

**GENERAL CONDITIONS**  
(CM at Risk – Without UCIP Coverage)

TABLE OF CONTENTS

	Page
<b>ARTICLE 1 GENERAL PROVISIONS</b>	
1.1 Basic Definitions .....	4
1.2 Ownership and Use of Contract Documents.....	8
1.3 Interpretation .....	8
<b>ARTICLE 2 UNIVERSITY</b>	
2.1 Information and Services Provided by University.....	9
2.2 Access to Project Site.....	9
2.3 University's Right to Stop the Work .....	10
2.4 University's Right to Carry Out the Work .....	10
2.5 University's Right to Replace University's Representative.....	10
<b>ARTICLE 3 CM/CONTRACTOR</b>	
3.1 Review of Contract Documents and Field Conditions by CM/Contractor.....	10
3.2 Supervision and Construction Procedures.....	10
3.3 Labor and Materials .....	11
3.4 CM/Contractor's Warranty .....	11
3.5 Taxes.....	11
3.6 Permits, Fees, and Notices.....	11
3.7 Applicable Code Requirements .....	12
3.8 Superintendent and Key Personnel .....	12
3.9 Schedules Required of CM/Contractor .....	14
3.10 As-Build Documents .....	14
3.11 Documents and Samples at Project Site .....	14
3.12 Shop Drawings, Product Data, and Samples.....	14
3.13 Use of Site and Clean Up .....	15
3.14 Cutting, Fitting, and Patching.....	15
3.15 Access to Construction Work.....	16
3.16 Royalties and Patents.....	16
3.17 Differing Site Conditions .....	16
3.18 Concealed, Unforeseen, or Unknown Conditions or Events .....	16
3.19 Hazardous Materials.....	17
3.20 Information Available to Bidders .....	17
3.21 Liability for and Repair of Damaged Construction Work .....	17
3.22 Indemnification.....	18
3.23 Bidding.....	19
<b>ARTICLE 4 ADMINISTRATION OF THE CONTRACT</b>	
4.1 Administration of the Contract by University's Representative.....	19
4.2 CM/Contractor Change Order Requests.....	20
4.3 Claims.....	21
4.4 Assertion of Claims.....	23
4.5 Decision of University's Representative on Claims.....	23

4.6 Mediation ..... 24  
 4.7 Arbitration ..... 24  
 4.8 Waiver ..... 25

**ARTICLE 5 SUBCONTRACTORS**

5.1 Award of Subcontracts and Other Contracts for Portions of the Construction Work..... 25  
 5.2 Subcontractual Relations..... 25  
 5.3 Contingent Assignment of Subcontracts..... 269

**ARTICLE 6 CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS**

6.1 University's Right to Perform Construction and to Award Separate Contracts..... 26  
 6.2 Mutual Responsibility..... 26  
 6.3 University's Right to Clean Up ..... 27

**ARTICLE 7 CHANGES IN THE WORK**

7.1 Changes ..... 27  
 7.2 Definitions..... 27  
 7.3 Change Order Procedures..... 27  
 7.4 Field Orders..... 30  
 7.5 Variation in Quantity of Unit Price Work..... 31  
 7.6 Waiver ..... 31

**ARTICLE 8 CONTRACT TIME**

8.1 Commencement of the Work ..... 31  
 8.2 Progress and Completion ..... 31  
 8.3 Delay ..... 32  
 8.4 Adjustment of the Contract Time for Delay ..... 32  
 8.5 Compensation for Delay ..... 33  
 8.6 Waiver ..... 33

**ARTICLE 9 PAYMENTS AND COMPLETION**

9.1 Cost Breakdown ..... 33  
 9.2 Progress Payment ..... 34  
 9.3 Application for Payment..... 34  
 9.4 Certificate for Payment ..... 35  
 9.5 Deposit of Securities in Lieu of Retention and Deposit of Retention into Escrow ..... 36  
 9.6 Beneficial Occupancy ..... 36  
 9.7 Substantial Completion..... 37  
 9.8 Final Completion and Final Payment..... 37

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

10.1 Safety Precautions and Programs ..... 38  
 10.2 Safety of Persons and Property..... 38  
 10.3 Emergencies..... 38

**ARTICLE 11 INSURANCE AND BONDS**

11.1 CM/Contractor's Insurance ..... 38  
 11.2 Builder's Risk Property Insurance..... 40  
 11.3 Performance Bond and Payment Bond ..... 40

**ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

12.1 Uncovering of Work ..... 41

12.2 Correction of Defective Work and Guarantee to Repair Period ..... 41

**ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT**

13.1 Termination by CM/Contractor..... 42

13.2 Termination by University for Cause..... 42

13.3 Suspension by University for Convenience ..... 43

13.4 Termination by University for Convenience ..... 44

**ARTICLE 14 STATUTORY AND OTHER REQUIREMENTS**

14.1 Patient Health Information ..... 45

14.2 Nondiscrimination ..... 45

14.3 Prevailing Wage Rates ..... 46

14.4 Payroll Records ..... 46

14.5 Apprentices..... 47

14. Construction Work Day..... 48

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

15.1 Governing Law..... 48

15.2 Successors and Assigns..... 48

15.3 Rights and Remedies ..... 48

15.4 Survival..... 48

15.5 Complete Agreement..... 49

15.6 Severability of Provisions..... 49

15.7 University's Right to Audit..... 49

15.8 Notices..... 49

15.9 Time of the Essence ..... 49

15.10 Mutual Duty to Mitigate ..... 49

**ARTICLE 16 CONTRACT AMENDMENTS**

16.1 General ..... 50

16.2 Adjustment of Performance and Payment Bonds and Builder's Risk Insurance..... 50

16.3 Option ..... 50

16.4 Bid Package(s) ..... 50

**ARTICLE 1**  
**GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS****1.1.1 APPLICABLE CODE REQUIREMENTS**

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

**1.1.2 APPLICATION FOR PAYMENT**

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

**1.1.3 ANTICIPATED CONTRACT VALUE**

The term "Anticipated Contract Value" means the amount that the University anticipates the Work will cost at Final Completion.

**1.1.4 BENEFICIAL OCCUPANCY**

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

**1.1.5 BID PACKAGE**

The term "Bid Package" means a part of the Construction Work represented by a particular Design Package prepared by the University's Design Professional, and reviewed by the CM/Contractor in Phase 1 per the Scope of Work, and performed by CM/Contractor's Subcontractors or self-performed. All Bid Packages will be incorporated into the Contract by Contract Amendment and the price thereof will, together with the CM/Contractor's Option Sum - Phase 2, be the total amount due the CM/Contractor.

**1.1.6 CERTIFICATE FOR PAYMENT**

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

**1.1.7 CHANGE ORDER**

See Article 7.2 of the General Conditions.

**1.1.8 CLAIM**

See Article 4.3 of the General Conditions.

**1.1.9 CM/CONTRACTOR**

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

**1.1.10 CM/CONTRACTOR BASE FEE**

The term "CM/Contractor Base Fee" means the price the CM/Contractor has included in his Option Sum - Phase 2 that represents all costs for the following items incurred in performing the Construction Work:

- .1 Salaries, or other compensation, of the CM/Contractor's officers, executives or other supervisory personnel at the CM/Contractor's Home Office.
- .2 All expenses of the CM/Contractor in connection with maintaining and operating its Home Office of CM/Contractor other than field office of the Project.
- .3 Any part of the CM/Contractor's capital expenses, including interest on the CM/Contractor's capital employed for the Work.
- .4 Except as specifically provided elsewhere in the Contract Documents, rental costs of machinery and equipment.

- .5 Profit, overhead or general expenses of any kind, except as may be expressly included elsewhere in the Contract Documents, including Home Office supervision of all subcontracted work.
- .6 Payments made by CM/Contractor to its employees or personnel on account of merit bonuses.
- .7 All salaries, cost and expenses incurred by CM/Contractor in estimating and preparing estimates, administration of the Construction Work and all other cost data and preparation required by University, exclusive of the time involving the CM/Contractor's field forces engaged in the actual field performance of the Construction Work.
- .8 All cost and expenses of purchasing and expediting all purchase orders, exclusive of the time involving the CM/Contractor's field forces engaged in the actual field performance of the Construction Work.
- .9 All cost and expenses of supervision and administration of progress and cost control by executives above the level of Project Manager.
- .10 General accounting, auditing and billing to University, Subcontractors and purchase orders, payment of voucher costs, and payment of labor taxes and insurance.
- .11 Supervision of insurance and taxation matters.
- .12 All travel expenses of CM/Contractor's officers and executives, and relocation costs of personnel involved in the Project.
- .13 All expenses paid or incurred for purchase or rental of office equipment, stationery, stamps and office supplies of any kind or nature whatsoever for Home Office.
- .14 All costs of any business licenses required by CM/Contractor, and all dues, assessments and contributions paid or payable to CM/Contractor's technical or trade associations.
- .15 All cost of insurance on tools and equipment owned or furnished by CM/Contractor; taxes assessed against property and equipment of CM/Contractor which is not to be incorporated into the Project; taxes on gross income, except gross receipts tax, profit and net income of CM/Contractor; and interest or money borrowed or furnished by CM/Contractor.
- .16 All cost of Subcontractor performance or payment bonds, or insurance in lieu thereof.
- .17 Storage costs at yards owned and leased by CM/Contractor, except any yard leased by CM/Contractor on a short-term basis solely for purposes of the Project, with University's prior written approval.
- .18 All costs incurred by CM/Contractor in violation of any terms, provision, or agreement set forth in the Contract Documents.
- .19 Consultations with University and its Design Professionals, and other consultants engaged by the University with respect to the Construction Work.

#### 1.1.11 COMPENSABLE DELAY

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

#### 1.1.12 CONSTRUCTION WORK

The term "Construction Work" means that portion of the Work consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents, including, without limitation, all CM/Contractor Base Fee, General Conditions Work, and Bid Packages.

#### 1.1.13 CONTRACT

The term "Contract" shall have the meaning identified in Article 3 of the Agreement.

#### 1.1.14 CONTRACT AMENDMENT

The term "Contract Amendment" means the contract instrument to modify the Contract to exercise the Option or to include Bid Packages.

#### 1.1.15 CONTRACT DOCUMENTS

The term "Contract Documents" means all documents listed in Article 3 of the Agreement, as modified by Change Order, including but not limited to the Drawings and Specifications.

#### 1.1.16 CONTRACT SCHEDULE

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

#### 1.1.17 CONTRACT SUM

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

#### 1.1.18 CONTRACT TIME

The term "Contract Time" means the number of days set forth in the Agreement, as adjusted by Change Order or Contract Amendment, within which CM/Contractor must achieve Final Completion of the Work.

#### 1.1.19 CONTRACTOR FEE

See Article 7.3 of the General Conditions.

#### 1.1.20 COST OF EXTRA WORK

See Article 7.3 of the General Conditions.

#### 1.1.21 DAY

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

#### 1.1.22 DEFECTIVE WORK

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

#### 1.1.23 DESIGN/CONSTRUCTION OVERLAP DURATION

The term "Design/Construction Overlap Duration" is the maximum period of time stipulated in the Contract Documents that the University will allow Phase 2 to start prior to the scheduled completion of Phase 1. See Supplementary Conditions for the specified time period for Design/Construction Overlap Duration.

#### 1.1.24 DESIGN PACKAGE

The term "Design Package" means the Drawings and Specifications for a component of the Construction Work as shown on the Project Schedule Exhibit.

#### 1.1.25 DESIGN PROFESSIONAL

The term "Design Professional" means the individuals or entities who University has hired to provide architectural, engineering, and other professional services required for the coordinated design of the Project.

#### 1.1.26 DESIGN WORK

The term "Design Work" means the work performed by Design Professional(s) to produce Bid Packages and a coordinated design for the Project; which incorporates University approved input by CM/Contractor resulting from its Phase 1 Pre-Construction Services.

#### 1.1.27 DRAWINGS

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

#### 1.1.28 EXCUSABLE DELAY

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

#### 1.1.29 EXTRA WORK

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

### 1.1.30 FIELD ORDER

See Article 7.2 of the General Conditions.

### 1.1.31 FINAL COMPLETION

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

### 1.1.32 GENERAL CONDITIONS WORK

The term "General Conditions Work" means all work and associated cost to complete the Construction Work that is not included in CM/Contractor's Base Fee or in Bid Packages; including, but not limited to, items required by the exhibits. All costs for General Conditions Work incurred in performing the Contract shall be included in the CM/Contractor's Option Sum - Phase 2.

### 1.1.33 GUARANTEE TO REPAIR PERIOD

See Article 12.2 of the General Conditions.

### 1.1.34 HAZARDOUS MATERIAL

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

### 1.1.35 HOME OFFICE

The term "Home Office" means any and all offices, including but not limited to principal, branch, or main office, the CM/Contractor may have before or during the Work, except its field office for this Project.

### 1.1.36 MAXIMUM ANTICIPATED CONTRACT VALUE

The term "Maximum Anticipated Contract Value" means the maximum amount that the University anticipates the Work will cost at Final Completion.

### 1.1.37 NOTICE OF INTENT

The term "Notice of Intent" means the notice given by the University's Representative that the University intends to exercise its Option for Phase 2. This notice shall provide time for the CM/Contractor to submit certain Contract Documents prior to a Contract Amendment being issued for Phase 2.

### 1.1.38 OPTION

See Article 2 of the Agreement and Article 16 of these General Conditions.

### 1.1.39 OPTION SUM – PHASE 2

See Article 4 of the Agreement.

### 1.1.40 PHASE 2 TIME

See Article 5 of the Agreement.

### 1.1.41 PRE-CONSTRUCTION SERVICES

The term "Pre-Construction Services" means the services provided by the CM/Contractor under Phase 1 of the Scope of Work. The Pre-Construction Services shall continue through Design/Construction Overlap Duration, if any, after the University's Option for Phase 2 is exercised.

### 1.1.42 PROJECT

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

### 1.1.43 SEPARATE CONTRACTOR

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

### 1.1.44 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.12 of the General Conditions.

#### 1.1.45 SPECIFICATIONS

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

#### 1.1.46 SUBCONTRACTOR

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

#### 1.1.47 SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

#### 1.1.48 SUPERINTENDENT

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

#### 1.1.49 TIER

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

#### 1.1.50 UNEXCUSABLE DELAY

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

#### 1.1.51 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions.

#### 1.1.52 UNIVERSITY

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

#### 1.1.53 UNIVERSITY'S BUILDING OFFICIAL

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

#### 1.1.54 UNIVERSITY'S REPRESENTATIVE

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

#### 1.1.55 UNIVERSITY'S RESPONSIBLE ADMINISTRATOR

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

#### 1.1.56 WORK

The term "Work" means the Pre-Construction Services and all Construction Work and other requirements of the Contract Documents as modified by Change Order or Contract Amendment, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided, or to be provided by, CM/Contractor to fulfill CM/Contractor's obligations without limitation. The Work may constitute the whole or a part of the Project.

### 1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

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

### 1.3 INTERPRETATION

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

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

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

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

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

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

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

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

## **ARTICLE 2**

### **UNIVERSITY**

#### **2.1 INFORMATION AND SERVICES PROVIDED BY UNIVERSITY**

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

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

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

#### **2.2 ACCESS TO PROJECT SITE**

2.2.1 University will provide access to the lands and facilities upon which the Construction Work is to be performed at the time it exercises its Option for Phase 2, including such access and other lands and facilities designated in the Contract Documents for use by CM/Contractor.

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

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

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

2.4.1 If CM/Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and , after receipt of written notice from University, fails within 2 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the University may specify, to correct such failure, University may, without prejudice to other remedies University may have, correct such failure at CM/Contractor's expense. In such case, University will be entitled to deduct from payments then or thereafter due CM/Contractor the cost of correcting such failure, including without limitation compensation for the additional services and expenses of University's consultants made necessary thereby. If payments then or thereafter due CM/Contractor are not sufficient to cover such amounts, CM/Contractor shall pay the additional amount to University.

### **2.5 UNIVERSITY'S RIGHT TO REPLACE UNIVERSITY'S REPRESENTATIVE**

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

## **ARTICLE 3**

### **CM/CONTRACTOR**

#### **3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CM/CONTRACTOR**

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

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

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

3.1.4 CM/Contractor, as part of the Scope of Work in the Exhibits, has assisted the University in preparing Contract Documents for Bid Packages that will be incorporated into the Contract by Contract Amendment. CM/Contractor shall be responsible for all Losses attributable to the errors or omissions of the CM/Contractor in the performance of Pre-Construction Services and all services required in the preparation of the various Bid Packages.

#### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

administer all phases of construction activities to achieve the completion of all Bid Packages within the requirements of the Contract Documents. The CM/Contractor shall coordinate the work of its Subcontractors to optimize efficiency and minimize conflict and interference between the various Subcontractors on-site.

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

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

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

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

3.2.6 CM/Contractor's responsibility shall include assuring that its Subcontractors are meeting all the terms of the Contract Documents. CM/Contractor shall provide on-site quality control and inspection to ensure compliance with documents, drawings and contract specifications, schedule coordination and information coordination for all construction activities on the construction site including all General Conditions Work. CM/Contractor shall schedule and coordinate testing and inspection services. This will include coordination with the Subcontractors of the scheduling of all University's Representative inspections, Fire Marshall, Test Labs, Materials Inspectors and other inspections as required. Prior to close-up of concealed areas, the CM/Contractor shall coordinate all Campus Fire Marshall, OSHPD, and all other applicable inspections with the University's Representative and create a punch list and distribute to all affected Subcontractors.

3.2.7 CM/Contractor shall coordinate all required utility shut downs, road closures, traffic closures, and the like. This coordination shall follow procedures at the Facility, and or direction as provided by the University's Representative.

### **3.3 LABOR AND MATERIALS**

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

### **3.4 CM/CONTRACTOR'S WARRANTY**

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

3.4.2 The CM/Contractor shall assure that there is no damage of existing utilities; and protect trees and root systems both during demolition and construction.

### **3.5 TAXES**

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

### **3.6 PERMITS, FEES, AND NOTICES**

3.6.1 Except for the permits and approvals which are to be obtained by University or the requirements with respect to which University is not subject as provided in Article 2.1.2 of the General Conditions, CM/Contractor shall secure and pay for all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Construction Work. CM/Contractor shall deliver to University all original licenses, permits, and approvals obtained by

CM/Contractor in connection with the Construction Work prior to the final payment or upon termination of the Contract, whichever is earlier.

### **3.7 APPLICABLE CODE REQUIREMENTS**

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

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

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

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

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

### **3.8 SUPERINTENDENT AND KEY PERSONNEL**

3.8.1 CM/Contractor shall employ a competent Superintendent satisfactory to University who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent CM/Contractor and communications given to and received from Superintendent shall be binding on CM/Contractor. Failure to maintain a Superintendent on the Project site at all times Construction Work is in progress shall be considered a material breach of this Contract, entitling University to terminate the Contract or alternatively, issue a stop Construction Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, CM/Contractor fails to complete the Contract on time, CM/Contractor will be assessed Liquidated Damages in accordance with the Agreement.

3.8.2 The Superintendent approved for the Project must be able to read, write and verbally communicate in English. The superintendent may not perform the Construction Work of any trade, pick-up materials, or perform any Construction Work not directly related to the supervision and coordination of the Construction Work at the Project site when Construction Work is in progress.

3.8.3 CM/Contractor shall provide the Key Personnel, in addition to the Superintendent, as named in the Key Personnel Exhibit to this Contract. Substitution or replacement of any named individual requires the written approval of the University's Representative and approval will be at the sole discretion of University. Failure to provide the listed individuals at all times Work is in progress shall be considered a material breach of this Contract unless the named individuals are no longer employed or retained by CM/Contractor, a company CM/Contractor has a financial interest in, or a parent company of CM/Contractor; such material breach shall entitle University to terminate the Contract or alternatively, issue a Stop Work order until the individual or an acceptable replacement is provided. If, by virtue of issuance of said Stop Work order, CM/Contractor fails to complete the Contract on time, CM/Contractor will be assessed Liquidated Damages in accordance with the Agreement.

### **3.9 SCHEDULES REQUIRED OF CM/CONTRACTOR**

3.9.1 CM/Contractor shall submit a Preliminary Contract Schedule to University's Representative in the form and within the time limit required by the Specifications. University's Representative will review the Preliminary Contract Schedule with

CM/Contractor within the time limit required by the Specifications, or, if no such time period is specified, within a reasonable period of time.

3.9.2 CM/Contractor shall submit a Contract Schedule and updated Contract Schedules to University's Representative in the form and within the time limits required by the Specifications and acceptable to University's Representative. University's Representative will determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Specifications, or if no such time period is specified, within a reasonable period of time. If University's Representative deems the Contract Schedule or updated Contract Schedule unacceptable, it shall specify in writing to CM/Contractor the basis for its objection.

3.9.3 The Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time and/or Phase 2 Time. Schedules showing the Work completed in less than the Contract Time and/or Phase 2 Time may be acceptable if judged by University's Representative to be practical. Schedules showing the Work completed beyond the Contract Time may be submitted under the following circumstances:

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

University's Representative will timely review the updated Contract Schedule or Fragnet Schedule submitted by CM/Contractor. If University's Representative determines that additional supporting data are necessary to fully evaluate the updated Contract Schedule or Fragnet Schedule, University's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. University's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the updated Contract Schedule or Fragnet Schedule or the deadline for furnishing such additional supporting data. Failure of University's Representative to render a decision by the applicable deadline will be deemed a decision denying approval of the updated Contract Schedule or Fragnet Schedule. Acceptance of any schedule showing completion beyond the Contract Time by University's Representative shall not change the Contract Time and/or Phase 2 Time and is without prejudice to any right of the University. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by CM/Contractor under Article 5 and Article 6 of the Agreement and in the determination of any delay under Article 8 of the General Conditions.

3.9.4 If a schedule showing the Work completed in less than the Contract Time and/or Phase 2 Time is accepted, CM/Contractor shall not be entitled to extensions of the then current Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the then current Contract Time.

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

3.9.6 The Preliminary Contract Schedule, Contract Schedule, and the Updated Contract Schedules shall meet the following requirements:

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

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

3.9.7 CM/Contractor shall plan, develop, supervise, control, and coordinate the performance of the Construction Work so that its progress and the sequence and timing of Construction Work will permit its completion within the Contract Time, any Contract milestones and any Contract phases.

3.9.8 In preparing the Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules, CM/Contractor shall obtain such information and data from Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the work and shall provide such information and data to the University's Representative upon request. CM/Contractor shall continuously obtain from Subcontractors information and data about the planning for and progress of the Construction Work and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the Construction Work and the delivery of equipment.

3.9.9 CM/Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. CM/Contractor shall cooperate with University's Representative in the development of the Contract Schedule and updated Contract Schedules.

3.9.10 University's Representative's acceptance of or its review comments about any schedule or scheduling data shall not relieve CM/Contractor from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule to University's Representative or University nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule.

3.9.11 Failure of University's Representative to discover errors or omissions in schedules that it has reviewed, or to inform CM/Contractor that CM/Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve CM/Contractor from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

### **3.10 AS-BUILT DOCUMENTS**

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

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

3.11.1 CM/Contractor shall maintain the following at the Project site:

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

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

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

3.12.1 Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

### **3.14 CUTTING, FITTING, AND PATCHING**

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

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

### **3.15 ACCESS TO CONSTRUCTION WORK**

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

### **3.16 ROYALTIES AND PATENTS**

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

### **3.17 DIFFERING SITE CONDITIONS**

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

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

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

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

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

### **3.18 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS**

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

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

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

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

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

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

### **3.19 HAZARDOUS MATERIALS**

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

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

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

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

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

- .1 Claims, damages, losses or expenses arising from the breach of contract, negligence or willful misconduct of CM/Contractor, its suppliers, its Subcontractors of all tiers and/or any persons or entities working under CM/Contractor; and
- .2 Claims, damages, losses or expenses arising from a Hazardous Material subject to Article 3.19.2.

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

### **3.20 INFORMATION AVAILABLE TO BIDDERS**

3.20.1 Any information provided pursuant to Information Available to Bidders is subject to the following provisions:

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

### **3.21 LIABILITY FOR AND REPAIR OF DAMAGED CONSTRUCTION WORK**

3.21.1 CM/Contractor shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to University's acceptance of the Project as fully completed except that CM/Contractor

shall not be liable for earthquake in excess of magnitude 3.5 on the Richter Scale, tidal wave, or flood, provided that the damages or losses were not caused in whole or in part by the negligent acts or omissions of CM/Contractor, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, "flood" shall have the same meaning as in the builder's risk property insurance.

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

### 3.22 INDEMNIFICATION

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

- .1 The failure of CM/Contractor to perform its obligations under the Contract.
- .2 The inaccuracy of any representation or warranty by CM/Contractor given in accordance with or contained in the Contract Documents.
- .3 Any claim of damage or loss by any Subcontractor against University arising out of any alleged act or omission of CM/Contractor or any other Subcontractor, or anyone directly or indirectly employed by CM/Contractor or any Subcontractor.
- .4 Any claim of damage or loss resulting from Hazardous Materials introduced, discharged, or disturbed by CM/Contractor as required per Article 3.19.6.

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

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

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

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

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

**3.23 BIDDING**

3.23.1 CM/Contractor is responsible as part of Pre-Construction Services, to competitively bid all work not performed by the CM/Contractor in accordance with the applicable provisions of the California Public Contract Code and University Policy. As such, CM/Contractor shall:

- .1 Provide public notice of the availability of work to be subcontracted in accordance with Section 10500 et seq. of the Public Contract Code.
- .2 The contents of the notice shall state the time and place for receiving and opening of sealed bids and general description of the work.
- .3 As authorized by the University, establish reasonable prequalification criteria and standards which are consistent with the competitive bidding laws.
- .4 Provide that the subcontracted work be awarded to the lowest responsive and responsible bidder, subject to University's right, in its sole discretion, to reject all bids and require CM/Contractor to re-bid any subcontract Bid Package.
- .5 Receive, open, and analyze for compliance with competitive bidding procedures, the bids received, other than for self-performed work, for Bid Package Contracts.
- .6 Provide University with a Bid Package Certification Form, as contained in the Exhibits, certifying to the University that the CM/Contractor has followed the procedures of this section and that the CM/Contractor has determined that the lowest bidder is both responsible and responsive. Additionally, upon submittal of the Bid Package Certification Form for the final Bid Package as shown in the Contract Schedule, CM/Contractor shall certify to the University on the Bid Package Certification that all Construction Work, previously approved by the University for insertion into Bid Packages, has been incorporated into the Contract, whether by the final Bid Package or preceding Bid Packages. CM/Contractor shall bear the cost any such Construction Work not incorporated in the final Bid Package or preceding Bid Packages.
- .7 Incorporate requirements related to bid protest procedures, pursuant to University Policy, and comply with the procedures in Bid Protest Procedure Exhibit.

3.23.2 University will conduct bidding for any Bid Package when the CM/Contractor, a company CM/Contractor has a financial interest in, or a parent company of CM/Contractor, intends to submit a bid to self-perform the work of the Bid Package.

3.23.3 CM/Contractor, a company CM/Contractor has a financial interest in, or a parent company of CM/Contractor will be permitted to submit a bid to self-perform the work of a Bid Package if:

- .1 The categories of work to be bid are listed in the Supplementary Conditions, and
- .2 CM/Contractor has notified University's Representative in writing within the time period specified in the Supplementary Conditions of such intent.

**ARTICLE 4****ADMINISTRATION OF THE CONTRACT****4.1 ADMINISTRATION OF THE CONTRACT BY UNIVERSITY'S REPRESENTATIVE**

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

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

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

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

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

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

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

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

## **4.2 CM/CONTRACTOR CHANGE ORDER REQUESTS**

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

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

- .1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2; and
- .2 If requested, timely submission of additional informational requested by the University's Representative pursuant to Article 4.2.3.3.

4.2.3 Change Order Request.

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

- .1 The Change Order Request includes compensation sought by a Subcontractor; AND
- .2 The CM/Contractor requests in writing to the University's Representative, within the 7-day time period,

additional time to permit CM/Contractor to conduct an appropriate review of the Subcontractor Change Order Request, the time period for submission of the actual Change Order Request shall be extended by the number of days specified in writing by the University's Representative..

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

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

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

- .1 If CM/Contractor seeks an adjustment of the Contract Sum or other monetary relief, actual cost records for any changed or extra costs (including without limitation, payroll records, material and rental invoices and the like), shall be submitted by the deadline established by the University's Representative, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the University's Representative and/or representatives of the University's Representative.
- .2 If CM/Contractor seeks an adjustment of the Contract Time, written documentation demonstrating CM/Contractor's entitlement to a time extension under Article 8.4 of the General Conditions, which shall be submitted within 15 days of the date requested. If requested, CM/Contractor may submit a fragnet in support of its request for a time extension. The University may, but is not obligated to, grant a time extension on the basis of a fragnet alone which, by its nature, is not a complete schedule analysis. If deemed appropriate by University Representative, CM/Contractor shall submit a more detailed schedule analysis in support of its request for a time extension.
- .3 If CM/Contractor seeks an adjustment of the Contract Sum or other monetary relief for delay, written documentation demonstrating CM/Contractor's entitlement to such an adjustment under Article 7.3.9 of the General Conditions, which shall be submitted within 15 days of the date requested.
- .4 Any other information requested by the University's Representative for the purpose of evaluating the Change Order Request, which shall be submitted by the deadline established by the University's Representative.

4.2.4 University's Representative will make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. In the event the Change Order Request is submitted pursuant to Article 8.4.1 the University's Representative shall promptly review and accept or reject it within thirty (30) days. A final decision is any decision on a Change Order Request which states that it is final. If University's Representative issues a final decision denying a Change Order Request in whole or in part, CM/Contractor may contest the decision by filing a timely Claim under the procedures specified in Article 4.3 below.

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

### **4.3 CLAIMS**

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

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

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

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

4.3.3 A Claim must include the following:

- .1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5 of the General Conditions.
- .2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.
- .3 A certification, executed by CM/Contractor, that the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified.
- .4 A certification, executed by each Subcontractor claiming not less than 5% of the total monetary amount sought by the claim, that the subcontractor's portion of the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified.
- .5 A statement demonstrating that a Change Order Request was timely submitted as required by Article 4.2.3 above.
- .6 If a Cost Proposal or declaration was required by Article 4.2.3 above, a statement demonstrating that the Cost Proposal or the declaration was timely submitted as required by Article 4.2.3.
- .7 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:
  - .1 If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Article 7.3.2 of the General Conditions. An estimate of the costs must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a month during any periods costs are incurred. A cost record will be considered current if submitted within 30 days of the date the cost reflected in the record is incurred. At the request of the University's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged Extra Work on a daily basis). The cost breakdown must include an itemization of costs for i) labor including names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; ii) materials stored or incorporated in the work including invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information; and iii) itemization of machinery and equipment including make, model, hours of use, dates of use and equipment rental rates of any rented equipment.
  - .2 If the Claim involves an extension of the Contract Time, written documentation demonstrating the CM/Contractor's entitlement to a time extension under Article 8.4 of the General Conditions, including the specific dates for which a time extension is sought and the specific reasons for entitlement of a time extension.
  - .3 If the Claim involves an adjustment of the Contract Sum for delay, written documentation demonstrating the CM/Contractor's entitlement to such an adjustment under Article 7.3.9 of the General Conditions,

including but not limited to, a detailed time impact analysis of the Contract Schedule. The Contract Schedule must demonstrate CM/Contractor's entitlement to such an adjustment under Article 7.3.9.

#### **4.4 ASSERTION OF CLAIMS**

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

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

4.4.3 CM/Contractor shall submit a Claim in writing, together with all supporting data specified in Article 4.3.3 above, to University's Representative as soon as possible but not later than 30 days after the date the Claim arises under Article 4.3.2, provided that after written notification to the University's Representative within such time period, the time period for submission of the Claim shall be extended by the number of days specified in writing by the University's Representative where the Claim includes compensation sought by a Subcontractor and the CM/Contractor requests an extension of time to permit it to discharge its responsibilities to conduct an appropriate review of the Subcontractor claim..

4.4.4 Strict compliance with the requirements of Articles 4.2, 4.3, and 4.4 of the General Conditions are conditions precedent to CM/Contractor's right to arbitrate or litigate a Claim. CM/Contractor specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with Articles 4.2, 4.3, and 4.4. The failure of CM/Contractor to strictly comply with the requirements of Articles 4.2, 4.3 and 4.4 constitutes a failure by CM/Contractor to exhaust its administrative remedies with the University, thereby denying any court or arbitration panel of jurisdiction to adjudicate the Claim.

#### **4.5 DECISION OF UNIVERSITY'S REPRESENTATIVE ON CLAIMS**

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

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

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

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

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

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

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

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

#### **4.6 MEDIATION**

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

#### **4.7 ARBITRATION**

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

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

- .1 Civil discovery shall be permitted for the production of documents. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
- .2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University join in and be bound by the Arbitration. University's Representative and University's consultants will have the same rights in any arbitration proceeding as are afforded by the AAA rules to CM/Contractor and University.
- .3 CM/Contractor's sureties shall be bound by any arbitration award and may join in any arbitration proceeding.
- .4 Except as provided in Articles 4.7.2.2 and 4.7.2.3 above, no Subcontractor or other person shall have a right or obligation to join in or be a party to any arbitration proceeding provided for in this Article 4 either directly, by joinder, by consolidation or actions, by counterclaim or cross-claim, or otherwise without the express written consent of University, CM/Contractor, and the joining party.
- .5 If more than one demand for arbitration is made by a party with respect to Claims referred to University's Representative, all such Claims shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
- .6 If total Claims are less than \$50,000, AAA expedited procedures as modified by this Article 4 shall apply. If total Claims are between \$50,000 and \$100,000, they shall be heard by a single arbitrator who shall be an attorney. If total Claims are in excess of \$100,000 and are submitted to arbitration, either by agreement or by failure to elect litigation, the controversy shall be heard by a panel of three arbitrators, one of which shall be an attorney.
- .7 No arbitrator shall be appointed and no discovery may be commenced prior to Final Completion unless University and CM/Contractor otherwise agree.

- .8 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California. AAA shall not submit to any arbitrator any matter concerning the arbitrability of the dispute if the arbitrability is contested.
- .9 If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 7 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.

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

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

#### **4.8 WAIVER**

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

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

### **ARTICLE 5**

#### **SUBCONTRACTORS**

##### **5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE CONSTRUCTION WORK**

5.1.1 Unless otherwise stated in the Contract Documents, CM/Contractor shall submit in writing on the CM/Contractor Expanded List of Subcontractors, prior to entering into subcontract agreements, the names and addresses of all Subcontractors proposed for the Construction Work that were not previously listed in CM/Contractor's Bid. CM/Contractor shall submit an updated CM/Contractor Expanded List of Subcontractors, listing all additional subcontractors resulting from Bid Package(s) with its Bid Package Certification.

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

5.1.3 In accordance with the Subletting and Subcontracting Fair Practices Act, nothing herein shall be deemed to entitle CM/Contractor, without the approval of University, to substitute other subcontractors for those named in current University approved CM/Contractor Expanded List of Subcontractors and, except with such approval, no such substitution shall be made.

5.1.4 Except as hereinafter provided, any increase in the cost of the Construction Work resulting from the replacement or substitution of a Subcontractor, as required by University or University's Representative pursuant to this Article 5.1 shall be borne solely by CM/Contractor and CM/Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution.

##### **5.2 SUBCONTRACTUAL RELATIONS**

5.2.1 Any part of the Construction Work performed for CM/Contractor by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Construction Work to be performed by the Subcontractor, to be bound to CM/Contractor by the terms of the Contract Documents, to assume toward

CM/Contractor all the obligations and responsibilities which CM/Contractor assumes towards University by the Contract Documents, and to perform such portion of the Construction Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of University under the Contract Documents, with respect to the Construction Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. CM/Contractor shall cause each such subcontract to expressly include the following requirements:

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

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

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

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

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

## **ARTICLE 6**

### **CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS**

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

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

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

#### **6.2 MUTUAL RESPONSIBILITY**

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

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

### **6.3 UNIVERSITY'S RIGHT TO CLEAN UP**

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

## **ARTICLE 7** **CHANGES IN THE WORK**

### **7.1 CHANGES**

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

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

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

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

### **7.2 DEFINITIONS**

7.2.1 A Change Order is a Contract Document ( as shown in the Exhibits) which has been signed by both University and CM/Contractor, and states their agreement, as applicable, to the following:

- .1 A change in the Work, if any.
- .2 The amount of an adjustment of the Contract Sum, if any.
- .3 The amount of an adjustment of the Contract Time, if any.
- .4

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

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

### **7.3 CHANGE ORDER PROCEDURES**

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

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

7.3.2 The term "Cost of Extra Work" as used in this Article 7.3 shall mean actual costs incurred or to be incurred by CM/Contractor and each Subcontractor regardless of tier involved, to the extent not otherwise disallowed under Article 7.3.3, and shall be limited to the following (to the extent the CM/Contractor demonstrates that the costs are both reasonable and actually incurred, if such costs have been incurred):

- .1 Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .3 Overtime wages or salaries, specifically authorized in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of the performance of the Extra Work.
- .5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work as approved by University's Representative. Such costs shall be charged at the lowest price available to the CM/Contractor but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to University and CM/Contractor shall make provisions so that they may be obtained.
- .6 Sales tax on the cost of materials and consumable items, which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.
- .7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by University's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current Equipment Rental Rates published by the California Department of Transportation for the area in which the work is performed. Such rental rates are found at <http://www.dot.ca.gov/hq/construc/equipmnt.html>. CM/Contractor shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.
- .8 Additional costs of royalties and permits due to the performance of the Extra Work.
- .9 The cost for Insurance and Bonds shall not exceed 2% of items .1 through .8 above.

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

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

- .1 Superintendent(s)
- .2 Assistant Superintendent(s)
- .3 Project Engineer(s)
- .4 Project Manager(s)
- .5 Scheduler(s)
- .6 Estimator(s)
- .7 Small tools (Replacement value does not exceed \$300)

- .8 Office expenses including staff, materials and supplies
- .9 On-site or off-site trailer and storage rental and expenses
- .12 Site fencing
- .13 Utilities including gas, electric, sewer, water, telephone, telefax, copier equipment
- .14 Data processing personnel and equipment
- .15 Federal, state, or local business income and franchise taxes
- .16 Overhead and Profit
- .17 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2 above
- .18 Costs and expenses of any kind or item specifically and expressly included in definition of CM/Contractor Base Fee

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

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

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

- .1 Where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices to the quantities of the items involved.
- .2 Where Unit Prices are not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to Article 7.3.1 above.
- .3 Where University and CM/Contractor cannot agree upon a lump sum, by the Cost of Extra Work plus CM/Contractor Fee applicable to such Extra Work.
- .4 The CM/Contractor shall not be entitled to any CM/Contractor Fee under any of the foregoing provisions, except for the fees for subcontractors of any tier, if the Contract Sum is then below Maximum Anticipated Contract Value.

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

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

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

7.3.8 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a CM/Contractor Fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a CM/Contractor Fee will be allowed only on the difference between the two amounts, subject to limitations in Article 7.3.5.5 above.

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

- .1 Condition Number One: The delay results in an extension of the Contract Time pursuant to Article 8.4.1 of the General Conditions.
- .2 Condition Number Two: The delay is caused solely by one or more of the following:
  - .1 An error or omission in the Contract Documents; or
  - .2 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the CM/Contractor; or
  - .3 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the CM/Contractor; or
  - .4 The failure of the University (including the University acting through its consultants, Design Professionals, Separate Contractors or the University's Representative) to timely perform any Contract obligation where the failure to so perform is not the result of any default or misconduct of the CM/Contractor; or
  - .5 The decision of the University to direct the rejection of all bids for a given Bid Package(s) and the rebidding of same, if such rejection is not due to the failure of the CM/Contractor to fulfill its obligation to provide a Project Construction Cost Estimate per the requirements of the Agreement; or
  - .6 A materially differing site condition pursuant to Article 3.17 of the General Conditions.
- .3 Condition Number Three: The delay is not concurrent with a delay caused by an event other than those listed in Article 7.3.9.2.

7.3.10 For each day of delay that meets all three conditions prescribed in Article 7.3.9 above the Contract Sum will be adjusted by the daily rate included in the Agreement and specifically identified as the rate to be paid to CM/Contractor for Compensable Delays. Pursuant to Article 9.7.4 of the General Conditions, said daily rate shall not apply to delays occurring after Substantial Completion. Said daily rate shall not apply to Pre-Construction Services under Phase 1.

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

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

## **7.4 FIELD ORDERS**

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

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

- .2 If the CM/Contractor asserts that the change in the Work encompassed by the Field Order may entitle CM/Contractor to an adjustment of Contract Sum or Contract Time in excess of the University's estimate, in order not to be bound by University's estimate CM/Contractor must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of CM/Contractor's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time, in excess of the University's estimate, arising from performance of the Work described in the Field Order.

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

## **7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK**

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

## **7.6 WAIVER**

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

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

## **ARTICLE 8**

### **CONTRACT TIME**

## **8.1 COMMENCEMENT OF THE WORK**

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

## **8.2 PROGRESS AND COMPLETION**

8.2.1 By signing the Agreement:

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

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

8.2.3 CM/Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Work within the Contract Time. If University's Representative determines and notifies CM/Contractor that CM/Contractor's progress is such that CM/Contractor will not achieve Final Completion of the Work within the Contract Time, CM/Contractor shall immediately and at no additional cost to University, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the Work is fully completed within the Contract Time. Upon receipt of such notice from University's representative, CM/Contractor shall immediately notify University's Representative of all measures to be taken to ensure Final Completion of the Work within the Contract Time. CM/Contractor shall reimburse

University for any extra costs or expenses (including the reasonable value of any services provided by University's employees) incurred by University as the result of such measures.

### 8.3 DELAY

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

- .1 To bear the risk of delays to the Work; and
- .2 That CM/Contractor's bid for the Contract was made with full knowledge of this risk.

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

### 8.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

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

- .1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work beyond the Contract Time. Under this Article 8.4.1.2, if the Contract Schedule shows Final Completion of the Work before expiration of the Contract Time, a delay is critical if and only to the extent the delay pushes Final Completion of the Work to a date that is beyond the Contract Time.
- .2 Condition Number Two: Within 7 days of the date the CM/Contractor discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project, (even if the CM/Contractor has not yet been delayed when the CM/Contractor discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay) the CM/Contractor submits both a timely and complete Change Order Request that meets the requirements of Article 4.2 of the General Conditions.
- .3 Condition Number Three: The delay is not caused by:
  - .1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.17 of the General Conditions; or
  - .2 The financial inability, misconduct or default of the CM/Contractor, a Subcontractor or supplier; or
  - .3 The unavailability of materials or parts.
- .4 Condition Number Four: The delay is caused by:
  - .1 Fire; or
  - .2 Strikes, boycotts, or like obstructive actions by labor organizations; or
  - .3 Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or
  - .4 A materially differing site condition pursuant to Article 3.17 of the General Conditions; or
  - .5 An error or omission in the Contract Documents; or
  - .6 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the CM/Contractor; or
  - .7 The University's decision to suspend the Construction Work, where such decision is not the result of any default or misconduct of the CM/Contractor; or
  - .8 The failure of the University (including the University acting through its consultants, Design Professionals, Separate Contractors or the University's representative) to perform any Contract obligation unless such failure is due to CM/Contractor's default or misconduct; or

.9 "Adverse weather," but only for such days of adverse weather, or on-site conditions caused by adverse weather, that are in excess of the number of days specified in the Supplementary Conditions. In order for a day to be considered a day of adverse weather for the purpose of determining whether CM/Contractor is entitled to an adjustment in Contract Time, both of the following conditions must be met:

- .1 The day must be a day in which, as a result of adverse weather, less than one half day of critical path work is performed by CM/Contractor; and
- .2 The day must be identified in the Contract Schedule as a scheduled work day.

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

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

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

## **8.5 COMPENSATION FOR DELAY**

8.5.1 To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in Article 7 of the General Conditions. Such adjustment shall, to the maximum extent allowed by law, constitute payment in full for all delay related costs (including costs for disruption, interruption and hindrance, general conditions, on and off-site overhead and profit) of CM/Contractor, its Suppliers and Subcontractors of all tiers and all persons and entities working under or claiming through CM/Contractor in connection with the Project.

8.5.2 By signing the Agreement, the parties agree that the University is buying the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

- .1 To order changes in the Work, regardless of the extent and number of changes, including without limitation:
  - .1 Changes to correct errors or omissions, if any, in the Contract Documents.
  - .2 Changes resulting from the University's decision to change the scope of the Work subsequent to execution of the Contract.
  - .3 Changes due to unforeseen conditions.
- .2 To suspend the Work or any part thereof.
- .3 To delay the Work, including without limitation, delays resulting from the failure of the University or the University's Representative to timely perform any Contract obligation and delays for University's convenience.

## **8.6 WAIVER**

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

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

## **ARTICLE 9**

## PAYMENTS AND COMPLETION

### 9.1 COST BREAKDOWN

9.1.1 Within 10 days after receipt of the Notice of Intent, CM/Contractor shall submit to University's Representative a Cost Breakdown of the Contract Sum in the form contained in the Exhibits. The Cost Breakdown shall itemize as separate line items the cost of each Work Activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the University's Representative, shall become the basis for determining the cost of Work performed for CM/Contractor's Applications for Payment. The Cost Breakdown shall be amended and updated after each Bid Package is bid and shall be submitted for University approval by the University's Representative. Such approval shall be obtained prior to University issuing a Contract Amendment incorporating the Bid Package into the Contract.

### 9.2 PROGRESS PAYMENT

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

- .1 Cost of the Construction Work in permanent place as of the date of the CM/Contractor's Application for Payment.
- .2 Plus cost of materials not yet incorporated in the Construction Work, subject to Article 9.3.5 below.
- .3 Less amounts previously paid.
- .4 For Pre-Construction Services, the University shall pay CM/Contractor monthly a prorated amount, based on the Contract Sum for Phase 1.

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

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

### 9.3 APPLICATION FOR PAYMENT

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

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

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

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

9.3.4 CM/Contractor warrants that, upon submittal of an Application for Payment, all Work, for which Certificates for Payment have been previously issued and payment has been received from University, shall be free and clear of all claims,

stop notices, security interests, and encumbrances in favor of CM/Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

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

#### **9.4 CERTIFICATE FOR PAYMENT**

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

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

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

- .1 Defective Work not remedied.
- .2 Third-party claims against CM/Contractor or University arising from the acts or omissions of CM/Contractor or Subcontractors.
- .3 Stop notices.
- .4 Failure of CM/Contractor to make timely payments due Subcontractors for material or labor.
- .5 A reasonable doubt that the Construction Work can be completed for the balance of the Contract Sum then unpaid.
- .6 Damage to University or Separate Contractor for which CM/Contractor is responsible.
- .7 Reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance of the Contract Sum would not be adequate to cover University's damages for the anticipated delay.
- .8 Failure of CM/Contractor to maintain and update as-built documents.
- .9 Failure of CM/Contractor to submit schedules or their updates as required by the Contract Documents.
- .10 Failure to provide conditional or unconditional releases from any Subcontractor or supplier, if such waiver(s) have been requested by University's Representative.
- .11 Performance of Construction Work by CM/Contractor without properly processed Shop Drawings.
- .11 Liquidated damages assessed in accordance with Article 6 of the Agreement.
- .12 Failure to provide updated Reports of Subcontractor Information and Self-Certifications, as applicable.
- .13 Failure to provide a Final Distribution of Contract Dollars with final Application for Payment.
- .14 Any other failure of CM/Contractor to perform its obligations under the Contract Documents.

9.4.4 Subject to the withholding provisions of Subparagraph 9.4.3, University will pay CM/Contractor the amount set forth in the Certificate for Payment no later than 10 days after the issuance of the Certificate for Payment.

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

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

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

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

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

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

## **9.6 BENEFICIAL OCCUPANCY**

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

- .1 University's Representative will make an inspection of the portion of the Project to be beneficially occupied and prepare a list of items to be completed or corrected prior to Final Completion. Prior to Beneficial Occupancy, University will issue a Certificate of Beneficial Occupancy on University's form.
- .2 Beneficial Occupancy by University shall not be construed by CM/Contractor as an acceptance by University of that portion of the Construction Work which is to be occupied.
- .3 Beneficial Occupancy by University shall not constitute a waiver of existing claims of University or CM/Contractor against each other.
- .4 CM/Contractor shall provide, in the areas beneficially occupied and on a 24 hour and 7 day week basis as required, utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with CM/Contractor while the equipment is so operated. CM/Contractor shall submit to University an itemized list of each piece of equipment so operated with the date operation commences.
- .5 The Guarantee to Repair Periods, as defined in Article 12.2 of the General Conditions, will commence upon the occupancy date stated in the Certificate of Beneficial Occupancy except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which University has not taken Beneficial Occupancy or issued a Certificate of Substantial Completion shall not commence until the University

has taken Beneficial Occupancy for that portion of the Work or has issued a Certificate of Substantial Completion with respect to the entire Project. .6 University will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

- .7 University will pay all utility costs which arise out of the Beneficial Occupancy.
- .8 CM/Contractor shall not be responsible for providing security in areas beneficially occupied.
- .9 University will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of CM/Contractor's remaining Construction Work.
- .10 CM/Contractor shall not be required to repair damage caused by University in its Beneficial Occupancy.
- .11 Except as provided in this Article 9.6, there shall be no added cost to University due to Beneficial Occupancy.
- .12 CM/Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

## **9.7 SUBSTANTIAL COMPLETION**

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

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

9.7.3 When University's Representative determines that the Construction Work is substantially complete, University's Representative will arrange for inspection by University's Building Official and other officials, as appropriate, for the purpose of issuing a Certificate of Occupancy. After a Certificate of Occupancy has been issued by the University's Building Official, the University's Representative will prepare a Certificate of Substantial Completion on University's form as contained in the Exhibits, which, when signed by University, shall establish the date of Substantial Completion and the responsibilities of University and CM/Contractor for security, maintenance, utilities, insurance, and damage to the Construction Work. The University's Representative will prepare and furnish to the CM/Contractor a comprehensive "punch list" of items to be completed or corrected prior to Final Completion.

9.7.4 Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee to Repair Period for the Construction Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Construction Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

- .1 Are not operational (equipment or systems shall not be considered operational if they cannot be used to provide the intended service; or
- .2 Are not accepted by the University.

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

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

## **9.8 FINAL COMPLETION, FINAL PAYMENT, AND RELEASE OF RETENTION**

9.8.1 Upon receipt of notice from CM/Contractor that the Work is ready for final inspection, University's Representative will make such inspection. Final Completion shall be when University's Representative determines that the Work is fully completed

and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy has been issued by the University's Building Official. University will file a Notice of Completion within 10 days after Final Completion. After receipt of the final Application For Payment, if University's Representative determines that Final Completion has occurred, University's Representative will issue the final Certificate For Payment.

9.8.2 Final payment and retention shall be released to CM/Contractor, as set forth in Article 9.8.3, after:

- .1 CM/Contractor submits the final Application For Payment and all submittals required in accordance with Article 9.3;
- .2 CM/Contractor submits all guarantees and warranties procured by CM/Contractor from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents;
- .3 CM/Contractor submits the Final Distribution of Contract Dollars in the form contained in the Exhibits; and
- .4 University's Representative issues the final Certificate For Payment.

At its sole discretion, after Final Completion, University may waive the requirement that CM/Contractor submit a final Application For Payment before making final payment and/or release of retention to CM/Contractor.

9.8.3 Final payment shall be paid not more than 10 days after University's Representative issues the final Certificate For Payment. Retention shall be released to CM/Contractor 35 days after the filing of the Notice of Completion.

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

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

#### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

#### **10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

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

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

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

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

### **10.3 EMERGENCIES**

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

## **ARTICLE 11**

### **INSURANCE AND BONDS**

#### **11.1 CM/CONTRACTOR'S INSURANCE**

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

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

- .1 COMMERCIAL FORM GENERAL LIABILITY INSURANCE covering all Work done by or on behalf of CM/Contractor and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of CM/Contractor by these Contract Documents. If the insurance under this Article 11.1.2.1 is written on a claims-made form, coverage shall continue for a period of not less than 3 years following termination of this Contract. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Contract.
- .2 BUSINESS AUTOMOBILE LIABILITY INSURANCE on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of CM/Contractor and providing insurance for bodily injury and property damage.
- .3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE as required by Federal and State of California law. CM/Contractor shall also require all of its Subcontractors to maintain this insurance coverage.
- .4 PROFESSIONAL LIABILITY INSURANCE. If the insurance under this Article 11.1.2.4 is written on a claims-made form, coverage shall continue for a period of not less than 3 years following termination of this Contract. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Contract.

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

11.1.4 Certificates of Insurance, as evidence of the insurance required by these Contract Documents and on the form contained in the Exhibits, shall be submitted by CM/Contractor to University. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to University, in accordance with policy provisions.

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

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

- .1 1 University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Contractor in writing, will be included as additional insureds on Contractor's general liability policy for and relating to the Work to be performed by Contractor and Subcontractors. Contractor's general liability insurance policy shall name University as an additional insured pursuant to additional insured endorsement CG2010 (11/85) or a combination of both CG 2010 (10/01) and CG 2037 (10/01). This requirement shall not apply to Worker's Compensation and Employer's Liability Insurance..2 A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurers' liability."
- .3 A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policies referred to herein by one or more insureds hereunder for which another insured hereunder may be liable, then the policies shall cover such insureds against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurers' limits of liability as set forth in the insuring agreements."
- .4 University, University's consultants, University's Representative, and University's Representative's consultants will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- .5 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by University, University's consultants, University's Representative, and University's Representative's consultants. This provision, however, shall only apply as per the stipulations of Article 11.1.6.1.
- .6 The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.

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

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

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

11.1.10 If insurance company refuses to use the Certificate of Insurance Exhibit, it must attach a Certificate of Insurance evidencing compliance with this Article 11 and Special Provisions 1 through 4 on Certificate of Insurance Exhibit.

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

## 11.2 BUILDER'S RISK PROPERTY INSURANCE

11.2.1 If and only if the Anticipated Contract Value exceeds \$200,000 at the time of award, University will provide its standard builder's risk property insurance, subject to the deductibles, terms and conditions, exclusions, and limitations as contained in the provisions of the policy. A copy of the University's standard builder's risk property insurance policy is available at the University's Facility office. In addition, a summary of the provisions of the policy is included as an Exhibit to the Contract. CM/Contractor agrees that the University's provision of its standard builder's risk property insurance policy meets the University's obligation to provide builder's risk property insurance under the Contract and, in the event of a conflict between the provisions of the policy and any summary or description of the provisions contained herein or otherwise, the provisions of the policy shall control and shall be conclusively presumed to fulfill the University's obligation to provide such insurance. The proceeds under such insurance policies taken out by University insuring the Work and materials will be payable to University and CM/Contractor as their respective interests, from time to time, may appear. CM/Contractor shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Article 11.2 shall be construed to relieve CM/Contractor of full responsibility for loss of or damage to materials not incorporated in the Work, and for CM/Contractor's tools and equipment used to perform the Work, whether on the Project site or elsewhere, or to relieve CM/Contractor of its responsibilities referred to under this Article 11. "Materials incorporated in the Work," as used in this Article 11.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Project site.

11.2.2 Insurance policies referred to under this Article 11.2 shall:

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

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

### **11.3 PERFORMANCE BOND AND PAYMENT BOND**

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

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Anticipated Contract Value less the Phase 1 Contract Sum. If thereafter the Contract Sum exceeds the Anticipated Contract Value less the Phase 1 Contract Sum, CM/Contractor shall furnish supplemental Payment and Performance Bonds in an amount equal to any increase in the Contract Sum above the Anticipated Contract Value.

11.3.3 The Payment Bond and Performance Bond shall be in effect prior to the date the Contract Amendment for Phase 2 is signed by University. The CM/Contractor shall provide Payment Bond and Performance Bond within ten (10) days of Notice of Intent.

11.3.4 CM/Contractor shall promptly furnish such additional security as may be required by University to protect its interests and those interests of persons or firms supplying labor or materials to the Construction Work.

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

11.3.6 The premiums for the Payment Bond and Performance Bond shall be paid by CM/Contractor.

## **ARTICLE 12**

### **UNCOVERING AND CORRECTION OF WORK**

#### **12.1 UNCOVERING OF WORK**

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

12.1.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which University's Representative has not specifically requested to observe prior to its

being covered, University's Representative may request to see such Work and it shall be uncovered and replaced by CM/Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, CM/Contractor shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

## 12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

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

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

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

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

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

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

12.2.6 If CM/Contractor fails to pay the costs of such removal and storage as required by Articles 12.2.4 and 12.2.5 above within 10 days after written demand, University may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. CM/Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which CM/Contractor is liable to University, including compensation for University's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which CM/Contractor is liable to University, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due CM/Contractor or the remaining payments are insufficient to cover such deficiency, CM/Contractor shall promptly pay the difference to University.

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

for Defective Work or the time within which proceedings may be commenced to enforce CM/Contractor's obligations under the Contract Documents.

## ARTICLE 13

### TERMINATION OR SUSPENSION OF THE CONTRACT

#### 13.1 TERMINATION BY CM/CONTRACTOR

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

- .1 Provided that University has not commenced reasonable action to remove any order of a court within the 90 day period, the he Construction Work is stopped for 90 consecutive days, through no act or fault of CM/Contractor, any Subcontractor, or any employee or agent of CM/Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
- .2 University fails to perform any material obligation under the Contract Documents and fails to cure such default within 30 days, or University has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from CM/Contractor stating the nature of such default.
- .3 Repeated suspensions by University, other than such suspensions as are agreed to by CM/Contractor under Article 13.3 below, which constitute in the aggregate more than 20% of the Contract Time.

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

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

#### 13.2 TERMINATION BY UNIVERSITY FOR CAUSE

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

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

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

- .1 CM/Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
- .2 CM/Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from University.
- .3 CM/Contractor disregards Applicable Code Requirements.

- .4 CM/Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.
- .5 CM/Contractor is in default of any other material obligation under the Contract Documents.
- .6 CM/Contractor persistently or materially fails to comply with applicable safety requirements.

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

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

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

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

### **13.3 SUSPENSION BY UNIVERSITY FOR CONVENIENCE**

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

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

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

### **13.4 TERMINATION BY UNIVERSITY FOR CONVENIENCE**

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

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

- .1 Immediately discontinue the Work to the extent specified in the notice.

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

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

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

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

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

**ARTICLE 14**  
**STATUTORY AND OTHER REQUIREMENTS**

**14.1 PATIENT HEALTH INFORMATION**

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

**14.2 NONDISCRIMINATION**

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

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

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

- .1 CM/Contractor shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). CM/Contractor will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CM/Contractor also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The CM/Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the CM/Contractor, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.
- .2 CM/Contractor and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by University or any appropriate agency of the State of California designated by University for the purposes of investigation to ascertain compliance with this Article 14.2. The outcome of the investigation may result in the following:

- .1 A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by University as (1) a basis for determining that CM/Contractor is not a "responsible bidder" as to future contracts for which such CM/Contractor may submit bids or (2) a basis for refusing to accept or consider the bids of CM/Contractor for future contracts.
- .2 University may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that CM/Contractor has violated the Fair Employment Practices Act and (2) issued an order under the State of California Government Code Section 12970 or obtained an injunction under Government Code Section 12973.
- .3 Upon receipt of such written notice from the Fair Employment Practices Commission, University may notify CM/Contractor that, unless it demonstrates to the satisfaction of University within a stated period that the violation has been corrected, CM/Contractor's bids on future projects will not be considered.
- .3 CM/Contractor agrees that, should University determine that CM/Contractor has not complied with this Article 14.2, CM/Contractor shall forfeit to University, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in Article 14.3 below for violation of prevailing wage rates. Such penalty amounts may be recovered from CM/Contractor; and University may deduct any such penalty amounts from the Contract Sum.
- .4 Nothing contained in this Article 14.2 shall be construed in any manner so as to prevent University from pursuing any other remedies that may be available at law.
- .5 CM/Contractor shall meet the following standards for compliance and provide University with satisfactory evidence of such compliance upon University's request, which shall be evaluated in each case by University:
  - .1 CM/Contractor shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
  - .2 CM/Contractor shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).
  - .3 CM/Contractor or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.
  - .4 CM/Contractor shall notify University of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.
- .6 CM/Contractor shall include the provisions of the foregoing Articles 14.2.3.2.1 through 14.2.3.2.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

### **14.3 PREVAILING WAGE RATES**

- 14.3.1 For purposes of this Article 14.3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.
- 14.3.2 CM/Contractor shall comply and shall ensure that all Subcontractors comply with Sections 1770, 1771, 1772, 1773, 1774, and 1775 of the State of California Labor Code.
- 14.3.3 The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. CM/Contractor shall post a copy of the general prevailing per diem wage rates at the job site. By this reference, such schedule is made part of the Contract Documents. CM/Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by CM/Contractor in the execution of the Work. CM/Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. CM/Contractor shall forfeit to University, as a penalty, not more than \$50 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by CM/Contractor or any Subcontractor. The amount

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

#### **14.4 PAYROLL RECORDS**

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

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

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

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

#### **14.5 APPRENTICES**

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

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

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

14.5.4 When CM/Contractor or Subcontractors employ workers in any apprenticeship craft or trade on the Construction Work, CM/Contractor or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving CM/Contractor or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the

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

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

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

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

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

#### **14.6 CONSTRUCTION WORK DAY**

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

### **ARTICLE 15**

#### **MISCELLANEOUS PROVISIONS**

##### **15.1 GOVERNING LAW**

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

##### **15.2 SUCCESSORS AND ASSIGNS**

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

##### **15.3 RIGHTS AND REMEDIES**

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

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

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

**15.4 SURVIVAL**

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

**15.5 COMPLETE AGREEMENT**

15.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Articles 7 and 16 of the General Conditions.

**15.6 SEVERABILITY OF PROVISIONS**

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

**15.7 UNIVERSITY'S RIGHT TO AUDIT**

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

**15.8 NOTICES**

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

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

15.8.2 Such notices and other communications in Article 15.8.1 above shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 15.8.

**15.9 TIME OF THE ESSENCE**

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

**15.10 MUTUAL DUTY TO MITIGATE**

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

**ARTICLE 16**  
**CONTRACT AMENDMENTS**

**16.1 GENERAL**

16.1.1 Contract Amendments shall be used to modify the Contract when either the University elects to exercise its Option for Phase 2, or to incorporate Construction Work from a University approved Bid Package. Contract Amendments will be issued by the University unilaterally and do not require the signature of the CM/Contractor.

**16.2 INCREASE IN PERFORMANCE AND PAYMENT BONDS**

16.2.1 The amount of the Payment and Performance Bonds shall be increased by CM/Contractor, as appropriate, pursuant to Article 11.3.2 of the General Conditions upon the University's issuance of a Contract Amendment. University shall withhold payment until increased Performance and Payment Bonds are received, if they are not received within ten (10) days of the Contract Amendment.

**16.3 OPTION**

16.3.1 When a Contract Amendment is issued to exercise the University's Option for Phase 2, it shall increase the Contract Sum by the amount of the Option Sum - Phase 2 and will extend the Contract Time as set forth in Article 5 of the Agreement. No other increase of the CM/Contractor Base Fee, cost of General Conditions Work, or any other cost of the Work shall be included in the Contract Amendment; all such cost shall be included in the CM/Contractor's Option Sum - Phase 2.

**16.4 BID PACKAGE(S)**

16.4.1 When a Contract Amendment is issued to incorporate the Work of a Bid Package, only the Contract Sum will be adjusted. Contract Time associated with Bid Packages shall be incorporated into the Contract when the University elects to exercise its Option for Phase 2. The Contract Sum will only be adjusted by the amount approved by the University in the Bid Package; no additional cost for CM/Contractor's Base Fee, General Conditions Work, or any other cost of the Work shall be included in the Contract Amendment unless and until the Contract Sum exceeds the Maximum Anticipated Contract Value; if the Contract Sum exceeds the Maximum Anticipated Contract Value, the Contract Sum will be adjusted by the amount approved by the University in the Bid Package plus 5% of the amount of the Bid Package that is in excess of the Maximum Anticipated Contract Value.

[End]