitution of trade contractors.

- a. Bond Requirements.  
It is the Trustees' interpretation of section 4108 of the Public Contract Code that Design-Builder must clearly advertise the specific bond requirements for the Project, including the requirement of a bond, the kind of a bond, and the amount of the bond, in order to be eligible to substitute a subcontractor under section 4107(a) (4) of the Public Contract Code.
- b. Substitution of a Small Business Subcontractor.  
After award of the Contract based in part on the application of the small business preference, the Non-Small Business Design-Builder shall use the listed small business subcontractor(s) and/or suppliers unless a substitution is requested in writing to the Trustees, and the Trustees approve the substitution in writing before the commencement of any Work. The substitution request must include at least the following:
- (1) An explanation of the reason for the substitution.
  - (2) A description of the Work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall Contract that the substituted business will perform. The substituted business(es), if approved, shall be required to perform a commercially useful function in the Contract pursuant to California Code of Regulations section 1896.6.
  - (3) Design-Builder must substitute a small business with another small business. If the small business substitution cannot occur, Design-Builder must include a written justification and the steps that were taken to try to acquire a new small business subcontractor and how that portion of the Contract will be fulfilled.

Any substitution of subcontractors shall be performed in accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*). Failure of Design-Builder to subcontract with the small business listed on its bid proposal or to follow these substitution requirements may be grounds for the Trustees to notify the Department of General Services to impose sanctions pursuant to Government Code section 14842.5 or Code of Regulations section 1896.16. In the event such sanctions are to be imposed, Design-Builder shall be notified in writing and entitled to a hearing pursuant to Code of Regulations sections 1896.18 and 1896.20.

- c. Substitution of a Disabled Veteran Business Enterprise.  
Design-Builder shall use the listed Disabled Veteran Business Enterprise (DVBE) companies listed on the List of Subcontractors for Design-Build Projects form, unless a substitution is requested in writing to the Trustees, and the Trustees and the Department of General Services (DGS) approve the substitution in writing before the commencement of any Work. The substitution request must include at least the following:
- (1) An explanation of the reason for the substitution.
  - (2) A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.
  - (3) Design-Builder must substitute a DVBE with another DVBE. If the DVBE substitution cannot occur, Design-Builder must include a written justification and the steps that were taken to try to acquire a new DVBE subcontractor and how that portion of the contract will be fulfilled.
  - (4) A description of the Work to be performed identified both as a task(s) and as a dollar amount or percentage of the overall contract that the substituted business will perform.

The request for substitution of a DVBE and the Trustees' and DGS approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Sections 4100 *et seq.*, Public Contract Code) or any other contract requirements relating to substitution of subcontractors.

- d. Subcontractor Directory.  
Design-Builder shall provide and maintain current information requested on the Subcontractor Directory for all tiers of trade contractors and subcontractors working on the Project, and shall submit the Subcontractor Directory with its

signed Design-Build Agreement and with all subsequent payment requests. If Design-Builder substitutes any listed firms without approval by the Trustees in accordance with section 4107(a) of the Public Contract Code, or if subcontractors are added and perform Work in excess of one-half of one percent of the base Contract, penalties are applicable per section 4110 of the Public Contract Code.

### **36.05 Delegation of Performance and Assignment of Money Earned**

The performance of all or any part of this Contract may not be delegated without the written consent of the Trustees. Consent will not be given to any proposed delegation which would relieve Design-Builder or its surety of their responsibilities under the Contract.

Design-Builder may assign moneys due or to become due under the Contract, only upon written consent of the Trustees. Assignments of moneys earned by Design-Builder shall be subject to proper retention in favor of the Trustees and to all deductions provided for in the Contract and such moneys shall be subject to use by the Trustees for the completion of the Work in the event Design-Builder is in default.

### **36.06 Insurance Requirements**

a. Design-Builder shall not commence Work on the Site until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees. This Project shall be enrolled in the Trustees' Builders Risk Insurance Program, for which the provisions of Article 36.06-c shall apply. Reference Supplementary General Conditions to determine if this Project will be enrolled in the Trustees' Owner Controlled Insurance Program (OCIP), in which case the provisions of Article 36.06-b shall apply.

(1) Policies and Coverage.

(a) Design-Builder shall obtain and maintain for the term of the Contract the following policies and coverage for any subcontractor or work that is not covered by OCIP:

(i) Comprehensive or Commercial Form General Liability Insurance on an occurrence basis, covering Work done or to be done by or on behalf of Design-Builder and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Work.

(ii) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of Design-Builder and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.

(iii) Worker's Compensation including Employers Liability Insurance as required by law.

(iv) Errors & Omissions Insurance on an occurrence basis, covering Work done or to be done by or on behalf of Design-Builder and providing insurance for errors and omissions, shall be secured and maintained.

(b) Design-Builder also may be required to obtain and maintain the following policies and coverage:

(i) Environmental Impairment Liability Insurance may be required should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.

(ii) Other Insurance may be required by agreement between the Trustees and Design-Builder.

(2) Verification of Coverage.

Design-Builder shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. Design-Builder shall timely file renewal certifications and endorsements timely filed by Design-Builder for all coverage until the Work is accepted as completed pursuant to Article 40.01, Acceptance. The Trustees reserve the right to require Design-Builder to furnish the Trustees complete, certified copies of all required insurance policies. Design-Builder shall submit certification of coverage for errors and omissions insurance to the Trustees upon signature of this agreement.

(3) Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 36.07, Indemnification. The insurance policies shall contain, or be endorsed to contain, the following provisions.

(a) For the General and Automobile Liability Policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers and agents are to be covered as additional insureds.

- (b) For any claims related to the Work, Design-Builder’s insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, their officers, employees, representatives, volunteers, and agents shall be in excess of Design-Builder’s insurance and shall not contribute with it.
- (c) Design-Builder shall immediately, upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required by this Article, provide written notice of any such insurance cancellation or non-renewal by certified mail to the Trustees.
- (d) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

(4) Amount of Insurance.

(a) For All Projects.

The insurance furnished by Design-Builder under this Article shall provide coverage in amounts not less than the following, (‘M’ indicates millions):

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

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

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

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

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

(iv) Errors & Omissions Insurance shall be secured and maintained for no less than \$1,000,000.00 per occurrence.

(b) For Projects Involving Hazardous Materials.

Design-Builder shall provide additional coverage in amounts not less than the following:

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

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

(ii) In addition to the coverage described in 36.06-a(4)(a)(ii), Business Automobile Liability Insurance, Design-Builder shall obtain for hazardous material transporter services:

(A) MCS-90 endorsement

(B) Sudden & Accidental Pollution endorsement — Limits of Liability\*

\$2M Each Occurrence;

\$2M General Aggregate

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

With the Trustees’ approval, Design-Builder may delegate the responsibility to provide this additional coverage, as described in Article 36.06-a (4) (b) above, to its hazardous materials subcontractor. When Design-Builder returns its signed Project Agreement to the Trustees, Design-Builder shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. Design-Builder shall affirm in this letter that the hazardous materials subcontractor’s certificate of insurance shall also adhere to all of the requirements in Article 36.06-a: (2) Verification of Coverage and (3) Insurance

Provisions. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to the Trustees as soon as Design-Builder fully executes its subcontract with the hazardous materials subcontractor.

- (5) Acceptability of Insurers.  
Insurers shall be licensed by the state of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to the Trustees.
- (6) Subcontractor's Insurance.  
Design-Builder shall ensure that all subcontractors on this Project are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's Work. Design-Builder shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained.
- (7) Miscellaneous.
  - (a) Any deductible under any policy of insurance required in this Article shall be Design-Builder's liability.
  - (b) Acceptance of certificates of insurance by the Trustees shall not limit Design-Builder's liability under the Contract.
  - (c) In the event Design-Builder does not comply with these insurance requirements, the Trustees may opt to provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by Design-Builder and, if prompt payment is not received, may be deducted from Contract sums otherwise due Design-Builder.
  - (d) If the Trustees are damaged by the failure of Design-Builder to provide or maintain the required insurance, Design-Builder shall pay the Trustees for all such damages.
  - (e) Design-Builder's obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.

b. Owner Controlled Insurance Program (OCIP).

The Trustees **must** enroll any Project awarded with a Contract Amount of ten million dollars or more in this program. Design-Builder **must** refer to the Supplementary General Conditions to determine if this Project is enrolled in this program, and **must** disregard these provisions of Article 36.06-b if not.

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

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

(1) Enrolled Parties and their Insurance Obligations.

OCIP Coverage **must** cover Enrolled Parties. Enrolled Parties are: the Trustees as the Owner, the OCIP Administrator, Design-Builder and eligible subcontractors of all tiers that enroll in the OCIP, and such other persons or entities as Trustees may designate, in its sole discretion (each party insured under the OCIP is an "Enrolled Party"). For all Enrolled Parties, the OCIP Administrator **must** deem that, upon each party's enrollment in the OCIP for all on site activities, each party's obligation to obtain Comprehensive or Commercial Form Liability Insurance and Workers' Compensation including Employer's Liability Insurance, set out under Article 36.06-a(1)(a), has been satisfied.

All Enrolled Parties must still comply with all other provisions of Article 36.06-a, including providing Business Automobile Liability insurance for all activities, and providing Comprehensive or Commercial Form Liability insurance for offsite activities, providing Workers' Compensation/Employer's Liability Insurance for offsite activities, and providing any other insurance required under Article 36.06-a, or under any Supplementary General Conditions.

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

Excluded Parties must fully comply at all times with the requirements of Article 36.06-a.

- (3) OCIP Insurance Policies Establish the OCIP Coverage.  
The OCIP Coverage and exclusions summarized in this Article 36.06-b and in the other Contract Documents are set forth in full in their respective insurance policies. The summary descriptions of the OCIP Coverage in this Article 36.06-b or the Insurance Manual are not intended to be complete or to alter or amend any provision of the OCIP Coverage. In the event any provision of this Article 36.06-b, the summary below, the Insurance Manual, or the Contract Documents conflicts with the OCIP insurance policies, the provisions of the OCIP insurance policies **must** govern.
- (4) Summary of OCIP Coverage.  
OCIP Coverage **must** apply only to those operations of each Enrolled Party performed at the Project Site in connection with the Work, and only to Enrolled Parties that are eligible for the OCIP. OCIP coverage **must** not apply to ineligible parties, even if they are erroneously enrolled in the OCIP. An Enrolled Party’s operations away from the Project Site, including product manufacturing, assembling, or otherwise, **must** only be covered if such offsite operations are identified and are dedicated solely to the Project. OCIP Coverage **must** not cover offsite operations until receipt by Design-Builder or its Subcontractor of any tier of written acknowledgment of such coverage from the OCIP Administrator.

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

	<u>Coverage Limits</u>
(a) Workers’ Compensation Insurance .....	Statutory Limit
This insurance is primary for all occurrences at the Project Site.	
(b) Employer’s Liability Insurance	
Bodily Injury by Accident, each accident .....	\$1,000,000
Bodily Injury by Disease, each employee .....	\$1,000,000
Bodily Injury by Disease, policy limit .....	\$1,000,000
This insurance is primary for all occurrences at the Project Site.	
(c) Commercial General Liability Insurance	
(Written on most current ISO Occurrence Form, or its equivalent)	
Each Occurrence Limit.....	\$2,000,000
General Aggregate Limit for all Enrolled Parties.....	\$4,000,000
Products & Completed Operations Aggregate for all Enrolled Parties .....	\$4,000,000
Ten (10) Years Products & Completed Operations Extension	
This insurance is primary for all occurrences at the Project Site.	
(d) Excess Liability Insurance (over Employer’s Liability & General Liability) .....	\$100,000,000

- (5) Trustees' Insurance Obligations.  
Trustees **must** pay the costs of premiums for the OCIP Coverage. Trustees will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. Design-Builder hereby assigns to Trustees the right to receive all such adjustments, and **must** use its best efforts to ensure that each of its subcontractors of every tier assigns to Trustees the right to receive all such adjustments. Trustees assume no obligation to provide insurance other than that specified in this Article, and in the OCIP insurance policies. Trustees' furnishing of OCIP Coverage **must** in no way relieve or limit, or be construed to relieve or limit, Design-Builder or any of its subcontractors of any tier of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP insurance policies, or by law, including, without limitation, any indemnification obligations which Design-Builder or any of its Subcontractors has to Trustees thereunder. Trustees reserve the right at their option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in the Contract Documents.
- (6) Design-Builder's OCIP Obligations.  
Design-Builder must:
- (a) Incorporate the terms of these Contract General Conditions into in all subcontract agreements.
  - (b) Enroll in the OCIP within five (5) days of execution of the Contract and maintain enrollment in the OCIP for the duration of the Contract, and assure that each of Design-Builder's eligible subcontractors of every tier enroll in the OCIP, and maintain enrollment in the OCIP for the duration of their respective subcontracts within five (5) days of subcontracting and prior to the commencement of Work at the Project Site.
  - (c) Comply with all of the administrative, safety, insurance, and other requirements outlined in this Article 36.06-b, the Insurance Manual, the OCIP Safety Manual, the OCIP insurance policies, or elsewhere in the Contract Documents.
  - (d) Provide to each of its Subcontractors of every tier a copy of the Insurance Manual, and ensure subcontractor compliance with the provisions of the OCIP insurance policies, the Insurance Manual, this Article, and the Contract Documents. The failure of either (1) the Trustees to include the Insurance Manual in the bid documents or (2) Design-Builder to provide to each of its eligible subcontractors of every tier a copy of the same, **must** not relieve Design-Builder or any of its subcontractors from any of the obligations contained therein.
  - (e) Acknowledge, and require all of its subcontractors of every tier to acknowledge, that:
    - Trustees and the OCIP Administrator are not agents, partners or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer"),
    - Neither Trustees nor the OCIP Administrator are responsible for any claims or disputes between or among Design-Builder, its subcontractors of any tier, and any OCIP Insurer(s), and
    - Neither Trustees nor OCIP Administrator guarantees the solvency or the availability of limits of any OCIP Insurer(s).
- Any type of insurance coverage or limits of liability in addition to the OCIP Coverage that Design-Builder or its subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, must be Design-Builder or its subcontractors' sole responsibility and expense, and **must** not be billed to Trustees.
- (f) Cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP.
  - (g) Provide, within five (5) days of Trustees or OCIP Administrator's request, all documents or information as requested of Design-Builder or its subcontractors. Such information may include, but may not be limited to, payroll records, certified copies of insurance coverages, declaration pages of coverages, policy rate pages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, construction cost estimates for this Project, or such other data or information as Trustees, the OCIP Administrator, or OCIP Insurers may request in the administration of the OCIP, **to verify that the Costs of OCIP Coverages were not included in the Contract Price/Contract Sum, or any**



subcontract amount, or as required by the Insurance Manual. All such records must be maintained through the term of the Contract and for a period of one (1) year thereafter.

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

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

The General Liability Obligation must remain uninsured by Design-Builder, and will not be covered by the OCIP Coverage.

(7) All Bids Net of OCIP Insurance Costs.

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

(8) Design-Builder’s Representations and Warranties to Trustees.

Design-Builder represents and warrants to Trustees, and **must** use its best efforts to ensure that each of its subcontractors of every tier represent and warrant to Trustees that:

- (a) All information they submit to Trustees or to the OCIP Administrator **must** be accurate and complete.
- (b) They have had the opportunity to read and analyze copies of the OCIP insurance policies that are on file in Trustees’ office, and that they understand the OCIP Coverage. Any reference or summary in the Agreement, this Article 36.06-b, the Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of OCIP Coverage and/or potential applicability to any potential claim or loss is for reference only. Design-Builder and its subcontractors of all tiers have not relied upon said reference, but solely upon their own independent review and analysis of the OCIP Coverage in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Coverage and/or its potential applicability to any potential claim or loss.

- (c) The Costs of OCIP Coverages were not included in Design-Builder's bid or proposal for the Work, the Contract Price/Contract Sum, and will not be included in any change order or any request for payment for the Work or extra work.
- (d) Design-Builder acknowledges that Trustees **must** not pay or compensate Design-Builder or any subcontractor of any tier, in any manner, for the Costs of OCIP Coverage.
- (9) OCIP Audits.  
Design-Builder agrees that Trustees, the OCIP Administrator, and/or any OCIP Insurer may audit Design-Builder's or any of its subcontractors' payroll records, books and records, insurance coverage, insurance cost information, bid estimates, pricing for any cost in the Contract Price/Contract Sum, or any subcontracted Work, or any information that Design-Builder provides to Trustees, the OCIP Administrator, or the OCIP Insurers to confirm their accuracy, and to ensure that the Costs of OCIP Coverages are not included in any payment for the Work.
- (10) Trustees' Election to Modify or Discontinue the OCIP.  
For any reason, Trustees may modify the OCIP Coverage, discontinue the OCIP, or request that Design-Builder or any of its Subcontractors of any tier withdraw from the OCIP upon thirty (30) days written notice. Upon such notice Design-Builder and/or one or more of its subcontractors, as specified by Trustees in such notice, **must** obtain and thereafter maintain during the performance of the Work, all (or a portion thereof as specified by Trustees) of the OCIP Coverage. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance **must** be subject to Trustees' approval. The cost of the replacement coverage **must** be at Trustees' expense, but only to the extent of the applicable Insurance Credit.
- (11) Withholding Payments.  
Trustees may withhold from any payment owed or owing to Design-Builder or its subcontractors of any tier any portion of the Insurance Credit improperly included in a request for payment. In the event a Trustees audit of Design-Builder's records and information as permitted under the Contract Documents reveals a discrepancy in the insurance, payroll, safety, or any other information required by the Contract Documents to be provided by Design-Builder to Trustees, or to the OCIP Administrator, or reveals **the inclusion of the Cost of OCIP Coverages in any payment for the Work**, Trustees shall have the right to a full deduction of any improperly billed costs from the Contract Amount and recovery of all audit costs. Audit costs shall include, but shall not be limited to, the fees of the OCIP Administrator, and the fees of attorneys and accountants conducting the audit and review. If the Design-Builder or its subcontractors fail to timely comply with the provisions of Contract General Conditions Article 36.06-b, and Supplementary General Conditions Article 36.06-b, Trustees may withhold any payments due to Design-Builder and/or its subcontractors of any tier until such time as they do comply. Such withholding by Trustees shall not be deemed to be a default under the Contract Documents.
- (12) Waiver of Subrogation.  
Where permitted by law, Design-Builder hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against Trustees, the OCIP Administrator, their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of Trustees in connection with the planning, development and construction of the Project. Trustees **must** also require that all Design-Builder-maintained insurance coverage related to the Work, include clauses providing that each insurer **must** waive all of its rights of recovery by subrogation against Design-Builder together with the same parties referenced immediately above in this Article 36.06-b (12). Where permitted by law, Design-Builder **must** require similar written express waivers and insurance clauses from each of its subcontractors. A waiver of subrogation **must** be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.
- (13) Conflicts.  
In the event of a conflict between the provisions of this Contract and the OCIP Insurance Manual, this Contract **must** govern. In the event of any conflict or difference between the OCIP insurance policies and this Contract or the OCIP Insurance Manual, the actual OCIP policies **must** govern.

- c. Trustees' Course of Construction ("Builder's Risk") Property Insurance. Trustees shall insure or self-insure all Work while in the course of construction, reconstruction, remodeling or alteration, including materials incorporated in the Work, against physical loss or damage resulting from the perils normally insured under a "Standard All Risk Course of Construction" policy, including, but not limited to theft, fire, flood, vandalism, or Acts of God, as defined in Public Contract Code section 7105. The term, Acts of God, as defined in Public Contract Code section 7105, means earthquakes in excess of a magnitude of 3.5 on the Richter magnitude scale and tidal waves. Trustees shall issue to Design-Builder a "Summary of Coverage" provided under this Article, upon request of Design-Builder.
- (1) Design-Builder shall be responsible for paying a deductible of \$25,000 per occurrence in the event of loss, with the following exceptions. Design-Builder shall be responsible for paying a deductible of:
    - (a) \$50,000 per occurrence in the case of water damage, or
    - (b) \$100,000 per occurrence in the case of flood, or
    - (c) \$100,000 per occurrence in the case of damages caused by Acts of God.
  - (2) Design-Builder shall not be liable for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) in excess of the \$100,000 deductible, if the Work damaged is built in accordance with the Contract and applicable building standards.
  - (3) The proceeds under the Course of Construction Property Insurance taken out by the Trustees will be payable to the Trustees and Design-Builder as their respective interests, from time to time, may appear.
  - (4) Trustees' Course of Construction Property Insurance shall provide limited coverage for materials in transit, and full coverage for materials at the Project Site and full coverage for materials stored off site; however, Design-Builder is responsible for reviewing the summary of coverage and reporting large values requiring special treatment. Design-Builder shall advise the Trustees whenever the total value of materials in transit exceeds \$1,000,000 at any time, and whenever the total value of materials stored offsite exceeds \$1,000,000 at any time.
  - (5) Nothing in this Article shall be construed to relieve Design-Builder of Design-Builder's responsibilities referred to under Article 36.06-a.
  - (6) Insurance policies referenced in this Article shall include the following:
    - (a) Provide that the policies are primary and do not participate with nor are excess over any other valid collectible insurance carried by Design-Builder.
    - (b) Insurer shall waive right of subrogation against Design-Builder and subcontractors of every tier.
    - (c) Insurer shall name Design-Builder and subcontractors of every tier as additional insured.

### **36.07 Indemnification**

Nothing in these indemnification provisions shall be deemed to alter the insurance provisions in Article 36.06.

- a. Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to: (1) the failure of Design-Builder to perform its obligations under the Contract or the performance of its obligation in a willful, reckless, or negligent manner or contrary to the provisions of the Contract; (2) the inaccuracy of any representation or warranty by Design-Builder given in accordance with or contained in the Design-Build Contract Documents; and (3) any claim of damage or loss by any subcontractor, or supplier, or laborer against the Trustees arising out of any alleged act or omission of Design-Builder or any other subcontractor, or anyone directly or indirectly employed by Design-Builder or any subcontractor.
- b. Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of, resulting from, or relating to the negligent acts or omissions, recklessness, or willful misconduct of Design-Builder, a subcontractor, or anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Article 36.07-c, following. Such obligation shall, however, apply in proportion to and to the extent that any such losses result from the negligent acts or omissions by an employee of Design-Builder, a subcontractor, or a person indirectly employed by Design-Builder or a subcontractor, or anyone for whose acts either may be liable.
- c. In claims against any person or entity indemnified under this Article made by an employee of Design-Builder or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either may be liable, the

indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.

- d. The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- e. Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses resulting from any claim of damage made by any separate contractor of the Trustees against the Trustees arising out of any alleged acts or omissions of Design-Builder, a subcontractor, anyone directly or indirectly employed by either Design-Builder or subcontractor, or anyone for whose acts either Design-Builder or subcontractor may be liable.
- f. Design-Builder shall hold harmless, defend, and indemnify the separate contractors of the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of the negligent acts or omissions, recklessness, or willful misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable.

Trustees shall cause a reciprocal indemnification provision in favor of Design-Builder to be included in its contracts with separate contractors of the Trustees. Liability for any negligent act or omission, recklessness, or willful misconduct shall be apportioned pursuant to the applicable law of the State of California.

### **36.08 Design-Builder's Responsibility for the Work**

Design-Builder shall be fully responsible for all Work performed under this Contract, and no subcontractor will be recognized as such. For purposes of assessing responsibility to Design-Builder, all persons engaged in the Work shall be considered as employees of Design-Builder. Design-Builder shall give its personal attention to the fulfillment of the Contract and keep all phases of the Work under its control.

Design-Builder shall create a report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on Site each day, briefly describing the Work the subcontractors are performing. Each subcontractor shall create report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on Site each day, briefly describing the Work the subcontractors are performing. Design-Builder and every subcontractor shall submit these reports to the Trustees daily. At the end of the Project, Design-Builder shall submit to the Trustees a complete listing of all subcontractors, suppliers and other businesses that performed Work on the Project. Reference Article 35.07-c (4), Subcontractor Directory.

The Trustees will not arbitrate disputes among subcontractors nor between Design-Builder and one or more subcontractors concerning responsibility for performing any part of the Project.

#### **a. Quality Control.**

Design-Builder shall be fully responsible for the quality of materials and workers' skill in the Project. Design-Builder shall not rely upon the inspection and testing provided by the Trustees other than those special inspections and tests performed by the Trustees' selected laboratories for which there are written reports.

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

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

From the issuance of the official Notice to Proceed until the formal acceptance of the Project by the Trustees, Design-Builder shall have the charge and care of and shall bear the risk of damage to the Project and materials and equipment for the Project.

Design-Builder, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the Project and materials therefor before the acceptance of the Project by the Trustees except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of Work from any cause whatever, Design-Builder shall be responsible for all materials, and shall properly store them, if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

If Design-Builder damages any property belonging to the Trustees, the Trustees, in addition to other remedies available to the Trustees, may retain from the money due to Design-Builder an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

Neither the State of California, the Trustees of the California State University, the University, nor the officers, employees, representatives, nor agents of each of them shall be responsible for any damage to the Project and materials and equipment for the Project.

c. Protection of Facilities.

Once Design-Builder mobilizes and occupies the Site, and until the formal acceptance of the Project by the Trustees, Design-Builder shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Design-Builder is not prosecuting Work, Design-Builder shall furnish such security services as necessary to safeguard materials and equipment in storage on the Project Site, including Work in place or in process of fabrication, against theft, acts of malicious mischief, vandalism and other losses or damages. Design-Builder shall be liable for any loss or damage that result from its failure to protect the Site and the Work.

Design-Builder shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Design-Builder's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to Trustees. Design-Builder shall initiate an erosion and sedimentation control program, which includes measures addressing erosion caused by wind and water and sediment in runoff from the Site. Also, Design-Builder shall initiate a regular watering program to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules (reference Article 36.03, subsections: a-Air Pollution Control and b-Water Pollution Control).

d. Safety.

Design-Builder shall exercise precaution at all times for the protection of persons and their property.

- (1) Design-Builder shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the Work or permanently installed as part of the Project.
- (2) Design-Builder shall provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs.
- (3) Design-Builder shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless Design-Builder designates other employees, its superintendent shall have the duty of prevention of accidents. Design-Builder shall institute a safety program which includes all trades on the Site.
- (4) Renovation, expansion, or remodel Work of any existing building may expose workers to lead-containing materials such as paint, flashings, and pipe joints. Design-Builder shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, CA Code of Regulations, section 1532.1).
- (5) The Trustees and the Construction Inspector may bring to the attention of Design-Builder a possible hazardous situation in the field regarding the safety of personnel on the site. Design-Builder shall be responsible for verifying the observance of all local, state, and federal workplace safety guidelines. In no case shall this right to notify Design-Builder absolve Design-Builder of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than Design-Builder has assumed any responsibility for field safety operations.
- (6) Design-Builder shall not use Explosives without first obtaining written permission from the Trustees and then shall use them only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. The Trustees prohibit storage of explosives on the Project Site or University property. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

In the event of an accident, Design-Builder shall make available to the Trustees copies of its accident report to its insurance carrier. Design-Builder shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

e. Utilities

- (1) If Design-Builder discovers utility facilities not identified in the Design-Build Contract Documents, Design-Builder shall immediately notify the Trustees and the utility involved, in writing, of such discovery. When Design-Builder is required by the Plans and Specifications to either locate, remove or relocate utility facilities not identified in the Design-Build Contract Documents with reasonable accuracy, it shall be compensated for any reasonable actual added cost incurred. The Trustees shall also compensate the Design-Builder for the cost of repairing any damage resulting from the discovery of such unidentified utility

facility, when such damage does not result from the failure of Design-Builder to exercise reasonable care. The Trustees shall base all such compensation to Design-Builder on an actual repair cost plus Design-Builder and subcontractor mark-up, as identified in Article 38.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5), and (6). When the damage results from the failure of Design-Builder or subcontractor to exercise reasonable care, the Trustees shall reduce both Design-Builder's and subcontractor's mark-up by six (6) percent each. The Trustees or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs, or relocation Work or permit Design-Builder to do such repairs or relocation Work at a reasonable price, where such Work is required to facilitate the Project. If the Trustees or the owner of the utility fail to provide for removal or relocation of such unidentified utility facilities, the Trustees shall not assess liquidated damages on Design-Builder for delay in the completion of the Project.

- (2) With the exception of the identification of main or trunk line utility facilities in the Contract Documents, the foregoing provisions of subdivision (1) shall not apply to the presence of existing service laterals or appurtenances. Additionally, the Trustees shall have no obligation to indicate them whenever the presence of such utilities on the Site of the Project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Site of the construction.
- (3) Except as expressly provided in subdivisions (1) and (2) above, Design-Builder shall be responsible at its own cost for all Work, Work, expense, or special precautions caused by the existence or proximity of utilities encountered at the Site or in the performance of the Project Work. This would include, without limitation, repair of any damage that may result, including any damage resulting from hand or exploratory excavation.

The Trustees caution Design-Builder that the utilities encountered at the Site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such high voltage cables, Design-Builder shall:

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

- (4) Design-Builder shall provide to the University as-built drawings of all utilities encountered and constructed indicating the size, horizontal location, and vertical location based on the Project bench mark or a stable datum.

f. **Hazardous Materials**

(1) **Asbestos.**

Design-Builder shall not install any asbestos-containing materials or products in any Work performed under this Contract. Design-Builder shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by Project completion, the warranty period, or other provisions of this Contract.

(2) **Lead.**

Design-Builder shall not install any lead-containing materials or products, including paint, in any Work performed under this Contract without the written consent of the Executive Facilities Officer and the Director of Environmental Health and Safety. Design-Builder shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by Project completion, the warranty period, or other provisions of this Contract.

- g. Design-Builder, by warranting the completeness of the Construction Documents, agrees that, if Design-Builder uses design-build delivery on certain building elements such as fire protection systems, store front assemblies, etc., then Design-Builder accepts responsibility for any impact which results from the design-build process such as deferred submittals, plan check approval and procurement.

**36.09 Occupancy by Trustees Prior to Acceptance**

The Trustees reserve the right to occupy all or any part of the Project before completion of the entire Contract, upon issuance of a Field Instruction and subsequent written Contract Change Order, or upon issuance of a written Contract change order therefor. In such event, Design-Builder shall be relieved of responsibility for any injury or damage to such occupied part as results from the Trustees' occupancy and use. If Design-Builder carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the Trustees, and if such occupancy results in increased premiums for such insurance, the Trustees will pay to Design-Builder the added premium costs for such insurance during the period of occupancy. The occupancy change order shall be the vehicle for such payment, if applicable.

The Trustees' occupancy of the Project shall not constitute acceptance by the Trustees (reference Article 40.01, Acceptance) either of the Project as completed or of any portion thereof. Nor will it relieve Design-Builder of full responsibility for correcting defective Work or materials found at any time before the formal written acceptance of the Project as completed by

the Trustees and during the full guarantee period after such acceptance. Nor does it stop the assessment of liquidated damages. However, when the Project includes several separate facilities, and one or more of such facilities is entirely occupied by the Trustees, then upon written request of Design-Builder, and subject to the Trustees' written consent thereto, the guarantee period for the occupied facility may commence from the date of occupancy by the Trustees.

### **36.10 Payments by Design-Builder**

In accordance with Business and Professions Code section 7108.5, and unless otherwise agreed in writing by the parties, Design-Builder agrees to pay all subcontractors not later than seven (7) Days of receipt of each progress payment, the respective amounts allowed Design-Builder on account of the Work performed by its subcontractors, to the extent of each such subcontractor's interest therein.

Under this Contract, Design-Builder shall pay each employee engaged in Work on the Project, and shall require its subcontractors to pay each employee engaged in Work on the Project, in full (less deductions made mandatory by law), and not less often than once each week.

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

Design-Builder shall secure all permits and licenses required for any operations required under this Contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. Design-Builder is responsible to ascertain the necessity of such permits and licenses in preparing its proposal, and include in its bid the cost thereof as well as adjustments for any delays that may occur by securing permits and licenses.

### **36.12 Patented or Copyrighted Materials**

Design-Builder shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used on or incorporated in the Project. Design-Builder agrees to save harmless, defend, and indemnify the State of California, the Trustees of the California State University, Trustees' Consultants, the University, and the officers, employees, representatives, and agents of each of them from all suits, actions, or claims for or on account of the use of any patented or copyrighted materials, equipment, devices, or processes.

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

Nothing in the Contract shall be construed as vesting in Design-Builder any property right in the materials or equipment:

- after they have been attached to or permanently placed in or upon the Work or the soil, or
- after payment has been made for fifty percent or more of the value of the materials or equipment delivered to the Site of the Work whether or not they have been so attached or placed.

All such materials or equipment shall become the property of Trustees once attached or placed, or upon payment of fifty percent or more of the value of the materials or equipment delivered on the Site but not installed. Design-Builder warrants that all such property shall pass to Trustees free and clear of all liens, claims, security interests, or encumbrances.

### **36.14 Taxes**

Design-Builder shall pay all levied taxes imposed by law that become payable resulting from Design-Builder's performance under this Contract.

### **36.15 Contract Time**

a. Time of the Essence.

All time limits specified in this Contract are of the essence of the Contract.

b. Starting and Completion Date.

The Trustees shall designate in the Notice to Proceed the starting date of the Contract for Construction Work on which Design-Builder shall immediately begin and thereafter diligently prosecute the Work to completion. Design-Builder agrees to complete the Work on the date specified for completion of Design-Builder's performance in the Contract unless the Trustees adjust such time in writing, by change order. Design-Builder may complete the Work before the completion date if it will not interfere with the Trustees or other contractors engaged in related or adjacent Work. The Trustees shall regard the Work as completed on the acceptance date noted on the Trustees' Notice of Completion, and the Trustees consider this acceptance date as the date that starts the guarantee period as defined in Article 40.06, Guarantee.

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

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

- acts of God,

- the public enemy,
- fire,
- flood,
- epidemic,
- quarantine restriction,
- strike,
- freight embargo,
- discovery of archaeological or paleontological artifacts, and
- unusual action of the elements.

The Trustees shall determine the facts with regard to the delay and the reasonable time to extend the date of completion should be extended by reason thereof, if any, and advise the Trustees accordingly. The Trustees' findings thereon shall be final and conclusive.

The Trustees shall not compensate Design-Builder for costs associated with this kind of delay. Design-Builder may use its contingency for these delay costs.

The term "unusual action of the elements" is limited to extraordinary, adverse weather conditions and conditions immediately resulting therefrom which cause a cessation in the progress of the Work that delays the time of completion of the Contract. Adverse weather is subject to a Contract Time adjustment, if it exceeds weather normal for the locality, as defined by the National Oceanic and Atmospheric Administration (NOAA).

Design-Builder shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions that are normal for the locality of the Site. The Trustees have calculated the time for completion of the Contract, with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the Site.

d. Adjustment of Contract Time Due to Acts of the Trustees.

If Design-Builder experiences a delay in completing the Contract by:

- reason of any act or omission of the Trustees not provided by the Contract, or
- by reason of changes made pursuant to Article 38.01, Change Orders, without reaching agreement as to any time adjustments,

Trustees may extend the time for completion of the Contract for a period commensurate with the delay. Design-Builder shall notify the Trustees in writing of the causes of the delay within seven (7) Days from the beginning of the delay.

e. Design-Builder's Duty to Prosecute the Work Fully.

The Trustees will grant no extension of time for any cause, unless Design-Builder demonstrates to the satisfaction of the Trustees that Design-Builder has made every reasonable effort to fully prosecute the Work and complete the Work within the Contract Time. The causes of delay shall be subject to the same determinations as stated in Article 36.15-c, Adjustment of Contract Time Due to Acts of God, etc., above. Design-Builder shall reference Article 36.16, Schedule.

f. Trustees' Adjustment of Contract Time.

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

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

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

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

h. Liquidated Damages.

Attention is directed to Article 39.02, Delay in Completion--Liquidated Damages.



### 36.16 Schedule

- a. Time is of the essence of this Contract, including the time of beginning, the rate of progress, and the time of completion of the Work. Design-Builder shall prosecute the Work at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in the Design-Build Contract Documents and Design-Builder's Construction Schedule.
- b. Design-Builder shall prepare and submit to the Trustees' Construction Administrator Design-Builder's initial construction schedule within thirty (30) Days after the starting date on the Notice to Proceed. Design-Builder's initial Construction Schedule shall be comprised of a critical path method network. Design-Builder shall input the critical path Construction Schedule on the computer using the scheduling software as specified in the Division 01-General Requirements for this Project. Design-Builder shall provide electronic data files.

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

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

- c. Design-Builder's initial Construction Schedule shall show the sequence, duration in Calendar or Working Days, and interdependence of activities required for the complete performance of all Work. The Construction Schedule shall show milestones, including milestones for Trustees-furnished information, and shall include activities for Trustees-furnished equipment and furniture when those activities are interrelated with Design-Builder's activities. Design-Builder's initial Construction Schedule shall begin with the effective date of the Notice to Proceed and conclude with the acceptance and recordation dates as noted on the recorded Notice of Completion. No more than twenty percent of the activities will have less than five Working Days of float unless approved by the Trustees. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Design-Builder shall base its weather data on information provided by the National Oceanic and Atmospheric Administration (NOAA).

Design-Builder shall develop the Construction Schedule using an appropriate Work breakdown structure. Design-Builder's transmittal provided with the initial Construction Schedule shall state whether the durations are in Working Days or Days.

- d. Design-Builder may submit an initial Construction Schedule that shows the Work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time. Total float, slack time, or contingency is the unused time within the Construction Schedule (i.e., the difference in time between the Project's early completion date and the required Contract completion date. Total float is not for the exclusive use of either the Trustees or Design-Builder, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.
- e. Design-Builder shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, constraints, unnecessary milestones, leads or lags on logic ties, and hammock type activities. Since Contractor and Trustees jointly own float within the Construction Schedule, the Trustees will grant no time extensions nor pay delay damages until a delay occurs which extends the Work beyond the Contract completion date. Since float within the Construction Schedule is jointly owned, it is acknowledged that Trustees-caused delays on the Project may be offset by Trustees-caused timesavings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to Design-Builder, etc.). In such an event, Design-Builder shall not be entitled to receive a time extension or delay damages until Trustees exceed all Trustees-caused timesavings, and the Contract completion date is overrun.

- f. Comments made by the Trustees on Design-Builder's initial Construction Schedule during review will not relieve Design-Builder from compliance with the requirements of the Contract Documents. The review is only for general conformance with the scheduling requirements of the Contract Documents. Upon the Trustees' request, Design-Builder shall participate in the review of Design-Builder's initial Construction Schedule submissions (including the original submittal, all update submittals, and any re-submittals). The Trustees may request the participation of subcontractors in these reviews, as determined necessary by the Trustees. Design-Builder shall resubmit all revisions within fifteen (15) Days after the Trustees' review.
- g. The submittal of a fully revised and acceptable Design-Builder's initial Construction Schedule shall be a condition precedent to the processing of the second monthly payment application, unless the Trustees grant a time extension due to unusual circumstances.
- h. Design-Builder's Construction Schedule shall provide a workable plan for monitoring the progress of all the elements of the Work, establish and clearly display the critical elements of the Work, forecast completion of the construction, and match the Contract duration in time. Exclusive of those activities for submittal review and material fabrication and delivery, activity duration shall not be less than one (1) nor more than thirty (30) Days, unless otherwise approved by the Trustees. In addition to the detailed network diagram, Design-Builder shall submit the following reports with the original submittal and all updates and revisions:
- (1) Predecessor/Successor Report, or a list showing the predecessor activities and successor activities for each activity in the Construction Schedule, and
  - (2) Activity Report, sorted by early start or a list showing each activity in the Construction Schedule, arranged by early start dates.
- i. Design-Builder shall submit an updated Construction Schedule to the Construction Administrator with a copy to the Project Manager/Construction Inspector five (5) Days prior to the submittal of Design-Builder's monthly payment request. The submittal of the Progress Schedule that satisfies the requirements of this Article, accurately reflects the status of the Work, revises the cash flow schedule, and incorporates all changes into the Construction Schedule, shall be a condition precedent to the processing of the monthly payment application. Design-Builder shall also submit Progress Schedules at such other times as the Trustees may direct. If Design-Builder fails to comply or is late in compliance with this requirement, and the Trustees find it to be in their best interest to process the monthly payment, Trustees shall retain an amount not exceeding \$10,000 from each monthly progress payment until compliant.

Design-Builder's monthly Progress Schedule update shall include a report containing a narrative which includes the following:

DESIGN-BUILDER'S PROGRESS SCHEDULE NARRATIVE REPORT OUTLINE

- Design-Builder's transmittal letter
- Description of problem tasks (referenced to field instructions, requests for information (RFIs), change order or claim numbers) as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
  - Cause of the delay
  - Corrective action and schedule adjustments to correct the delay
  - Known or potential impact of the delay on other activities, milestones, and Project completion date
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
  - Pending change orders
  - Time extension requests
  - Other items
- Contract completion date status:
  - If ahead of Construction Schedule, the number of Days ahead
  - If behind Construction Schedule, the number of Days behind
- Other Project or scheduling concerns.
- Updated network diagram with target bars shown.
- Tabular report as specified in subdivision (h) above, including a listing of completed activities and activities in progress.
- Flash drive or other media with the latest data files as specified in subdivision (h) herein.

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

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

- j. If any of the following is behind the approved Construction Schedule and will impact the end date of the Work past the Contract completion date (create negative float), Design-Builder shall submit in writing, a revised Construction Schedule acceptable to the Trustees for completing the Work on or before the current Contract completion date.
- completion of any part of the Work,
  - delivery of equipment or materials, or
  - submission of the Contractor submittals.

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

- (1) Increase construction manpower in such quantities and crafts as shall substantially eliminate the backlog of Work and meet the current Contract completion date.
- (2) Increase the number of working hours per shift, the number of shifts per day, the number of Work Days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to substantially eliminate the backlog of Work.
- (3) Reschedule Work items to achieve concurrent accomplishment of Work activities.

Under no circumstances shall Design-Builder add equipment or construction forces, increase the working hours, or employ any other method, manner, or procedure, in order to return to the contractually required completion date, justification for a change order or justification for a compensable acceleration, unless prior written approval is received from the Trustees.

- k. Adjustment of Contract Times for Completion

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

- (1) Time Impact Analysis

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

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

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

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

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

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

- (2) The Construction Administrator shall grant no time extensions nor pay indirect costs unless:

- Design-Builder can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred, and
- the delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of Work or other means.

Design-Builder shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract time extension or delay damages.

- l. Once each week, or as approved in writing by the Trustees, Design-Builder shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, to be completed or to be in progress for the succeeding three (3) weeks. This schedule shall cover all Work activities listed on the Progress Schedule for the reporting period.
- m. As a condition precedent to the release of retained funds, Design-Builder shall, after completion of the Work has been achieved, submit a final Design-Builder's Progress Schedule which accurately reflects the manner in which the Project was constructed and includes actual start and completion dates for all Work activities.
- n. The Trustees may require a more detailed and comprehensive scheduling requirement. In this case, the schedule requirement shall be included in the Contract as Supplementary General Conditions.

### **36.17 Labor Force and Superintendent**

At all times Design-Builder shall provide sufficient labor to properly prosecute the Work and to ensure completion of each part in accordance with the Construction Schedule and within the Contract Time (Public Contract Code section 10843). Design-Builder shall employ competent workers who are skilled in the type of Work required and whose workmanship is of the best, regardless of the quality of material. If, in the judgment of the Trustees, any person is incompetent or disorderly, Design-Builder shall promptly remove such person from the Project and shall not re-employ such person thereon.

Design-Builder shall retain a competent, full-time, on-site superintendent to represent Design-Builder and to direct the Project at all times while any Work under this Contract is underway. Design-Builder shall not replace a Superintendent without advanced written approval from the Trustees. If, in the judgment of the Trustees, the Superintendent is incompetent, unqualified, poorly performing or disorderly, Design-Builder shall, upon request by the Trustees, promptly remove such person from the Project and shall not re-employ such person thereon. In this event, the Trustees shall approve the replacement Superintendent.

The Superintendent shall prepare a daily report which includes worker count, Work in progress, etc., and shall provide it to the Trustees upon request. If Design-Builder does not supply the staffing in accordance with its Request for Proposals, the Trustees shall either demand that the prescribed staffing be supplied and/or credit back the value of the staffing not supplied.

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

### **36.18 Limitation of Construction Operations**

Design-Builder shall limit the area and nature of the construction operations to that which is authorized in the Request for Proposal or as approved in writing by the Trustees.

### **36.19 Coordination with Other Work**

The Trustees reserve the right to do other Work in connection with or related to the Project or adjacent thereto by Contract or otherwise, and Design-Builder shall at all times conduct the Work so as to impose no hardship on the Trustees or others engaged in the Trustees' Work nor to cause any unreasonable delay or hindrance thereto. Where two or more contractors are employed on related or adjacent Work, each shall conduct its operation in such a manner as not to cause delay or additional expense to the other.

Design-Builder shall be responsible to others engaged in the related or adjacent Work for all damage to Work, to persons and to property, and for loss caused by failure to complete the Work within the specified time for completion. Design-Builder shall coordinate its Work with the Work of others so that no discrepancies shall result in the Project.

### **36.20 Drawings Reflecting Actual Construction**

During the course of construction, Design-Builder shall maintain drawings daily to show the Project as it is actually constructed. Design-Builder shall mark every sheet of the Plans and Specifications which differs from the actual construction, and shall note sheets so changed on the title sheets of the Plans and Specifications. Design-Builder shall show all change orders by reference to drawings, and include any supplementary drawings or change order drawings. Design-Builder shall review the "as-built" drawings with the Construction Inspector at least once a month to demonstrate that Design-Builder is recording all changes that have occurred fully and accurately. Design-Builder shall provide sufficient detail to the altered

Contract drawings so contractor(s) may conduct future Work on the Project or in adjacent areas with a minimum of difficulty. Before the completion of the Project, and before Trustees release the final retention payment, Design-Builder shall transmit the “as-built” drawings and specifications to the Trustees’ Construction Administrator for further handling. Additionally, Design-Builder shall turn over to the Trustees a re-drafted and complete set of “as-built” drawings of the actual construction on AutoCAD, Version 12 or other version as approved by the Trustees, and Mylar reproducibles generated from AutoCAD. Final payment will not be made to Design-Builder until the “as-builts” are received and spot checked by the Trustees. Corrections, if any, shall be made to the AutoCAD and to the Mylar reproducibles.

### **36.21 Access for Inspection**

Design-Builder shall at all times permit the Trustees, the Construction Administrator, the Construction Inspector and the Project Manager to visit and inspect the Work and the shops where Work is in preparation and shall maintain proper facilities and provide safe access for such inspection. Design-Builder shall not cover up Work requiring testing, inspection or verification without such test, inspection, or approval. Design-Builder shall notify the Construction Inspector in writing at least one (1) Working Day before the Construction Inspector is required to inspect the Work. For a Project with part-time inspection, a minimum of two (2) Working Days written notification by Design-Builder to the Construction Inspector is required before the Construction Inspector is required to inspect the Work.

a. Inspections on Premium Time.

The Trustees define “Premium Time” as Work performed in excess of eight hours per day Monday through Friday and any Work performed on Saturday, Sunday or holiday. Whenever Design-Builder intends to perform Work during premium time, it shall provide a minimum of two (2) Working Days written notice of such intention before performing such Work. If such Work during premium time is discretionary and for the sole benefit of Design-Builder, Design-Builder shall reimburse to the Trustees the premium cost of inspection.

b. Reinspections.

The Trustees may back-charge all reinspection costs to Design-Builder.

c. Additional Inspections.

If a fabricator or manufacturer of a material or equipment requiring inspection is inefficiently performing or performing at multiple locations, then the Trustees may charge Design-Builder for the extraordinary costs incurred.

### **36.22 Cleanup of Project and Site**

Design-Builder shall clean up its Work at frequent intervals and at other times when directed by the Trustees. At all times while finish Work is underway, Design-Builder shall keep floors broom clean. Upon completion of the Work, Design-Builder shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more contractors are engaged in Work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event Design-Builder does not maintain the Project or the Site clear of debris and rubbish in a manner acceptable to the Trustees, the Trustees may opt to arrange to clean the Project or Site withhold the expense incurred therefor from payments due Design-Builder.

### **36.23 Project Sign, Advertising**

Design-Builder shall furnish and install a Project sign required as part of the Work under the Contract. As a minimum, the sign shall be four feet by eight feet, made from three-quarter inch plywood, and shall identify the Project name, the Trustees, Design-Builder, and the Architect. No advertising is permitted on the Project or Site without written permission from the Trustees.

### **36.24 Assignment of Trade Contracts to Trustees**

Design-Builder shall include in all trade contracts an assignment clause stating that the Trustees have the right to require that Design-Builder assign the trade contract(s) to the Trustees. Upon direction from the Trustees, Design-Builder shall assign to the Trustees for fully vesting in the Trustees all rights and benefits of Design-Builder under such trade contracts or purchase orders, in order that the Trustees may proceed to finish the Project.

## **37.00 - INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS**

### **37.01 Interpretation of Contract Requirements**

a. Correlation.

Design-Builder shall interpret Contract Documents as complementary, requiring a complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents.

Generally, the Specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.

b. Conflicts.

In the event of conflict in the Contract Documents, the following priorities shall govern:

- (1) Addenda shall govern over all other Contract Documents, and subsequent Addenda shall govern over prior Addenda only to the extent modified.
- (2) Supplementary General Conditions shall govern over Contract General Conditions.
- (3) Contract General Conditions shall govern over all sections of the Specifications and any notation on the RFP Plans. No other section of the Specifications shall modify the Contract General Conditions.
- (4) In case of conflict between the RFP and the Contract General Conditions, the RFP shall govern.
- (5) In case of conflict within the RFP Plans:
  - (a) Material and equipment schedules, when identified as such, shall govern over all other portions of the RFP Plans.
  - (b) Specific notes shall govern over all other notes and all other portions of the RFP Plans, except the material and equipment schedules described in Article 37.01-b (5) (a) above.
  - (c) Larger scale drawings shall govern over smaller scale drawings.
  - (d) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- (6) In the event that provisions of codes, safety orders, Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

c. Omissions.

In the event of omissions in the Construction Documents, the following shall apply:

- (1) If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, Design-Builder shall deem such detail to be an implied requirement of the Construction Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.
- (2) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Construction Documents.

d. Quality.

The quality of Design-Builder's Work shall be equal to or better than that required in the RFP, and if it is found that the Work in Design-Builder's proposal is of lesser quality, the RFP shall prevail.

**37.02 Issuance of Interpretations, Clarifications, Additional Instructions**

Should Design-Builder discover any conflicts, omissions, errors, or coordination issues in the Contract or have any question concerning interpretation or clarification of the Contract, Design-Builder shall request in writing interpretation, clarification, or additional detailed instructions before proceeding with the Work affected. Design-Builder shall provide the written request to the Trustees with copies to the Project Manager/Construction Inspector.

The Trustees shall, within a reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should Design-Builder proceed with the Work affected before receipt of the interpretation, clarification, or instructions from the Trustees, Design-Builder shall replace or adjust any Work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions as approved by the Trustees and, in the opinion of Design-Builder, constitute Work beyond the scope of the Contract, Design-Builder must submit written notice thereof to the Trustees within seven (7) Days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of Work thereon. Design-Builder shall send copies of such correspondence to the Project Manager/Construction Inspector. Within seven (7) Days after Design-Builder issues its written notice, Design-Builder shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes Work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts.

If, in the judgment of the Trustees, the notice is justified, the interpretation, clarification or additional detailed instructions shall be revised or the extra Work authorized by Contract change order or by field instruction with a change order to follow.

If the Trustees decide that the claim is not justified, the Trustees shall give Design-Builder a written order that the claim is not justified and direct Design-Builder to perform such Work.

Design-Builder shall proceed with the Work upon receipt from the Trustees of a written order to do so, in accordance with the Trustees' interpretation of the Contract requirements. If Design-Builder objects to the order, Design-Builder must notify the Trustees in writing of its objection and the reasons therefore, within seven (7) Days of receipt of the order. Design-Builder shall have the right to have this claim later determined by a Claims Review Board pursuant to this Contract (reference Article 39.01, Claims). When performing disputed Work, Design-Builder shall prepare time and materials records for each day, and the Construction Inspector shall verify these records at the conclusion of each day. Design-Builder shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives the written notices required to the Trustees within seven (7) Days as specified above.

### **37.03 Product and Reference Standards**

a. Product Designation.

When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referenced in the Contract, Design-Builder shall consider such designations as those found in industry publications of current issue at the date specified in the RFP.

b. Reference Standards.

When the Contract references standards of the federal government, trade societies, or trade associations by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the current and most recently published edition at the date specified in the RFP shall be considered a part of this Contract.

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

a. Submittal Procedure.

"Shop drawings" include drawings, diagrams, illustrations, materials and equipment schedules, performance charts, brochures and catalogs and other data prepared by Design-Builder or any subcontractor, manufacturer, supplier or distributor, which illustrate some portion of the Work. Design-Builder shall review and approve all shop drawings. Once approved, Design-Builder shall promptly mark the shop drawing "approved" so as to cause no delay in the Work, and submit it to the Trustees. Design-Builder shall also include with this submittal samples as required by the Contract, and any offers of alternatives or substitutions. Design-Builder shall submit at least four copies of shop drawings with three to be retained by the Trustees. All such submittals shall be sent to the Trustees at the address given in the instructions to Design-Builder at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the Contract. Failure by Design-Builder to identify all deviations may render any action taken by the Trustees on the materials submitted to be void. Whether to void such action shall be in the discretion of the Trustees. The letter and all items accompanying it shall be fully identified as to Project name and location, Design-Builder's name, and Contract number. By submitting the approved shop drawings and samples, Design-Builder represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract.

b. Samples.

"Samples" are physical examples furnished by Design-Builder to illustrate materials, equipment, color, texture, or workmanship, and to establish standards for judging the Work.

The Work shall be in accordance with the samples, submitted as required by the Contract and reviewed by the Trustees. Design-Builder shall remove samples from the Site when directed by the Trustees. If Design-Builder does not remove samples from the Site, the Trustees may opt to claim the samples as the property of the Trustees, or the Trustees will remove or dispose of them at Design-Builder's expense.

c. Alternatives or Equals.

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Proposer complies with the following requirements:

- (1) The Proposer shall submit its proposal to the Trustees for an alternative as an "equal" in writing no later than 35 Days after the award of the subcontract. In exceptional cases where the best interests of the Trustees so require, the Trustees may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The Proposer is responsible for a timely submittal of its proposed "or equal."

- (2) Trustees will consider no proposal unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Provide samples when requested by the Trustees.
- (3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Proposer. Where the material is specified by capacity or performance, the burden of proof shall be on the Proposer to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. Proposer shall furnish at its own expense all information necessary for a determination regarding meeting the minimum capacities or performance requirements.

The Trustees shall be the judge of such matters. If the Trustees reject the use of any alternative materials or equipment, then Design-Builder shall furnish one of the products designated by brand name.

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

d. Substitutions.

If the proposer proposes a product that is of lesser or greater quality or performance than the specified material or equipment, it must comply with these provisions of this Article 37.04, but, in addition, the proposer must submit any cost impact of this substitution. By submitting a substitute, Design-Builder and proposer waives any rights to claim a delay due to the processing of this substitution. The time for submission of a substitute of an unequal product shall be restricted to 35 Days after the award of the subcontract. The Trustees are not obligated to review or accept substitutions.

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

Materials, articles and equipment furnished by Design-Builder for incorporation into the Work shall be new. When the Contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, Design-Builder shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

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

- a. The Trustees specify in this Contract the materials, articles, equipment or other Work requiring tests. Design-Builder shall deliver to the Site all materials, articles and equipment requiring tests in ample time before intended use to allow for testing. Design-Builder shall not use these prior to testing and receipt of written approval. Design-Builder shall be solely responsible for notifying the Trustees where and when materials, articles, equipment and Work are ready for testing. Should Design-Builder cover any such materials, articles, equipment or Work without testing and approval, if required, Design-Builder shall uncover them at Design-Builder's expense. The Trustees have the right to order the testing of any other materials, articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, Trustees shall take all samples for testing from materials, articles or equipment for use on the Project or from Work performed. All tests will be under the supervision of, and at locations convenient to, the Trustees. The Trustees shall select the laboratories for all tests. The laboratories shall issue decisions regarding the adequacy of materials, articles, equipment or Work to the Trustees in writing.
- b. All costs of the initial required tests shall be borne by the Trustees. The Trustees may decide to take further samples and tests, and if the results show that the Work was not defective, the Trustees shall bear the costs of such samples and tests.
- c. In the event the results of such additional samples and tests show that the Work was defective, Design-Builder shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of Design-Builder. All retesting costs may be back-charged to Design-Builder by the Trustees.

### **37.07 Rejection**

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

### **37.08 Offsite Testing**

The Trustees shall bear the cost of offsite testing up to a distance of fifty miles from the Project Site and up to one fabrication yard or manufacturing plant per manufactured item, for example, structural steel. If the cost of testing increases because the fabrication yard or manufacturing plant is located beyond this fifty mile radius, then Design-Builder shall bear these increased



costs. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall also be borne by Design-Builder.

### **37.09 Responsibility of Quality**

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

## **38.00 - CHANGES IN THE WORK**

### **38.01 Change Orders**

The Trustees reserve the right to issue written orders, or Field Instructions, to Design-Builder, and the Trustees' Construction Administrator shall sign them. Through the use of Field Instructions, the Construction Administrator may direct changes in the Work at any time prior to the acceptance of the Project without voiding the Contract, and Design-Builder shall promptly comply with such orders. Design-Builder may request changes in the Work, but shall not act on the changes until approved in writing by the Trustees. Any change made without the Trustees' written authorization shall be the responsibility of Design-Builder; in this case, the Trustees will not increase compensation or extend time for a change involving greater expense to Design-Builder and may reject changes. The consequent responsibility falls on Design-Builder to replace at its own expense the changed Work with that originally specified (Public Contract Code section 10827).

On the basis set forth herein, the Trustees shall adjust the Contract Amount for any written order or Field Instruction requiring a different quantity or quality of labor, materials or equipment from that originally required, and Trustees shall adjust the partial payments to Design-Builder to reflect the change, as set forth in Article 40.02, Partial Payments. Whenever the necessity for a change arises, and when so ordered by the Trustees in writing, Design-Builder shall take all necessary steps to halt such other Work in the area of the change, to prevent the change affecting other Work. Design-Builder shall perform changed Work in accordance with the original Contract requirements except as modified by the change. Except as herein provided, Design-Builder shall have no claim for any other compensation due to changes in the Work (Public Contract Code section 10841).

a. **Proposed Change Orders.**

The Trustees shall issue to Design-Builder a cost request bulletin or a field instruction, for a proposed change order describing the intended change. Further, the Trustees shall require Design-Builder to respond with a proposed amount to be added to or subtracted from the Contract Amount due to the change, and supported by a detailed estimate of cost (hereinafter called a change order request (COR)). Upon request by the Trustees, Design-Builder shall permit inspection of the original Contract estimate, subcontract agreements, or purchase orders relating to the change. Design-Builder shall also include in its response to the cost request bulletin, with substantiating detailed explanation, any request for adjustment in time of final completion of the Project that is directly attributable to the changed Work. Design-Builder's failure to request adjustment of time on the COR shall waive any right to subsequently claim an adjustment of the time for final completion based on the changed Work. Design-Builder shall submit the COR with detailed estimates and any time extension request thereon to the Trustees and to the Project Manager/Construction Inspector within fifteen Days after issuance of the cost request bulletin. If Design-Builder does not submit the COR within the required fifteen Days, and Design-Builder has not obtained the Trustees' permission for a delay in submission, the Trustees may order Design-Builder in writing to begin the Work immediately in accordance with Articles 38.01-c or 38.02. Then the Trustees shall adjust the Contract Amount in accordance with the Trustees' estimate of cost, unless Design-Builder, within fifteen days following completion of the changed Work, presents proof convincing to the Trustees that the Trustees' estimate was in error. For any amount added to the Contract Amount for the changed Work, the Trustees shall determine payment, made in one of the following three ways: a lump sum amount, time and materials with a guaranteed maximum price, or time and materials with no guaranteed maximum price. If the parties agree on either of the latter two methods, Design-Builder shall keep and submit time and materials records verified daily by the Construction Inspector to substantiate its costs and to furnish such proof.

When the Trustees and Design-Builder agree on:

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

When the Trustees and Design-Builder agree to the adjustment in Design-Builder's compensation for the performance of changed Work, but fail to agree to the time adjustment for such Work, Design-Builder shall proceed with the Work at the agreed price, reserving the right to further pursue its claim for a time adjustment (reference Article 36.15-d,

Adjustment of Time Due to Acts of the Trustees). The Trustees shall not bear any costs incurred to acquire information relative to a proposed change order.

b. Allowable Costs upon Change Orders.

The only costs (estimated or actual) that will be allowed due to changed Work, and the manner in which such costs are computed, shall be in accordance with the following nine provisions. In submitting a change order request, Design-Builder affirms that:

- the cost is submitted in good faith,
- the cost is accurate and is in accordance with the provisions of the Contract requirements, and
- Design-Builder submits the cost recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim to the Trustees (reference Government Code section 12650 *et seq.*).

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

(1) Labor.

Costs are allowed for the actual payroll cost to Design-Builder for labor, field supervision of changed Work, (but not field office supervision nor indirect supervision) and engineering or technical services directly required for the performance of the changed Work (but not site management such as field office estimating, clerical, purchasing, as-builts, change order coordination, or warranty). Costs include payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act.

The Trustees will not recognize any labor cost at a rate in excess of the wages that Design-Builder paid for similar Work on the Project at the time Design-Builder performed the Work. Nor will Trustees permit use of a classification that would increase the cost of labor, unless Design-Builder established to the satisfaction of the Trustees the necessity for use of such higher classifications of workers. On a proposed change, Design-Builder and subcontractors shall submit a fully detailed breakdown of the cost of every labor classification to be utilized in the Work on the Hourly Labor Rate Worksheet. The Trustees may verify wage and burden per Article 36.02-a, Prevailing Wage, subsection (6). Design-Builder shall ensure that the unit cost of labor shall be an accurate accounting of actual costs paid in accordance with the allowances herein, and it shall be submitted under penalty of perjury.

(2) Materials.

The Trustees allow Design-Builder's costs for the cost of the materials directly required for the performance of the changed Work. Such cost of materials may include the costs of transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual supplier is available to Design-Builder, Design-Builder shall provide the credit to the Trustees. If Design-Builder obtains the materials from a supply or source owned wholly or in part by Design-Builder, payment therefor will not exceed the current wholesale price for such materials. Design-Builder may charge cost for consumed materials on a reasonably estimated basis, but may not be a percentage of labor.

If the Trustees deem that the cost of materials is excessive, or if Design-Builder fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Trustees reserve the right to furnish such materials as they deem advisable, and Design-Builder shall have no claim for costs or profits on material furnished by the Trustees.

(3) Equipment.

The Trustees allow Design-Builder's actual costs for the use of equipment directly required in the performance of the changed Work, except that Trustees will make no payment for time while equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the Project Site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment does not move by its own power, then Trustees will pay loading and transportation costs. However, Trustees will not pay either moving time or loading and transportation costs, if Design-Builder uses the equipment on the Project in any other way than upon the changed Work. Small tools or small equipment are individual pieces of equipment having a replacement value of \$200.00 or less, and Trustees will make no payment therefor unless it has been rented specifically for the changed Work. For consumed equipment or tools,

such as paintbrushes, rollers, drill bits, etc., Design-Builder may charge on an actual or reasonably estimated cost basis, and shall not charge as a percentage.

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

The Trustees shall pay Design-Builder an amount that includes mark-up for the use of equipment as set forth above. The Trustees' payment constitutes full compensation to Design-Builder for the costs of the following: fuel (unless Design-Builder has demonstrated that mark-up does not cover consumed fuel cost), power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and any and all costs incidental to the use of such equipment. Equipment operators shall be paid as provided in Article 38.01-b (1), above.

(4) Mark-ups on Change Orders.

The mark-ups allowed on the direct cost of changed Work include all incidental overhead support costs and profit. Such incidental overhead support costs include: estimating and purchasing; indirect supervision and project management; home office overhead; site overhead including facilities and utilities; change order coordination; as-built drawings; warranties; bonds; liability insurance including labor; and small tools. Any incidental overhead support cost not expressly identified herein shall be included in Design-Builder's mark-up. The Trustees will not permit mark-up on mark-up. If Design-Builder owns, partially owns, or has a share profits arrangement with the subcontractor, Design-Builder shall reduce any mark-up otherwise applicable to a change in proportion with the shared profits.

(5) Work by Subcontractors and Vendors.

For any portion of the changed Work, which a subcontractor of any tier performs, Design-Builder shall furnish to the Trustees a detailed estimate, prepared and signed by subcontractor, of the subcontractor's cost for performing the changed Work. The Trustees may opt to accept a lump sum estimate of such cost to subcontractor, in lieu of the detailed estimate.

The combined costs for subcontractor's overhead, profit, taxes, indirect supervision, insurance, bonds, warranty and any other costs not specifically allowed by Article 38.01-b (1), (2) and (3), shall not exceed fifteen (15) percent on the first \$50,000 of the direct cost; thereafter, ten (10) percent on the balance beyond \$50,000. The maximum allowable mark-up of a first tier subcontractor on any subsequent tiers shall be seven (7) percent. The aggregate mark-ups allowed by multiple tiered subcontractors shall not exceed twenty-six (26) percent of the direct cost on the first \$50,000; thereafter, twenty-one (21) percent on the balance beyond \$50,000.

Estimates of the amount deleted from subcontractor's portion of the Work shall be the gross value of the deducted Work plus at least six percent for overhead, bonds, insurance, and related savings added to the direct value of the deleted Work. For changed Work furnished by a vendor, Design-Builder shall furnish upon demand of the Trustees, a lump sum estimate of the cost of the items including taxes and cartage prepared by the vendor. The Trustees will not allow vendor mark-up for overhead, profit, layout, supervision or bonds for changed Work furnished by a vendor.

(6) Design-Builder Mark-up for Added Work.

When a subcontractor performs changed/added Work, Design-Builder may add no more than ten (10) percent mark-up to the subcontractor's total direct cost estimate (excluding the subcontractor's mark-up) for such Work on the first \$50,000; thereafter the mark-up is seven (7) percent on the balance beyond \$50,000. Design-Builder's ten percent mark-up in this case is for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs not specifically allowed by Article 38.01-b (1), (2) and (3). Also reference Article 36.08-e, Utilities, for special mark-up on repair of utilities. Design-Builder may add up to fifteen (15) percent to its direct cost when self-performing the changed Work on the first \$50,000 and ten (10) percent thereafter on the balance beyond \$50,000.

(7) Credit for Deleted Work.

Where an entire item or section of Work is deleted from the Contract, the entire subcontract value or bid value shall be considered the appropriate deduction less the value of Work performed, and shall have at least six percent mark-up added thereto for Design-Builder's saved overhead, bonds, and insurance, but not to exceed proposed fees. If the subcontract value or bid value is not identifiable, then deduct from the Contract amount the estimated value of the deducted Work plus at least six percent for saved overhead, bonds, and insurance. Design-Builder shall use the value submitted on the schedule of values to calculate the credit amount, and may not be further marked up if it includes the value for general conditions (overhead, bonds, insurance, etc.).

For a proposed change order that involves both added and omitted Work, Design-Builder shall separately calculate its total added costs and its total deducted costs, and shall then sum its total added and deducted costs, resulting in Design-Builder's net cost for the change order. Design-Builder shall then apply the mark-up to this net cost. Similarly, Design-Builder shall separately calculate each subcontractor's total added costs and total deducted costs, and shall then sum each subcontractor's total added and deducted costs, resulting in each subcontractor's net cost for the change order. If the resulting net costs for each subcontractor will increase the Contract Amount, then Design-Builder shall apply separate mark-ups for added Work as specified in Article 38.01-b (6). If the resulting net costs for each subcontractor will decrease the Contract Amount, then Design-Builder shall apply separate mark-ups for deleted Work as specified in this Article.

For example:

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

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

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

Design-Builder's total mark-up for this example change order is \$5,900.

(8) Market Values.

Cost for added Work shall be no more than market values prevailing at the time of the change, unless Design-Builder can establish to the satisfaction of the Trustees that it investigated all possible means of obtaining Work at prevailing market values and could not avoid the excess cost.

When a change order deletes Work from the Contract, the computation of the amount thereof shall be the values, which prevailed at the time bids for the Work were opened, if the Work is contained in a subcontract agreement or purchase order executed at or near the time proposals were opened.

(9) Architect/Engineer's Extra Services for Change Order Work.

(a) Negotiated Fee.

The Trustees may elect to negotiate a fixed fee for design extra services on change order Work.

(b) Work Performed by Principals and Employees of the Architect/Engineer.

Unless as identified in (a) above, for any Work performed by the Architect/Engineer on a change order, the Architect/Engineer shall receive an amount not to exceed two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra services. Reimbursement for principals when providing drafting or other related services normally provided by an employee shall be reimbursed at the maximum rate for services of employees. The Architect/Engineer shall provide an Hourly Labor Rate Worksheet at the onset of the Project, listing rates applicable to this Project within the limits listed above.

(c) Work Performed by Firms or Individuals Not Employees of the Architect/Engineer.

Unless as identified in (a) above, for Work performed by firms or individuals not employees of the Architect/Engineer, but engaged by the Architect/Engineer to assist in providing the authorized extra service, the Architect/Engineer shall receive one and one tenth (1.1) times the amount to be paid by the Architect/Engineer to the consultants for said services. Payment to consultants for services rendered is limited to direct Project costs, including a maximum of two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra service.

(d) Architect/Engineer Reimbursables.

The Architect/Engineer shall be paid only the actual and reasonable costs of reimbursable expenses incurred on change order Work as approved in writing by the Trustees prior to the Architect/Engineer incurring the costs, with no mark-up for overhead and profit.

c. Failure to Agree as to Cost

(1) For Added Work.

Notwithstanding the failure of the Trustees and Design-Builder to agree as to the cost of the proposed change order, Design-Builder, upon written order from the Trustees, shall proceed immediately with the changed Work. This written order shall be in the form of a Field Instruction or letter signed by the Trustees. At the start of each day's Work on the change, Design-Builder shall notify the Trustees in writing as to the size of the labor force for the changed Work and its location. Failure to notify the Trustees may result in the non-acceptance of the costs for that day. At the completion of each day's Work, Design-Builder shall furnish to the Construction Inspector a detailed summary of all labor, materials, and equipment employed in the changed Work. The Construction Inspector will compare his/her records with Design-Builder's daily summary and may make any

necessary adjustments to the summary. After the Construction Inspector and Design-Builder agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional Work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed Work. The Trustees, however, may make subsequent adjustments, based on later audits by the Trustees. When Design-Builder performs changed Work at locations away from the jobsite, Design-Builder shall furnish in lieu of the daily summary, a summary submitted at the completion of the Work containing a detailed statement of labor, material, and equipment used in the Work. This latter summary shall be signed by Design-Builder who shall certify thereon under penalty of perjury that the information is true, and the costs are as allowed in Article 38.01-b (1), (2), and (3). If Design-Builder is to pay changed Work based on time and materials, Design-Builder shall include a credit for deleted Contract Work. Mark-up shall be as covered in Article 38.01-b (4), (5), (6), (7) and (9).

Design-Builder shall maintain and furnish on demand of the Trustees itemized statements of cost from all vendors and subcontractors who perform changed Work or furnish materials and equipment for such Work. The vendors and the subcontractors must sign all statements.

(2) For Deleted Work.

When a proposed change order contains a deletion of any Work, and the Trustees and Design-Builder are unable to agree upon the value thereof, the Trustees' estimate may be deducted from the Contract Amount. The Trustees may withhold from any payment due Design-Builder until Design-Builder presents proof convincing to the Trustees that the Trustees' estimate was in error. The amount to be deducted, other than deletion of an entire item as addressed in Article 38.01-b (7), shall be the costs to Design-Builder for labor, materials, and equipment which would have been used on the deleted Work together with the credit mark-up. Use the guidelines set forth in Article 38.01-b, Allowable Costs upon Change Orders, in computing the amounts involved for changes other than deletion of an entire item.

d. Allowable Time Extensions.

For any change in the Work, Design-Builder shall be entitled only to such adjustments in time by which completion of the entire Work is delayed due solely to performance of the changed Work. However, the Trustees will not grant an extension of time for a change in the Work unless Design-Builder:

- demonstrates to the satisfaction of the Trustees that the Work is on the critical path, and
- submits an updated CPM schedule showing that an extension of time is required, and
- is making, or has made, every reasonable effort to guarantee completion of the additional Work called for by the change within the time originally allotted for the Contract (Public Contract Code section 10842).

Reference Article 36.15, Contract Time, and Article 36.16, Schedule.

e. Use of Design-Builder's Contingency.

(1) If there is an omission or correction in the Construction Documents that should have been identified through a reasonable constructability check and coordination review of the Construction Documents by Design-Builder, then Design-Builder shall purchase and install the omitted equipment or material utilizing Design-Builder's contingency. Design-Builder shall obtain the Trustees' approval of the use of any of Design-Builder's contingency, and this approval shall not be unreasonably withheld.

(2) Design-Builder shall not include mark-up for overhead and profit on changes necessitated by omissions or corrections to the Construction Documents that should have been identified by a reasonable constructability check and coordination review.

Design-Builder shall not utilize Design-Builder Contingency to pay OCIP and/or BRIP insurance deductibles described in Articles 36.06-b, OCIP, and 36.06-c, BRIP.

(3) With each monthly payment request, Design-Builder shall submit an accounting of Design-Builder's use of their contingency, along with a documentation of the Trustees' approval. This accounting shall be presented to the Trustees as a draw against Design-Builder's contingency.

f. Use of Allowances

The Trustees limit the use of allowances; however, the Trustees shall approve the use of any allowance, on a case by case basis. If the Trustees so approve, allowances may only be used for specific and discrete scopes of Work that were indeterminate at the time of producing the GMP, such as for trades where Design-Builder did not receive a bid, when Design-Builder is self-performing Work, or when review of trade bids reveals necessary Work that is not included. Design-Builder shall not aggregate allowances to create another Project contingency; Design-Builder bears the cost risk of completing the Work covered by a Design-Builder Allowance, and shall return unused portions of Design-Builder Allowance to the Trustees in a credit change order. The Trustees are responsible for the estimate on a Trustees' allowance.

Design-Builder shall only use allowances for their identified specific and discrete purpose. Design-Builder may not use allowance balances to make up deficits on other line items. The Trustees shall authorize each debit from an allowance in writing, using a field instruction. Design-Builder shall maintain a detailed cost accounting, including allowances, and submit it with the monthly payment application for the Trustees' approval. The trade contractors shall mark up direct cost items in accordance with this Article, however, Trustees will not award to Design-Builder additional mark-ups or fees on allowances.

### 38.02 Emergency Changes

Following are the kinds of emergency changes that the Trustees may authorize in writing to Design-Builder:

- changes in the Work agreed by the Trustees to be made necessary due to unforeseen Site conditions,
- discovery of errors in the Contract Documents requiring immediate clarification in order to avoid a serious Work stoppage,
- changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the Trustees.

Design-Builder shall commence performance of the emergency change immediately upon receipt of Trustees' written direction.

If the Trustees and Design-Builder reach an agreement as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 38.01, relating to ordinary changes. If the Trustees and Design-Builder do not reach an agreement on compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 38.01-c, Failure to Agree as to Cost. All time and materials records and summaries shall be witnessed on a daily basis, and maintained until either a lump sum payment and/or a time extension, as provided in Article 38.01-d, is agreed upon, or the changed Work is completed.

## 39.00 - CLAIMS AND DAMAGES

### 39.01 Claims

#### a. Claim and Dispute Submittals.

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

At the time of submission of any claim, Design-Builder shall certify as follows:

#### SUBMISSION UNDER PENALTY OF PERJURY

"I, (insert full name), am the (insert title--must be an Officer) of (insert name of firm).

I declare, under penalty of perjury under the laws of the State of California, and do personally certify and attest that I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, know its contents, made said claim in good faith, and that:

- the supporting data is truthful and accurate;
- the amount requested accurately reflects the contract adjustment for which I believe the Trustees are liable, and further,
- I am familiar with California Penal Code section 72 and California Government Code section 12650 *et seq.*, pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences."

By: \_\_\_\_\_ (signature)

Date: \_\_\_\_\_ (insert date of signature)

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

#### b. Design-Builder's Claim(s) – Notice of Claim.

In accordance with Article 37.02 (Issuance of Interpretations, Clarifications, Additional Instructions), should Design-Builder disagree with the determination of the Trustees on a matter that substantially affects Design-Builder's costs, compensation or extent of Work, Design-Builder shall file a preliminary claim with the Trustees. For purposes of this Article 39.01, "claim" means a separate demand by Design-Builder, sent by registered or certified mail with return receipt requested, for one or more of the following:

- (1) a time extension for relief from damages or penalty for delay;
- (2) Trustees' payment which is not otherwise expressly provided or to which Design-Builder is not otherwise entitled;
- (3) payment of an amount that the Trustees dispute; or

- (4) subcontractor claims.
- c. Actions Prior to Claims Review Board
  - (1) Design-Builder's Claim Submittal / Documentation.  
Design-Builder submitted its claim in accordance with Article 39.01, subsections 'a' and 'b'.
  - (2) Trustees' Review of Design-Builder's Claim upon Receipt.  
The Trustees shall conduct a reasonable review of the claim upon receipt and, within a period not to exceed 45 days, shall provide Design-Builder a written statement identifying disputed and undisputed portions of the claim. Upon receipt of the claim and by mutual agreement, the Trustees and Design-Builder may extend the time provided herein.  
  
The Trustees' failure to issue a written statement shall result in the rejection of the claim in its entirety. A claim that is denied by reason of the Trustees' failure to respond to the claim or to meet the time requirements contained herein shall not constitute an adverse finding regarding the merits of the claim or the responsibility/qualifications of Design-Builder.
  - (3) Trustees' Payment of Undisputed Portion of Claim.  
The Trustees shall pay the undisputed portion of the claim within 60 days after issuing the written statement.
- d. Informal Meet and Confer Conference
  - (1) If Design-Builder disputes the Trustees' response, or if the Trustees fail to respond to Design-Builder's claim within the time prescribed, Design-Builder may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered or certified mail with return receipt requested, the Trustees shall schedule a meet and confer conference within 30 days for settlement of the dispute.
  - (2) Post-Meet and Confer Conference  
Within ten business days following conclusion of meet and confer conference, the Trustees shall provide Design-Builder a second written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. The Trustees shall pay the undisputed portion within 60 days after the Trustees issue the second written statement.
- e. Nonbinding Claims Review Board  
Design-Builder shall submit any remaining disputed portion of the claim to a nonbinding Claims Review Board. If the Claims Review Board is unsuccessful, Design-Builder may submit the disputed portion of the claim to mediation.
- f. Design-Builder Submission of Unresolved Claims.  
Design-Builder shall submit all claims in writing in accordance with this Article 39.01 to the Trustees no later than 30 Days after the County Recorder's recordation date on the Trustees' Notice of Completion. Design-Builder's failure to submit its claims to the Trustees within this 30-Day period shall constitute a waiver by Design-Builder of such claims. Once Design-Builder has submitted the claims, and the 30 Days after the County Recorder's recordation date on the Notice of Completion have expired, Design-Builder may not submit any additional claims. Design-Builder shall have 30 additional Days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-Day period shall constitute a waiver by Design-Builder of such claims.
- g. False Claims.  
Design-Builder submits the claim recognizing the significant civil penalties and treble damages, which follow from making a false claim or presenting a false claim to the Trustees (reference Government Code sections 12650 *et seq.*).
- h. Trustees' Claim(s) Submittal.  
The Trustees shall submit a rebuttal to Design-Builder's claim, along with any Trustees' claims to the Claims Review Board within a reasonable time after the submission by Design-Builder of a total and detailed claims package or the expiration of the time to file Design-Builder's claims.
- i. Design-Builder Rebuttal to Trustees' Claims.  
Upon submission of any Trustees claims, Design-Builder shall have an additional 30-day period to submit to the Claims Review Board Design-Builder's rebuttal to the Trustees' claims.
- j. Claims Review Board.  
The Trustees will convene a Claims Review Board to hear the submitted claims at the completion of the Project. Each Claims Review Board shall continue to function until the members review all pertinent facts and arrive at a recommendation. The Assistant Vice Chancellor for Capital Planning, Design and Construction, or a designee administers the Claims Review Board process. These administrative responsibilities include, but are not limited to, selection of the Claims Review Board members, determination of the time and location of the hearing, and application

of the Claims Review Board procedures. The Claims Review Board is comprised of representatives of the California State University, which may include representatives of Capital Planning, Design and Construction staff who have not had any direct connection to the Project. It is a neutral, lay dispute resolution board, in which an independent third-party board assists the parties in dispute resolution through negotiation or by issuance of an evaluation or recommendation. Attorneys and third party claims specialists may not participate in the hearings, with the exception of scheduling consultants. As soon as possible after the conclusion of the hearing, the Board's recommendation will be made to the appropriate University official and the Assistant Vice Chancellor of Capital Planning, Design and Construction.

The decision to accept or reject the Board's recommendation is the responsibility of either the University official, if the University administered the Project, or the Assistant Vice Chancellor, Capital Planning, Design and Construction, if the Chancellor's Office administered the Project. The decision of the University official or the Assistant Vice Chancellor (as appropriate) exhausts Design-Builder's contractual and administrative remedies with the Trustees.

k. Actions Post Claims Review Board.

(1) Initial Mediation.

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

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

(2) Other Dispute Resolution.

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

### 39.02 Delay in Completion--Liquidated Damages

If Design-Builder does not complete the Work within the time required, the Trustees will sustain damage. It is, and will be, impractical and extremely difficult to determine the actual damage that the Trustees will sustain due to the delay. It is therefore agreed that Design-Builder will pay to the Trustees the sum of money stipulated per Day in the Contract for each Day's delay in completing the Work beyond the time prescribed (reference Article 40.01, Acceptance). If Design-Builder fails to pay such liquidated damages, the Trustees may deduct the amount thereof from any money due or that may become due Design-Builder under the Contract (Public Contract Code section 10826). If Trustees have occupancy of all or the majority of the Project and can use it for its intended purpose, including operation of fire and life safety systems, the Trustees may reduce the amount of assessment of liquidated damages (if it is determined to be in the best interest of the Trustees). In this case, Trustees may reduce the liquidated damages assessment to \$500 per Day or half of the value originally stipulated per Day, whichever is higher. The Trustees' assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

### 39.03 Termination for Cause

If the Trustees deem that Design-Builder has failed to supply an adequate working force or material of proper quality, or that Design-Builder has failed in any other respect to prosecute the Work with the diligence and force as required by the Contract, then the Trustees may take any of the actions as authorized by Public Contract Code section 10843 *et seq.* Design-Builder's failure to complete a punch list with diligence is an example of a failure to prosecute the Work with the diligence and force required by the Contract.

If the costs of finishing the Work exceed the unpaid balance of the Contract sum, Design-Builder shall pay the difference to the Trustees.

If the Trustees subsequently determine that grounds for termination under this Article do not exist, then the Trustees shall deem Design-Builder to have been properly terminated for convenience under Article 39.04, Termination for Convenience.

### 39.04 Termination for Convenience

The Trustees may terminate this Contract or any part thereof, for its sole convenience and without cause. Unless Trustees direct otherwise, upon written notice from the Trustees of such termination, Design-Builder shall:

- a. Stop all Work under the Contract except that Work specifically directed to complete before suspension of the Work.
- b. Perform Work the Trustees deem necessary to secure the Project for termination.
- c. Remove equipment and plant from the Site of the Work.
- d. Take such action as is necessary to protect materials from damage.



- e. Notify all subcontractors and suppliers that the Trustees terminated the Contract; and that they are not to perform their contracts or orders, unless otherwise authorized in writing by the Trustees. Reference Articles 36.05, Delegation of Performance and Assignment of Money Earned, and 39.05, Assignment of Subcontracts.
- f. Provide the Trustees with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the Work and not yet used in the Work, including their storage locations, and such other information as the Trustees may request.
- g. Handle materials not yet used in the Work as directed by the Trustees. Design-Builder shall provide the Trustees with good title to all materials purchased hereunder, including materials for which partial payment has been made.
- h. Subject to prior written approval of the Trustees, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Trustees, Design-Builder shall assign to the Trustees all the right, title and interest of Design-Builder under subcontracts or orders for materials.
- i. Furnish the Trustees with the required documentation under the provisions of the Contract.
- j. Take such other actions pertinent to terminating the Contract as the Trustees may direct.
- k. Remain liable for any defective construction completed before termination.

The Trustees shall pay Design-Builder in accordance with the provisions of Article 40, Payment and Completion, with the following exception. The amount due Design-Builder shall be based upon the Trustees' final estimate of the actual Work completed, or acceptable materials furnished but not used, to the date of suspension of the Work, less any amounts required to be withheld pursuant to Article 39.00, and less any prior payment(s) made to, or on account of Design-Builder.

### **39.05 Assignment of Subcontracts**

Should the Trustees terminate Design-Builder's control over the Work under Article 39.03, Termination for Cause, or Article 39.04, Termination for Convenience, the Trustees may elect to take legal assignment of subcontracts, purchase orders, and other contractual rights. In such an event, and as a condition of receiving the payments referenced in these Articles, Design-Builder shall execute and deliver all papers and take all steps, including the legal assignment to the Trustees of subcontracts, purchase orders, and other contractual rights of Design-Builder, as the Trustees may require. This will be done to fully vest in the Trustees all rights and benefits of Design-Builder under such subcontracts, purchase orders, or other contractual rights in order that the Trustees may proceed to finish the Project.

### **39.06 Third-Party Claims**

Trustees have full authority to compromise or otherwise settle any claim relating to a Contract at any time. However, Trustees shall notify Design-Builder of the receipt of any third-party claim relating to the Contract (Public Contract Code section 9201).

## **40.00 - PAYMENT AND COMPLETION**

### **40.01 Acceptance**

When the Trustees deem that the whole Project is complete in all respects in accordance with the completed, plan-checked and Trustees-approved Plans and Specifications, to the Trustees' full satisfaction, the Trustees will then file a Notice of Completion with the County Recorder in the county in which the Project is located. For projects bid with a segregation of costs for separate, independent portions of Work, the Trustees may individually accept each of the separate portions. The date of acceptance of the Project as stated on the Notice of Completion shall be the official completion date relating to the assessment of liquidated damages. Acceptance shall be final and conclusive except for latent defects, gross mistakes amounting to fraud, audit rights, or Trustees' rights under any warranty or guarantee.

The County Recorder's date of recording on the Notice of Completion, if filed timely (within fifteen Days of acceptance), shall be the official completion date relating to stop payment notices. Design-Builder and all subcontractors must file all stop payment notices with the Trustees within 30 Days after the County Recorder's recordation date on Trustees' timely filed Notice of Completion. Design-Builder and all subcontractors shall submit claims arising from this Contract in writing to Trustees no later than 30 Days after the recordation date on the Trustees' Notice of Completion (reference Article 39.01, Claims).

### **40.02 Partial Payments**

- a. Contents of Payment Request.

Design-Builder's submittal of the monthly payment application shall include, but may not be limited to the following forms and reports:

- Contractor Payment Request-Form 702.12DB,
- Schedule of Values-Form 702.21,

In the Schedule of Values Design-Builder shall include actual and estimated costs for each item of Work, including approved change orders, The cost breakdowns shall be in sufficient detail for use in estimating the Work to be completed each month and shall be submitted within 21 Days after the date of commencement of the Work given

in the Notice to Proceed. The initial submittal of the Schedule of Values shall include a breakdown of the awarded Contract value by completing the Uniform Building Systems form.

- Request for Payment of Materials on Hand-Form 702.17,
- Subcontractor Directory-Form 702.04S,
- Allowance and contingency accounting,
- Schedule update and narrative, and the
- Contractors Reuse, Recycling, and Disposal Report-Form 1151B (and if any demolition Work is included in this Project submit the Building Demolition Contractors Reuse, Recycling, and Disposal Report –Form 2060B).

b. Processing the Partial Payment Request.

Once each month during the progress of the Work, Design-Builder shall submit to the Construction Administrator a partial payment request that has been received and agreed upon by the Trustees' Project Manager/Construction Inspector. Design-Builder shall base the partial payment request on the approved bid breakdown for the cost of the Work completed. Where applicable, Design-Builder shall provide a maximum of 90% of the verified supplier-invoiced and Design-Builder-purchased value for the acceptable materials delivered to the Site, or stored, subject to the control of Design-Builder but identified as the property of the Trustees, and not yet installed and as allowed on the Contract Payment Request, form [702.12DB](#), line 2-f. Design-Builder must make any materials stored offsite accessible to the Trustees to verify invoiced value and shall deliver these materials to the Trustees upon request. When submitting a request for payment for materials, Design-Builder shall submit the Request for Materials On Hand, form [702.17](#), with its partial payment request.

Design-Builder shall submit the partial payment request on the monthly anniversary of the day selected by Design-Builder in the job start meeting. The Construction Inspector shall review and certify the validity of the request, which, if the request includes an invoice for materials, then it shall include an inspection by the Construction Inspector of materials invoiced. Design-Builder shall make no partial payment without the certification of the Construction Inspector, unless the partial payment is strictly administrative and processed after the completion of the Work (e.g. release of stop notice and stop payment notice claims).

The Trustees shall process Design-Builder's partial payment requests with five percent retention. The Trustees hold retention in part as security for the fulfillment of the Contract by Design-Builder. The Trustees will withhold sufficient funds in addition to the retention to cover for anticipated liquidated damages, stop payment notices, Labor Code wage and penalty assessments, unacceptable Work, punch list work, and Trustees' back-charges such as for retesting and reinspection. The Trustees will withhold monies from partial payments for incomplete punch list Work in addition to retention. The Trustees shall not process partial release of retention before Contract completion (Public Contract Code section 10851) unless the Trustees phase the Project with a segregation of costs per Articles 40.01 and 40.05.

The Trustees shall not construe partial payments as acceptance of any Work which is not in accordance with the requirements of the Contract. Once the Construction Inspector has certified the partial payment request, Construction Inspector shall submit it to the Trustees' Construction Administrator for approval and processing (Public Contract Code section 10851). The Trustees will then process payment in accordance with Public Contract Code section 10853, which provides for 39 Days processing, from the date of receipt of an undisputed and properly submitted payment request by the Construction Administrator, prior to assessment of late payment interest.

#### **40.03 Escrow in Lieu of Retention**

After Trustees issue the Notice to Proceed for Construction Work, Design-Builder may request to utilize an escrow account at Design-Builder's expense. With the approval of the Trustees, and upon execution of a three-party agreement between Design-Builder, the State Treasurer's Office and the Trustees, the Trustees may make payment of the five percent retention withheld from progress payments pursuant to the requirements of Public Contract Code section 10851, if Design-Builder deposits in escrow with the State Treasurer securities eligible for investment of State funds under Government Code section 16430 or bank certificates of deposit, and satisfies the conditions prescribed in Public Contract Code section 10852. Design-Builder shall utilize form [702.12R](#), Request for Payment of Retention to Contractor, to request retention payment.

#### **40.04 Stop Payment Notices**

Trustees shall retain out of any money due or that may become due Design-Builder, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop payment notice provisions of the law (Civil Code section 9000 *et seq.*).

All parties shall present preliminary notices and stop payment notices to the Trustees' Construction Administrator in proper form and should send a copy to the Trustees at the address identified in the letter transmitting the Contract for signature and at the preconstruction conference. Design-Builder shall be responsible to communicate this information to all subcontractors.

#### **40.05 Payment**

After Trustees' acceptance of the Project as complete, Design-Builder shall submit to the Construction Administrator a payment request indicating the total due under the Contract less retention, and shall substantiate this payment request by a detailed cost report. The Trustees may request additional substantiation, such as trade contractor payments, material invoices, payrolls for all labor, and other such data supporting Design-Builder's right to payment. Design-Builder shall forward the detailed cost report to the Construction Administrator no later than seven (7) Days following the submission of the final payment request. Once approved, the Trustees will process this payment request in the same manner as the partial payment requests. Reference Article 40.02, Partial Payments.

The Trustees shall notify Design-Builder of the date of recordation of the Notice of Completion. Design-Builder shall then submit a request for payment of the retention to the Construction Administrator, who will process the retention payment 30 Days after the date of recordation by the County Recorder.

The Trustees shall continue to retain funds to cover liquidated damages, stop payment notices, state labor commissioner claims, back charges from the University, unexecuted credit change orders, and other such claims that may be received up to the end of the 30 days period following recordation. Upon receiving any stop payment notice, the Trustees shall withhold payment in an amount of at least 125 percent of the total claims filed until either the rights under the stop payment notice have been settled, or Design-Builder has posted sufficient bond in an amount of 125 percent of the total claims filed to secure payment of such claims.

Design-Builder shall calculate the amount of such final payment as follows:

a. Final Cost Report

Design-Builder shall include the following in the final cost report:

- (1) Overhead and Profit – lump sum
- (2) Site Management Fee – lump sum
- (3) Contingency – a not-to-exceed line item.  
Design-Builder shall itemize all uses of contingency and provide the contingency balance. After Design-Builder deducts its shared portion of the unused contingency, Design-Builder shall return any Contingency savings to the Trustees with a credit change order.
- (4) Allowances – a not-to-exceed line item.  
Design-Builder shall itemize all allowances and provide the balance for each. Design-Builder shall return any Allowance savings to the Trustees with a credit change order.
- (5) Change Orders – Provide a line item breakdown for Trustees' change orders.
- (6) Trade Contractor Contract Breakdown – For each Trade Contractor Bid showing adjustments by change orders. If the total of the Trade Contractor amounts bid, as adjusted by change orders, is less than the total of the Trade Contractor amounts as built, as adjusted by change orders, Design-Builder shall submit a credit change order to the Trustees for the difference.

b. Final Payment Request

Once the Trustees accept the final cost report, and after Trustees notify Design-Builder of the date of the notice of completion recordation by the county recorder, Design-Builder may submit its final payment request. Design-Builder shall calculate the amount of such final payment as follows, per Contract General Conditions Article 40.05, Payment.

- (1) Take the sum of the cost of the Work for the entire Project substantiated by Design-Builder's final cost report, and Design-Builder's fees calculated previously,
- (2) Adjust by change order any cost savings on the completion of the Project pursuant to the RFP and Contract General Conditions Article 35.06, Guaranteed Maximum Price,
- (3) Subtract amounts, if any, which the Trustees are entitled to withhold to cover liquidated damages, stop payment notices, construction defects or non-conforming Work or other withholds authorized by the Contract Documents,
- (4) Subtract the aggregate of previous payments made by the Trustees to Design-Builder hereunder.

As a condition of final payment, Design-Builder shall provide a complete set of Contract Files to the Construction Administrator, which files shall include, but not be limited to, as-built drawings, operation and maintenance manuals, additional materials, and warranties.

#### **40.06 Guarantee**

Design-Builder hereby unconditionally guarantees the Work under this Contract to be in conformance with the Contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the Project pursuant to Article 36.15–b, Starting and Completion Date, unless the Trustees stipulate a longer guarantee period in the Contract Documents. Design-Builder shall obtain and deliver to the Trustees all manufacturers' warranties; the manufacturers' warranties shall start on the acceptance date noted on the Notice of Completion and shall run through the full term of each manufacturer's warranty. By this guarantee Design-Builder agrees, within the guarantee period, to repair or replace

any Work, together with any adjacent Work which may be displaced in so doing which is not in accordance with the requirements of the Contract, or which is defective in its workmanship or material, all without any expense whatsoever to the Trustees.

Design-Builder who is responsible for the entire Work and the subcontractor that performs the Work shall sign special guarantees required by the Contract.

Within ten (10) Days after Design-Builder receives the Trustees' written notification regarding any Work not in accordance with the requirements of the Contract or any defective Work, Design-Builder agrees to commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee, and to complete the Work in accordance with the requirements of the Contract within a reasonable period of time. Design-Builder, in the event of failure to comply, does hereby authorize the Trustees to proceed to have the Work done at Design-Builder's expense, and agrees to pay the cost thereof upon demand. The Trustees shall be entitled to all costs necessarily incurred upon Design-Builder's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Trustees' employees, property, or the public, the Trustees may without prior notice undertake all Work necessary to correct hazardous conditions caused by the Work of Design-Builder that is not in accordance with the requirements of this Contract.

#### **40.07 Contractor Evaluation**

The University will perform a contractor evaluation, and a report filed with the Trustees after completion of the Project. If Design-Builder fails to perform the construction Contract responsibly by failing to complete all Work and requirements, including honoring the warranty, the Construction Administrator shall so state the facts on the Contractor Evaluation Form. If an evaluation results in a non-responsible contractor finding, it could affect Design-Builder's prequalification and may cause Design-Builder to be deemed ineligible to bid on Trustees' Work. Reference Article 32.09, Failure to be a Responsible Bidder.

### **41.00 - MISCELLANEOUS**

#### **41.01 Governing Law**

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

#### **41.02 Successors and Assigns**

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

#### **41.03 Rights and Remedies**

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

No action or failure to act by Trustees or Trustees' 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 Trustees or Trustees' representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the Trustees, Trustees' representative, or Design-Builder.

#### **41.04 Waiver**

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

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

Design-Builder agrees and understands that no oral directive, approval or representation, either express or implied, by Trustees or its agents shall be binding upon Trustees.

**41.05 Survival**

The provisions of the Contract which by their nature survive termination of the Contract or Acceptance under Article 39.01, Claims, including all warranties, indemnities, payment obligations, and Trustees' right to audit Design-Builder's books and records, shall remain in full force and effect after Acceptance or any termination of the Contract.

**41.06 Complete Agreement**

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 38.00, Changes in the Work.

**41.07 Severability of Provisions**

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

**41.08 Notices**

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

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

Such notices and other communications in this Article 40.08 shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 40.08.

**41.09 Counterparts**

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

End of Contract General Conditions for Collaborative Design-Build Major Projects

**Task Order-Construction Agreement for Multiple Projects—  
Supplementary General Conditions to  
Contract General Conditions for Collaborative Design-Build Major Projects**

*(for use with Task-Order Construction Agreement for Multiple Projects only)*

- General.

When utilizing the Task Order-Construction Agreement for Multiple Projects (TO-CA) delivery method, include the Contract Documents for the Collaborative Design-Build or Construction Manager at Risk delivery method as specified below and found on the Task Order-Construction Agreement for Multiple Projects website: <https://www2.calstate.edu/csu-system/doing-business-with-the-csu/capital-planning-design-construction/project-center/academic-project/Construction/Pages/TOCA-Collaborative-Design-Build/forms.aspx>.

  - For Collaborative Design-Build projects, the following Contract Documents apply and are included in the TO-CA Contract Documents:
    - Contract General Conditions for Collaborative Design-Build Projects,
    - Supplementary General Conditions to the Contract General Conditions for Collaborative Design-Build Projects, and
    - This Task Order-Construction Agreement for Multiple Projects—Supplementary General Conditions to Contract General Conditions for Collaborative Design-Build Projects.
  - For Construction Manager at Risk projects, the following Contract Documents apply and are included in the TO-CA Contract Documents:
    - Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects,
    - Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects, and
    - This Task Order-Construction Agreement for Multiple Projects—Supplementary General Conditions to Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects.
  - Replace term “Guaranteed Maximum Price” and “GMP” with “Lump Sum” throughout.
- Article 31.00, Definitions; add or delete and replace the following definition:
  - Request For Proposals (RFP) - The documents that the Trustees issue to the Proposers describing and specifying the requirements of the Master Enabling Agreement (MEA) and Work/Projects.
  - Service Order Request – The initial document that the Trustees issue to the Design-Builder to begin a Project. This form is only used when the TO-CA MEA bid is based on Hourly Rates.
  - Task Order Service Agreement – For performance of design services Work through the acceptance of the Lump Sum for the Project in accordance with the Contract Documents.
- Article 35.06, Guaranteed Maximum Price; delete and replace with the following:

The Design-Builder shall guarantee the Contract Amount for the Project not to exceed the Lump Sum, as set forth in the Agreement. The Design-Builder shall support the Lump Sum by a line item cost breakdown for each trade, allowances, bonds, site management fees, overhead and profit, contingency, and any other cost necessary to complete the Project. The Lump Sum shall be subject to additions and deductions by change order as provided in Article 38, Change Orders.

If the cost of the Work, together with the Design-Builder’s fee, exceeds the Lump Sum, adjusted from time to time by change order, the Design-Builder shall pay the overrun without reimbursement by the Trustees. If the actual cost of the Work, plus the Design-Builder’s fee, is less than the Lump Sum, as adjusted from time to time by change order, then the Design-Builder shall retain the difference. Design-Builder agrees to use all reasonable efforts to maximize the cost savings for the mutual benefit of the parties.
- Article 35.08, Award of Design-Build Agreement; delete and replace with the following:

The Trustees and the Design-Builder have agreed to a schedule, design, specifications, and a Lump Sum Price (the Design-Build Contract Documents) and, the Trustees have awarded an Agreement to the Design-Builder to complete the design as required and construct the Project.
- Article 36.06, Insurance Requirements, insert the following before subsection a. All provisions of subsection a are unchanged.
  1. Insurance Requirements for a Project that has a Total Cost of \$709,000.01 or More.
- Article 36.06, Insurance Requirements, add new subsection 2 as follows:
  2. Insurance Requirements for a Project that has a Total Cost of \$709,000.00 or Less.

The Design-Builder shall not commence Work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.

a. Policies and Coverage.

(1) The Design-Builder shall obtain and maintain the following policies and coverage:

- (a) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering Work done or to be done by or on behalf of the Design-Builder and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Work.
- (b) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non owned automobiles used by or on behalf of the Design-Builder and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists
- (c) Worker's Compensation including Employers Liability Insurance as required by law.
- (d) Errors & Omissions Insurance on an occurrence basis, covering Work done or to be done by or on behalf of the Design-Builder and providing insurance for errors and omissions shall be secured and maintained.

(2) The Design-Builder also may be required to obtain and maintain the following policies and coverage:

- (a) Environmental Impairment Liability Insurance should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.
- (b) Other Insurance by agreement between the Trustees and the Design-Builder.

b. Verification of Coverage.

The Design-Builder shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. Design-Builder shall timely file renewal certifications and endorsements for all coverage until the Work is accepted as complete pursuant to Article 40.01, Acceptance. The Trustees reserve the right to require the Design-Builder to furnish the Trustees complete, certified copies of all required insurance policies.

c. Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 36.07. The insurance policies shall contain, or be endorsed to contain, the following provisions.

- (1) For the General and Automobile Liability Policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
- (2) For any claims related to the Work, the Design-Builder's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Design-Builder's insurance and shall not contribute with it.
- (3) The Design-Builder shall immediately upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required under this Article 36.06, provide written notice of any such insurance cancellation or non-renewal by certified mail to the University.
- (4) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

d. Amount of Insurance.

(1) For All Projects.

The insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following:

- (a) Comprehensive or Commercial Form General Liability Insurance--Limits of Liability
  - \$2,000,000 General Aggregate
  - \$1,000,000 Each Occurrence—combined single limit for bodily injury and property damage.

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

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

- (c) Workers' Compensation limits as required by law with Employer's Liability limits of \$1,000,000.  
 (d) Errors & Omissions Insurance shall be secured and maintained for no less than \$1,000,000 per occurrence.

(2) For Projects Involving Hazardous Materials.

The Design-Builder shall provide additional coverage in amounts not less than the following:

- (a) Environmental Impairment (pollution) Liability Insurance - Limits of Liability

General Aggregate	\$10M
Each Occurrence – combined single limit for bodily injury and property damage, including cleanup costs.	\$5M

- (b) In addition to the coverage described in 36.06-d (1) (b), Business Automobile Liability Insurance, the Design-Builder shall obtain for hazardous material transporter services:

- (i) MCS-90 endorsement  
 (ii) Sudden & Accidental Pollution endorsement--Limits of Liability\*  
                   \$2,000,000 Each Occurrence  
                   \$2,000,000 General Aggregate

\*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

With the Trustees' approval, the Design-Builder may delegate the responsibility to provide this additional coverage, as described in this Article 36.06-d (2) (b) above, to its hazardous materials subcontractor. When the Design-Builder returns its signed project construction phase agreement to the Trustees, the Design-Builder shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Design-Builder shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all of the requirements in Articles 36.06-2-b, Verification of Coverage, and 36.06-2-c, Insurance Provisions. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to the Trustees as soon as the Design-Builder fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed, whichever is less.

e. Acceptability of Insurers.

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to the University.

f. Subcontractor's Insurance.

Design-Builder shall ensure that its subcontractors are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's Work. Design-Builder shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained. Only the Design-Builder and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials as required in Article 36.06-2-d, Amounts of Insurance, subdivision (2).

g. Miscellaneous.

- (1) Any deductible under any policy of insurance required in this Article shall be Design-Builder's liability.  
 (2) Acceptance of certificates of insurance by the Trustees shall not limit the Design-Builder's liability under the Contract.  
 (3) In the event the Design-Builder does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Design-Builder and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Design-Builder.  
 (4) If the Trustees are damaged by the failure of Design-Builder to provide or maintain the required insurance, the Design-Builder shall pay the Trustees for all such damages.



- (5) The Design-Builder's obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.
  - (6) The Design-Builder's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Design-Builder negligence shall be limited to five percent of the Contract Amount if the Work damaged is built in accordance with the Contract and applicable building standards.
- Article 36.06-b, Owner Controlled Insurance Program (OCIP); renumber and replace with the following:  
**Article 36.06-3**, Owner Controlled Insurance Program (OCIP).  
All references to 36.06-b shall read 36.06-3.  
Design-Builder shall disregard the provisions of Article 36.06-3, as the OCIP will not apply to this Contract.
  - Article 36.06-c, Trustees' Course of Construction ("Builders Risk") Property Insurance; renumber and replace with the following:  
**Article 36.06-4**, Trustees' Course of Construction ("Builders Risk") Property Insurance.  
All subsequent provisions of this article are unchanged, except that all references to 36.06-c shall read 36.06-4.
  - Article 36.16, Schedule; delete and replace with the following:  
The following scheduling provisions apply to each Lump Sum construction proposal.
    - a. Time is of the essence of this Contract, including the time of beginning, the rate of progress, and the time of completion of the Work. The Work shall be prosecuted at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in the Contract Documents and the approved Construction Schedule.
    - b. The Design-Builder shall submit a bar chart or critical path method schedule setting forth the manner and sequence of the Work. The Design-Builder shall schedule the Work in accordance with the time duration set forth in the Service Order Request. The Design-Builder shall have broad discretion in scheduling the Work. The University's basis for disapproval of any schedule shall generally be limited to a determination that the Work sequence lacks logic, is unreasonable, is incomplete or is inconsistent with any other contractual requirement, such as a phasing plan or work shift requirements, noise, class schedules, campus holidays or non-construction activity days.
    - c. The Design-Builder initial Construction Schedule shall show the sequence, duration in Days, and interdependence of activities required for the complete performance of all Work. The Design-Builder initial Construction Schedule shall begin with the date of issuance of the Notice to Proceed and conclude with the date of final completion.
    - d. The Design-Builder may submit an initial Construction Schedule that shows the Work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time.
    - e. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service or other approved source.
    - f. The Design-Builder's submittal of a fully revised and acceptable Construction Schedule shall be a condition precedent to the processing of the each monthly payment application.
    - g. The Trustees will not grant any time extensions or pay any indirect costs unless the Design-Builder can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred, and which delay cannot be mitigated, offset, or eliminated through revising the intended sequence of Work or other means. The Design-Builder shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract time extension or delay damages.
    - h. Once each week, or as approved in writing by the Trustees, the Design-Builder shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, be completed or be in progress for the succeeding three (3) weeks. This schedule shall cover all Work activities listed on the Progress Schedule for the reporting period.

- i. With respect to any Design-Builder submission under this Article, no review, acceptance or approval by the Trustees shall release or relieve the Design-Builder from its obligation to fully and properly complete the Work, or any other duty, responsibility or liability imposed on it under this Contract, including, but not limited to the obligation to complete the Work within the Contract Time.
- Article 36.23, Project Sign, Advertising; delete this article in its entirety.
  - Article 36.24, Assignment of Trade Contracts; renumber and replace article number and title with the following: **Article 36.23**, Assignment of Trade Contracts. All subsequent provisions of this article are unchanged.
  - Article 37.01, Interpretation of Contract Requirements; delete and replace with the following:
    - a. Correlation.

Design-Builder shall interpret Contract Documents as complementary, requiring a complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the Specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.
    - b. Conflicts.

In the event of conflict in the Contract Documents, the following priorities shall govern:

      - (1) Addenda shall govern over all other Contract Documents, and subsequent Addenda shall govern over prior Addenda only to the extent modified.
      - (2) Supplementary General Conditions shall govern over Contract General Conditions.
      - (3) Contract General Conditions shall govern over all sections of the Specifications and any notation on the Design-Build Contract Documents Plans. No other section of the Specifications shall modify the Contract General Conditions.
      - (4) In case of conflict between the Design-Build Contract Documents and the Contract General Conditions, the Contract General Conditions shall govern.
      - (5) In case of conflict within the Design-Build Contract Documents and Plans:
        - (a) Material and equipment schedules, when identified as such, shall govern over all other portions of the Design-Build Contract Documents Plans.
        - (b) Specific notes shall govern over all other notes and all other portions of the Design-Build Contract Document Plans, except the material and equipment schedules described in Article 37.01-b(5)(a) above.
        - (c) Larger scale drawings shall govern over smaller scale drawings.
        - (d) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
      - (6) In the event that provisions of codes, safety orders, Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
    - c. Omissions.

In the event of omissions in the Construction Documents, the following shall apply:

      - (1) If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.
      - (2) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Construction Documents.
    - d. Quality.

The quality of the Design-Builder's Work shall be equal to or better than that required in the Design-Build Contract Documents, and if it is found that the Work in the Design-Builder's proposal is of lesser quality, the Design-Build Contract Documents shall prevail.

- Article 38.01-b, Allowable Costs upon Change Orders, subsection (9) Architect/Engineer’s Extra Services for Change Order Work; delete and replace with the following:
  - (9) Architect/Engineer’s Extra Services for Change Order Work.
    - (a) Negotiated Fee.  
The Trustees may elect to negotiate a fixed fee for design extra services on change order Work.
    - (b) Work Performed by Principals and Employees of the Architect/Engineer.  
Unless as identified in (a) above, for any Work performed by the Architect/Engineer on a change order, the Architect/Engineer shall receive an amount not to exceed the direct payroll costs as proposed in the RFP for services of principals and/or employees for actual time expended to provide the authorized extra services. Reimbursement for principals when providing drafting or other related services normally provided by an employee shall be reimbursed at the maximum rate for services of employees. The Architect/Engineer shall provide an Hourly Labor Rate Worksheet at the onset of the Project, listing rates applicable to this Project within the limits listed above.
    - (c) Work Performed by Firms or Individuals Not Employees of the Architect/Engineer.  
Unless as identified in (a) above, for Work performed by firms or individuals not employees of the Architect/Engineer, but engaged by the Architect/Engineer to assist in providing the authorized extra service, the Architect/Engineer shall receive one and one tenth (1.1) times the amount to be paid by the Architect/Engineer to the consultants for said services. Payment to consultants for services rendered is limited to direct Project costs, as proposed in the RFP, for the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra service.

End of Supplementary General Conditions