

CONTRACT GENERAL CONDITIONS FOR JOB ORDER CONTRACTS



THE CALIFORNIA STATE UNIVERSITY

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

www.calstate.edu/cpdc

Revised January 2023

**Contract General Conditions for
Job Order Contracts Revisions,
January 2023**

*Revisions from Previous Version of General Conditions in Content
Highlighted in Yellow*

Article No.	Revision Description
02.11 I	Add: "The Contractor shall comply with rules, regulations, ordinances, and statutes that apply to the California Disabled Veteran Business Enterprise Program as defined in Section 999 of the Military and Veterans Code"
02.11 I	Add: "In accordance with section 999.5 of the Military and Veterans Code, a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the maximum amount of twenty-five thousand dollars (\$25,000)."
2.11 IV	<p>Add: "IV. Closeout Documentation</p> <p>In accordance with section 999.5 of the Military and Veterans Code, upon completion of an awarded contract, the Contractor shall certify to the Trustees all the following in a final DVBE participation summary:</p> <ul style="list-style-type: none"> A. The total amount the Job Order. B. The name and address of the disabled veteran business enterprises that participated in the performance of the contract and the contract number. C. The amount and percentage of work the Contractor committed to provide to one or more disabled veteran business enterprises under the requirements of the contracts and the amount each disabled veteran business enterprise received from the Contractor. D. The actual DVBE participation dollar amount and percentage of the Job Order. <p>Contractor shall submit proof that all payments under the contract have been made to DVBEs. Proof shall be in the State approved form "unconditional waivers and release on final payment." The waivers shall indicate the amount of total payment each DVBE received on the project and shall include a notarized signature from the owner or delegated officer of the DVBE.</p> <p>In accordance with section 999.7 of the Military and Veterans Code, an amount of ten thousand dollars (\$10,000) must be withheld from final payment until the final participation summary and proofs of payment have been received. If the Contractor fails to comply with the certification requirement, after notice, shall be allowed to cure the defect. If after 30 calendar days from the date of notice, the Contractor cannot comply with the certification requirements, the Trustees must permanently deduct ten thousand dollars (\$10,000) from the final payment.</p>

Table of Contents

(Sections areclickable)

01.00	DEFINITIONS	1
02.00	BIDDING	5
02.01	License and Public Works Registration	5
02.02	Prequalification	5
02.03	Necessity for Careful Examination of Site and Contract Documents	6
02.04	Bidding Information	6
02.05	Bidding Documents	8
02.06	Bid Proposals	9
02.07	Competitive Bidding	10
02.08	Mistake in Bid	10
02.09	Failure to be a Responsible Bidder	10
02.10	Small Business Enterprise (SBE) Preference – Fire Percent Bid Advantage	11
02.11	Disabled Veteran Business Enterprise Participation Requirement	12
03.00	AWARD AND EXECUTION OF CONTRACT	14
03.01	Award of Contract	14
03.02	JOC Contractor Agreement Notice to Proceed and Contract Period	14
03.03	Return of Bidder's Security	14
03.04	Contract Bonds	14
03.05	Execution of Contract	15
03.06	Failure or Refusal to Execute Contract	15
04.00	CONDUCT OF THE WORK	15
04.01	Laws to be Observed - Generally	15
04.02	Laws to be Observed - Regarding Labor	16
04.03	Environmental Requirements	20
04.04	Substitution of Subcontractors	22
04.05	Delegation of Performance and Assignment of Money Earned	23
04.06	Insurance Requirements	23
04.07	Indemnification	26
04.08	Contractor's Responsibility for the Work	26
04.09	Payments by Contractor	29
04.10	Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.	29
04.11	Patented or Copyrighted Materials	29
04.12	Property Rights in Materials and Equipment	29
04.13	Taxes	29

04.14	Contract Time.....	30
04.15	Labor Force and Superintendent.....	31
04.16	Subsurface or Site Conditions Found Different.....	31
04.17	Verifying Dimensions	31
04.18	Meetings.....	32
04.19	Contractor's Relationship to Subcontractors.....	32
04.20	Character of Workers	32
04.21	Limitation of Construction Operations.....	33
04.22	Coordination with Other Work	33
04.23	Drawings Reflecting Actual Construction	33
04.24	Cleanup of Project and Site.....	33
04.25	Access to Work.....	33
04.26	Notice for Testing.....	33
04.27	Re-Examination of Work.....	33
04.28	Inspection of Work.....	34
04.29	Testing.....	34
04.30	Acceptance of Work.....	34
05.00	SCOPE AND PROCEDURE FOR JOB ORDER WORK	34
05.01	Pre-Construction Conference.....	34
05.02	General Scope of Work.....	34
05.03	Description of Work.....	34
05.04	Procedure for Initiating Job Order	35
05.05	Preparation of the Proposal.....	36
05.06	Review of the Job Order Price Proposal and Issuance of Job Order.....	42
05.07	Computer and Communications Equipment Requirements.....	42
05.08	Required Training.....	42
05.09	Job Order Contracting Software.....	42
05.10	Contractor's Detailed Schedule of Work.....	43
05.11	Stop Work Order.....	43
05.12	Unilateral Work Order	43
06.00	INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS.....	43
06.01	Interpretation of Contract Requirements.....	43
06.02	Issuance of Interpretations, Clarifications, Additional Instructions	44
06.03	Product and Reference Standards	45
06.04	Shop Drawings, Samples, Alternatives or Equals, Substitutions	45
06.05	Quality of Materials, Articles and Equipment.....	46
06.06	Testing Materials, Articles, Equipment and Work.....	46

- 06.07 Rejection..... 46
- 06.08 Responsibility of Quality..... 46
- 06.09 Accident Prevention..... 46
- 06.10 Protection of Work and Property..... 46
- 06.11 Construction Site Emergency..... 46
- 06.12 Failure to Comply with Provisions of Articles 06.09 - 06.11..... 47
- 06.13 Non-Performance Conditions..... 47
- 07.00 CHANGES IN THE WORK.....47**
- 07.01 Supplemental Job Orders..... 47
- 07.02 Emergency Changes..... 47
- 07.03 Time Extensions, Net Credit Changes, or Minor Additive Changes..... 47
- 08.00 CLAIMS AND DAMAGES.....48**
- 08.01 Claims..... 48
- 08.02 Delay in Completion - Liquidated Damages..... 50
- 08.03 Failure to Meet Terms of Contract..... 50
- 08.04 Third-Party Claims..... 51
- 08.05 Termination for Cause..... 51
- 09.00 PAYMENT AND COMPLETION51**
- 09.01 Acceptance..... 51
- 09.02 Partial Payments..... 51
- 09.03 Stop Payment Notices..... 52
- 09.04 Payment..... 52
- 09.05 Guarantee..... 52
- 09.06 Contractor Evaluation..... 52
- 10.00 MISCELLANEOUS.....53**
- 10.01 Governing Law..... 53
- 10.02 Successors and Assigns..... 53
- 10.03 Rights and Remedies..... 53
- 10.04 Waiver..... 53
- 10.05 Survival..... 53
- 10.06 Complete Agreement..... 53
- 10.07 Severability of Provisions..... 54
- 10.08 Notices..... 54
- 10.09 Counterparts..... 54
- 10.10 Failure of Contractor..... 54

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01.00 DEFINITIONS
CONTRACT GENERAL CONDITIONS FOR JOB ORDER CONTRACTS

01.00 DEFINITIONS

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

Addendum - A document issued by the University during the bidding period that modifies or supersedes portions of the Contract Documents.

Adjustment Factor - The Contractor's competitively bid price adjustment to the unit prices as published in the Construction Task Catalog. Contractors must bid three Adjustment Factors, one for Work to be accomplished during Normal Working Hours, one for Work to be performed during Other Than Normal Working hours and one for Work to be performed during Premium Working Hours. All Adjustment Factors are expressed as an increase or decrease from the published prices.

Agreement – A form executed by both the Contractor and the Trustees, which provides the Work will be done in accordance with the Contract Documents, as approved and on file with the Trustees and as incorporated into the Contract Documents by reference.

Architect - The person or organization, including the authorized representative thereof, commissioned by the University for the design of the Project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term 'Architect' shall mean the design professional so commissioned for the Project (if any).

Bid Date - The Day on which bid proposals for the Contract are opened.

Bidder - Any individual or business entity acting directly or through an authorized representative that submits a proposal for the Work.

Business Day – Calendar Day excluding Saturdays, Sundays, national holidays or state holidays; same as Working Day.

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

Change Order – See Supplemental Job Order.

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

Construction Administrator - The person delegated by the University to manage the construction phase of a Job Order.

Construction Inspector - The inspector on the Project Site who receives administrative direction from the University.

Construction Task Catalog - A comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price.

Contract - The Contract Documents which collectively represent the entire agreement between the University and the Contractor, and which supersede any prior negotiations, representations, or agreements either written or oral.

Contract Award Figure - The price as determined on the Contract award worksheet provided in the bid form.

Contract Documents - The Bid Proposal Form, Notice to Contractors, the Construction Task Catalog, Technical Specifications, Addenda, Agreement, Bonds, Contract General Conditions, Supplementary General Conditions, Special Conditions, Job Orders, Supplemental Job Orders, and any other documents so designated by the Trustees.

01.00 DEFINITIONS

Contractor - The individual, firm, or corporation, its successors and assigns, that enters into this Agreement with the Trustees.

Day – Unless otherwise indicated herein, Day is a Calendar Day.

Detailed Scope of Work - The complete description of services to be provided by the Contractor pursuant to an individual Job Order. The scope of Work may include a narrative description of the Work, partial design documents, or full design documents, depending on the complexity of the specific Project.

Directed - 'Directed,' 'required,' 'permitted,' 'ordered,' 'designated,' 'selected,' 'prescribed' or words of like import used in the specifications or in the Contract Documents to mean respectively the direction, requirement, permission, order, designation, selection or prescription of the Construction Administrator, and similarly the words 'approved,' 'acceptable,' 'satisfactory,' 'equal,' 'necessary' or words of like import to mean respectively, approved by, or acceptable or satisfactory to, or equal, or necessary in the opinion of the Construction Administrator.

Environmental Requirements - Means all applicable federal, state, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental compliance requirements.

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

Field Instruction - A written communication from the Trustees to the Contractor, signed by the Construction Administrator.

Final Completion of the Job Order - The last date on which all of the following events have occurred: the University has determined that all punch list Work and any other remaining Work has been completed in accordance with the Contract Documents; final inspections have been completed and all operation systems and equipment testing have been completed; certificates of occupancy (if any) have been issued; all deliverables have been provided to the University and all contractual requirements for final payment have been completed.

Hazardous Materials - Asbestos and asbestos-containing materials, polychlorinated biphenyl (PCB), oil or any other petroleum products, natural gas, source material, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec 2011 et seq.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec 136, et seq.) and any hazardous waste, 'toxic substance' (or comparable term) in the Comprehensive Environment Responsibility, Compensation and Liability Act (42 U.S.C. Sec 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Sec 6901, et seq.), the Toxic Substance Control Act (15 U.S.C. Sec 2601, et seq.) and any rules or regulations promulgated pursuant to such statutes or any other applicable Federal or State statute, rule, or regulation or local law, ordinance, rule, or regulation, as amended in each case.

Job Order - A document that describes the Work to be accomplished under this Contract. The University will be responsible for the development of the Job Order as well as the supervision and acceptance of the Work contained within the Job Order description. The University will review the Contractor's Job Order Price Proposal for each Job Order requested and, if acceptable, shall issue a Job Order for the Work described therein. Each Job Order will include a Detailed Scope of Work, a lump sum, firm fixed Job Order Price Proposal from the Contractor, a time duration for the completion of the Work and any special conditions that might apply to that specific Job Order, such as liquidated damages.

Job Order Completion Time – The period of time, set out in Calendar Days, established in the Job Order within which the Work must be completed. The Job Order Completion Time may be adjusted by time extensions through Supplemental Job Orders.

Job Order Contract - A firm, fixed price, competitively bid, indefinite quantity type Contract designed to accomplish small to medium, multi-traded maintenance, repair and minor new construction projects.

Job Order Contractor - See 'Contractor.'

Job Order Price – The amount a Contractor will be paid for completing a Job Order.

Job Order Price Proposal – A price proposal prepared by the Contractor that includes the Pre-Priced Tasks,

01.00 DEFINITIONS

Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work. See 'Proposal.'

Joint Scope Meeting – A Site meeting to discuss the work before the Detailed Scope of Work is finalized.

Materials - All material of any kind, nature and class as may be specified which becomes part of or is used in the performance of the Work together with all manufactured or prepared materials, articles, accessories, appurtenances and parts used therein or placed thereon.

Maximum Contract Amount - The maximum dollar value of Work that can be ordered during the base term of the Contract. This Maximum Contract Amount may be increased by mutual agreement to an amount not greater than \$3,000,000. Refer to the Special Conditions.

Minimum Contract Amount - The minimum dollar value of Work that will be ordered under this Contract during the base term of the Contract. Refer to the Special Conditions.

Non Pre-Priced Tasks - Those units of Work that are not included in the Construction Task Catalog but are within the general scope and intent of this Contract and may be negotiated into the Contract as needs arise. Such Work requirements as shall be incorporated into and made a part of this Contract for the Job Order to which they pertain, and may be incorporated into the Construction Task Catalog, if determined appropriated by the University, at the base price determined in this Contract. Non pre-priced tasks shall be separately identified and submitted in the Job Order Price Proposal.

Normal Working Hours - A work shift of eight (8) hours per day and 40 hours per week, Mondays through Fridays. Exact applicable hours are defined in the Special Conditions of this Contract.

Notice to Proceed - Written notification from the University identifying the beginning and ending date of the Job Order Contract. In reference to a Job Order issued under the Job Order Contract, it is written authorization from the University for the Contractor to commence a Job Order that also specifies start and completion dates for that Job Order.

Other Contractor - Any individual, firm or corporation (other than the Contractor) having a Contract with the University for Work at or near the Project Site.

Other Than Normal Working Hours - A Work shift of eight (8) hours per Day and 40 hours per week, Mondays through Saturdays. The exact applicable hours are defined in the Special Conditions of this Contract.

Owner - The Trustees of the California State University.

Plans - The scope of Work including task descriptions in the Construction Task Catalog, drawings, sketches, illustrations, specifications or other pertinent information included on or attached to the Job Order.

Premium Working Hours - All working hours not designated by the University as Normal or Other Than Normal working hours. Premium working hours will include overtime, Sundays and holidays. The exact applicable hours are defined in the Special Conditions of this Contract.

Prevailing Wages - The general prevailing rate of wages identified by the Director of the Department of Industrial Relations of the State of California pursuant to section 1770 of the Labor Code.

Pre-Priced Task - A unit of Work included within the Construction Task Catalog for which a unit price has been established.

Project - Collectively, the improvements to be constructed by the Contractor pursuant to a discrete, fixed-price Job Order.

Project Completion Time - The period of time allotted for the Contractor to achieve final completion of Job Order.

Project Limit Lines - The geographical boundaries of a Project, as more fully identified and described in the Job Order.

Project Record Documents - All documents the Contract requires the Contractor to provide to the University,

01.00 DEFINITIONS

including but not limited to shop drawings, as-built documents, parts manuals, operation and maintenance manuals, blue line drawings, Project manuals and specifications.

Project Site - The area where the Work will be performed.

Proposal - The Contractor-prepared document including a lump sum, firm fixed price and schedule for the completion of a Detailed Scope of Work as requested by the University. The proposal shall also contain, when appropriate, approved drawings, permits, or other such documentation as the University may require for the Job Order.

Punch List Work - A list of items that have not been completed in accordance with the Contract Documents.

Request for Job Order Price Proposal - The University's invitation for a Proposal for a specific Job Order, hereafter, 'Request for Proposal' or 'RFP.'

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

Site - The area specified in the specific, discrete Job Order made available for the Job Order Contractor's operation.

State - The State of California.

Stop Work Order - The suspension of the Work as set forth in [Article 05.11](#).

Standard Specifications - A body of documents, maintained by the University, containing instructions and requirements prepared by an Architect which complement the individual Job Order scopes of Work and describe the manner of performing the Work or the quantities, qualities and types of materials to be furnished.

Subcontractor - Any person or firm, other than the employees of the Contractor, who contracts with the Contractor or another subcontractor to furnish labor, or labor and materials, at the Work Site or in connection with the Project with appropriate license for the Work to be accomplished.

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

Supplemental Job Order - A written agreement entered into after the award of the Job Order that alters or amends the Job Order. Changes in the Work requested are accomplished by the issuance of a Supplemental Job Order. Changes involving extensions of time, adjustment for net credits, and minor additive changes are also accomplished by issuance of a Supplemental Job Order to the original Job Order.

Supplier or Vendor - Any person or business entity that contracts with the Contractor to provide materials or equipment.

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

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

Unit Price - The price published in the Construction Task Catalog for a specific construction or construction related task. The unit prices are fixed for the duration of the Contract. Each unit price is comprised of the labor, equipment and material costs to accomplish that specific task.

Work - That which is proposed to be constructed or done under the Job Order, including the furnishing of all labor, materials, equipment and other incidentals.

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

02.00 BIDDING

02.01 License and Public Works Registration

I. License.

No Bidder may bid on Work for which it is not properly licensed. The Trustees shall disregard any bid received from a bidder who is not properly licensed (Business and Professions Code, section 7028.15). A Contract shall not be awarded to a Bidder who does not possess the appropriate contractor's license, which is that specified in the Notice to Contractors. Bidders participating in a joint venture must individually possess a current license when submitting the joint venture bid, and the joint venture must possess a joint venture license at the time of award (Public Contract Code section 3300).

II. Public Works Registration with Department of Industrial Relations.

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

The following applies to this Contract:

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

02.02 Prequalification

I. Prequalification Rating.

The Trustees shall issue proposal packages only to Bidders who have prequalified with the Trustees (Public Contract Code section 10764). To prequalify, all bidders must file their prequalification applications online, and the application includes bidders' responses to a standard questionnaire, a statement of financial condition, and previous experience in performing public works, all in accordance with the instructions contained in the Notice to Contractors.

Bidders shall go to CPDC's website: <http://www.calstate.edu/contractor-prequalification> under 'Contractor Prequalification' and login in to the database using the link provided ([PlanetBids](#)). Bidders shall verify the information contained in the prequalification application under oath and submit the completed prequalification application online at least ten (10) Business Days prior to the date for opening bids. The Trustees' Prequalification Administrator must approve Bidders not less than one (1) Business Day prior to the date set for opening bids.

The Trustees' Prequalification Administrator will review the Bidder's statement of experience and financial condition upon receipt of a complete application, check Bidder's references, and notify the Bidder of the rating established based on the information contained in the application. The Bidder's assigned prequalification rating will be the maximum amount of a contract or contracts that the Bidder may undertake with the Trustees. Bidder may request an increase in rating from the Prequalification Administrator. The request shall be in writing and specify the reason(s) for increase. The Trustees' Prequalification Administrator will review Bidder's request, check new references submitted and notify Bidder of the resulting decision. The Prequalification Administrator's decision is final.

The Trustees shall disregard any bid received either from a Bidder that is not currently prequalified, or from a Bidder that is prequalified, but the rating is not high enough to accommodate its bid. Although this prequalification permits participation in the bidding of the project, it does not mean that the Bidder satisfies the requirements of being a "responsible" Bidder. This determination occurs later in the process (reference [Article 02.09, Failure to be a Responsible Bidder](#)).

II. Joint Ventures.

If two or more prospective Bidders desire to bid as a joint venture on a single project, they must file an affidavit of joint venture form [703.12](#) with the Trustees at least five (5) Days prior to the date and time set for opening bids on a form obtained from the Trustees. The affidavit of joint venture is valid only for the specific project for which it is filed. Each party to the joint venture must be prequalified, as provided herein, at least one (1) Business Day before the time set for opening bids.

If the Trustees announce that the joint venture is the successful bidder, the joint venture shall, prior to the Trustees' award of the Contract:

- A. obtain the joint venture license (Business and Professions Code sections 7029 and 7029.1), and
- B. register the joint venture with the Department of Industrial Relations.

III. Supplementary Prequalification.

In addition to the prequalification requirements in [Article 02.02](#), above, the Trustees may require a supplementary prequalification of the general contractors bidding on this Contract. If Trustees are requiring a supplementary prequalification, Bidders shall complete the Supplementary Prequalification Form contained in the Bid Documents OR contact the Trustees' Representative identified in the Notice to Contractors to obtain the Supplementary Prequalification Form, and then submit the completed form to the Trustees' Prequalification Administrator for review and approval at the address provided at the top of the form not later than ten (10) days prior to the bid opening date. The Trustees' Prequalification Administrator will notify bidders of their status in writing, and the decision of the Trustees' Prequalification Administrator is final.

02.03 Necessity for Careful Examination of Site and Contract Documents

Prospective bidders should visit the University campus for which this Job Order Contract is applicable to familiarize themselves with the general state of the facilities, any special conditions that they may encounter (such as possible isolated locales), or typical weather conditions that may affect Work during certain seasons. Some campuses are not located near large metropolitan areas; hence, availability of subcontractors may be a bidding concern.

Generally, prospective bidders shall examine the Contract Documents carefully and, before bidding, shall make a written request to the University for clarification of any ambiguity, or correction of any inconsistency or error in the documents. Requests for such clarification must be received at least ten (10) Days before the date fixed for the opening of the bid.

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

02.04 Bidding Information

I. Preparation of Bids

- A. Bids must be submitted on the forms supplied by the University. Bids shall be enclosed in a sealed envelope, addressed to the University and marked with the name and address of the bidder, the bid opening date and time, and the description of the Contract. All blank spaces must be filled in, using figures. Conditional bids will be rejected. Bids shall not contain any recapitulation of the Work to be done. No oral, telegraphic or telephonic bids or modifications will be considered.
- B. Bids that are illegible or that contain omissions, alterations, additions or items not called for in the bidding documents may be rejected as non-responsive. Any bid that modifies, limits, or restricts all or any part of such bid, other than as expressly provided for in the Contract Documents, will be rejected as non-responsive.
- C. The University may reject as non-responsive any bid not prepared and submitted in accordance with the provisions of the Contract Documents.
- D. Any bid received after the scheduled closing time for receipt of bids shall not be considered and will be returned to the bidder unopened (Public Contract Code section 10766).

II. Pre-Bid Conferences.

University is required to conduct a pre-bid conference or post a recorded pre-bid presentation online. Bidders are encouraged to attend or review one (1) pre-bid conference every bid, regardless of previous bids or experience with Job Order Contracting. Bidders may attend a second pre-bid conference if so desired at the

02.00 BIDDING

discretion of the University. The pre-bid conferences will be held at the times and dates or be posted online at the dates described in the Notice to Contractors and Special Conditions issued by the University. The purpose for the first pre-bid conference is to discuss the concept, documents and bid considerations. The purpose for the second pre-bid conference is to answer questions and discuss Job Order contracting from a Contractor's viewpoint.

III. Description of the Job Order Contract Agreement

- A. This solicitation is for the award of a Job Order Contract. A Job Order Contract is a competitively bid, indefinite quantity contract. It includes a collection of detailed repair and construction tasks and specifications that have established unit prices. It is awarded to a Contractor for the accomplishment of repair, alteration, modernization, maintenance, rehabilitation, and construction of infrastructure, buildings, structures, or other real property. The University issues discrete fixed price Job Orders under the Contract to accomplish the Work.
- B. Minimum and Maximum Contract Amounts
 1. The Minimum Contract Amount is the amount so stated by the University in the Special Conditions of the Contract. The Contractor is guaranteed to be offered Work valued not less than the minimum amount so stated in the Special Conditions during the base Contract period.
 2. The Maximum Contract Amount is the amount so stated by the University in the Special Conditions of the Contract. The Contractor will not be issued Job Orders exceeding the Maximum Contract Amount during any Contract period. However, the Contractor is not guaranteed to receive this volume of Work. The University has no obligation to issue Job Orders exceeding the Minimum Contract Amount.
 3. The Maximum Contract Amount may be increased by mutual agreement to an amount not greater than \$3,000,000. Refer to Special Conditions.
- C. Contract Term.

The term of the Contract is one year, as specified in the Contract Notice to Proceed, or when an amount equal to the Maximum Contract Amount has been ordered, whichever occurs first. Please see section 03.02 JOC Contractor Agreement Notice to Proceed for more information.
- D. Adjustment Factors.

There are four Adjustment Factors for the Contract, as listed below. When preparing a proposal for an individual Job Order, the Contractor shall select the appropriate Adjustment Factor for each task.

 1. Normal Working Hours,
 2. Other Than Normal Working Hours,
 3. Premium Working Hours as defined and qualified in the Special Conditions, and
 4. Non Pre-priced Tasks as defined in [Article 05.05](#).

Each Adjustment Factor is independent of the other. Bidder shall not specify Adjustment Factors for Other Than Normal Working Hours and Premium Working Hours that are less than the specified Adjustment Factor for Normal Working Hours.
- E. Work to Be Performed
 1. The Contractor shall perform the Work described in the Detailed Scope of Work referenced in each Job Order. The University shall have the right to require the Contractor to perform Work at any location within the campus at the Adjustment Factors set forth herein.
 2. The price of each Job Order shall be:
 - a. the sum of the following calculation for each pre-priced task: the unit price multiplied by the quantity of units, multiplied by the appropriate Adjustment Factor; plus
 - b. the total of all Non Pre-priced Tasks.

IV. Filings and Permits.

Contractor shall make the necessary arrangements for and obtain all filings and permits, including payment therefore, if any are required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If the Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The University will not

02.00 BIDDING

reimburse the Contractor the cost of expediting services or equipment use fees, unless approved by the University in advance. The contractor is responsible, per project related costs as an overhead expense (and not reimbursable), for any labor and/or travel associated with procuring permits.

V. Final Approvals.

The Contractor shall obtain all final approvals for the Work, in the form of such certificates that are required by all governmental agencies having jurisdiction over the Work. Contractor is responsible, per project related costs as an overhead expense (and not reimbursable), for the labor associated with the creation and submittal of all compliance and commissioning documents.

VI. Incidental Engineering and Architectural Services.

The Contractor shall provide incidental engineering, architectural and consultant services required in connection with a particular Job Order including drawings required for filing with appropriate agencies (including hazardous materials, if necessary). Any associated cost is considered a construction related cost and shall be covered by the Adjustment Factor.

02.05 Bidding Documents

The Trustees will identify in the Project advertisement and in the Notice to Contractors if the project is a paper submittal bid, or an electronic, online bid. Following are forms that Bidder shall tender with its bid in either case:

I. Bid Proposal Package.

Following a request from a prequalified Bidder, the University will furnish a bid proposal package which, when completely filled out and executed by Bidder, may be submitted as a bid. Bids not presented using the furnished bid proposal package shall be disregarded (Public Contract Code section 10764). The bid proposal package is not transferable to another bidder, and must be submitted in the same name as is used on the bidder's license and prequalification.

The University's bid proposal package contains a standard proposal form that shall be used for bidder's proposal. Each proposal shall give the Adjustment Factors proposed in the manner required by the bid and shall be signed by the bidder or the bidder's duly authorized representative, with its address and telephone number.

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

II. Listing of Subcontractors.

The Trustees do not require Bidders on this Contract to submit the List of Proposed Subcontractors form with their bids, since the Detailed Scopes of Work are not known at the time of bidding the Job Order Contract. After the Trustees award the Contract to the successful Bidder, Bidder shall list the subcontractors for each Job Order Price Proposal.

For each proposed subcontractor that will perform Work or labor or render services for the Contractor in excess of one-half of one percent of the Bidder's net bid price for each Job Order Price Proposal, the successful Bidder shall list on each Job Order Price Proposal the subcontractor's name, location of the place of business, California Contractors State License Board-issued contractor license number, and California Department of Industrial Relations Public Works Registration number. Bidders shall also state on each Job Order Price Proposal the portion of Work or labor or rendition of services that each such subcontractor will do. For each alternative, Contractor shall list any subcontractor not included in the base contract subcontractor listing.

Note: Contractor's submittal of a correction to a listed subcontractor's contractor license number, provided that number corresponds to the listed subcontractor's name and location, is not grounds for considering the Job Order Price Proposal nonresponsive (Public Contract Code section 4104). All tiers of subcontractors

02.00 BIDDING

working on each Project shall register with the DIR in accordance with [Article 02.01 \(II\), Public Works Registration with the Department of Industrial Relations](#).

A. Non-small Business Bidders Claiming the Small Business Preference.

If a Non-small Business Bidder claims the small business preference, Contractor shall list all subcontractors certified as California small businesses for each Job Order Price Proposal, and the total of these subcontracts shall be at least 25% of each Job Order Price Proposal.

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

The successful Bidder is required to achieve three percent DVBE participation in this Contract and may qualify for the DVBE bid incentive if Bidder proposes sufficient additional DVBE participation in this Contract. Trustees will calculate the Bidder's DVBE participation on each Job Order Price Proposal. The successful Bidder shall list in its Job Order Price Proposal, on the List of Proposed Subcontractors form, the DVBEs participating in the Job Order and the dollar amount of participation by each DVBE. The total of the DVBE participation amounts the successful Bidder provides on the List of Proposed Subcontractors shall equal at least Bidder's proposed percentage of DVBE participation. For each alternative, the successful Bidder shall list any DVBE not included in the base Contract Work subcontractor listing, and the dollar amount of DVBE participation by each subcontractor listed for Work to be performed on the alternative. If Trustees grant the successful Bidder the DVBE Bid Incentive, then the total amount of DVBE participation shall equal at least the incentive percentage of the Job Order Price Proposal, including awarded alternatives.

C. List of Subcontractors—Additional Information Form.

Contractor shall submit the List of Subcontractors—Additional Information form, which contains more detailed information, such as complete subcontractor names, addresses, telephone numbers, verified contractor license and registration numbers, etc. (Public Contract Code sections 4104, 4105 and 4106) within 24 hours after the acceptance of the Job Order Price Proposal. Contractor shall indicate on this form the dollar amount of each small business (if the Contractor claimed the non-small business bid preference in its bid) and each DVBE participating in its Job Order Price Proposal.

Contractors may submit the requisite subcontractor listings described above on Trustees' subcontractor listing forms, or Contractors may key the subcontractor listing information into the job order contracting software provided, and transmit the subcontractor listings electronically to the University along with the Contractor's Job Order Price Proposal.

III. Bidder's Security.

All bids shall be presented under sealed cover and have enclosed an amount equal twenty-five thousand dollars (\$25,000) as bid security. Bidders may submit the bid security in one of the following forms: a cashier's check or certified check made payable to the University, or a bidder's bond. The Trustees shall not consider any bid unless Bidder encloses one of these forms therewith (Public Contract Code section 10765). If the bid security is a bond, a corporation authorized as an admitted surety to issue surety bonds in California shall execute the bond, and it shall be executed on the form prescribed by the University.

For bids submitted electronically or online, Bidders shall present their bidder's security in electronic form when tendering their bids, and then shall submit original bidder's security within 24 hours of bid opening, or their bids will be deemed nonresponsive.

The Trustees will not accept riders or modifications of any kind on bidders bonds, and, if presented by Bidder, may result in Bidder's disqualification as nonresponsive. Bidder must use bond document forms approved by the Trustees without alteration.

02.06 Bid Proposals

I. Submission of Bids.

Bidders shall submit proposals as instructed on the bid proposal. It is the responsibility of the bidder to see that its bid is received in the proper time. Delays in timely receipt of the bid caused by the United States or the University mail system, independent carriers, acts of God, electronic communication failures, or any other cause shall not excuse late receipt of a bid. The Trustees shall return unopened, any bid received after the time specified in the Notice to Contractors or in any addendum (Public Contract Code sections 4104.5 and 10766).

II. Withdrawal of Bids.

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

III. Public Opening of Bids.

Proposals will be publicly opened and read or posted online as stated in the Notice to Contractors. Bidders or their agents are invited to be present if held in person or online. (Public Contract Code section 10780).

IV. Rejection of Irregular Bids.

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

V. Power of Attorney or Agent.

When an agent signs the proposal, a power of attorney shall either be on file with the University before the opening of bids or be submitted with the proposal. Failure to submit a power of attorney may result in the rejection of the proposals irregular and unauthorized. A power of attorney is not necessary in the case of a general partner of a partnership.

VI. Waiver of Irregularities.

The University reserves the right to waive minor irregularities in proposals submitted.

VII. Basis of Award.

The bid proposal package contains a standard proposal form that shall be used for bidder's proposal. In its bid proposal, the Bidder shall specify each of four Adjustment Factors to four decimal places. Each Adjustment Factor is independent of the other. Bidder shall not specify Adjustment Factors for Other Than Normal Working Hours and Premium Working Hours that are less than the specified Adjustment Factor for Normal Working Hours. The University shall assign weight to each of these factors, in order to calculate a composite score for each bidder. Refer to the Special Conditions of the Contract. If the University awards a contract, it will be awarded to the bidder with the lowest composite score.

02.07 Competitive Bidding

If more than one bid proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such bid proposals may be rejected, or the Trustees may accept the lowest proposal. A party who has quoted prices on materials or Work to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a bid directly for the materials or Work.

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

02.08 Mistake in Bid

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

02.09 Failure to be a Responsible Bidder

In order to be considered for award of a Contract a bidder must be a responsible bidder (Public Contract Code section 10780). To be responsible, the bidder, in the judgment of the University, must be sufficiently trustworthy and possessed of the requisite quality, fitness, capacity and experience to satisfactorily perform the Work (Public Contract Code section 1103). Should the University question the bidder's responsibility, the bidder shall be given an opportunity to rebut any evidence of non-responsibility, and to present evidence of responsibility.

The hearing shall be informal, and an individual appointed by the University to hear the matter may conduct it in whole or in part in writing. A decision concerning the bidder's responsibility shall be mailed to the bidder within ten (10) Days of the conclusion of the hearing.

02.10 Small Business Enterprise (SBE) Preference - Five Percent Bid Advantage

The Trustees calculate the five (5%) percent Small Business Preference as a percentage of the lowest overall responsive bidder's bid, per award. If multiple awards are made during a single bid, the Small Business Preference will be recalculated per award based on the percentage of the lowest overall responsive bidder's bid. For the award only, a certified Small Business may only be displaced by another certified Small Business. No combination of incentives or preferences shall allow a Small Business to be displaced by a Non-Small Business.

I. Preference for Small Businesses.

In accordance with Government Code section 14835 et seq., and California Code of Regulations, Title 2, section 1896 et seq., the Trustees shall give a small business bid advantage of five percent up to a maximum of \$50,000 to contracting firms that have been certified as a "Small Business" by the Office of Small Business & DVBE Services, in the Procurement Division of the Department of General Services. To receive the five percent advantage, certified small businesses shall:

- A. submit with the bid proposal a completed "Request for Small Business Five Percent Preference Certification" form [701.09](#),
- B. be certified Small Business upon verification in accordance with California Code of Regulations section 1896.2, having applied for certification no later than 5:00 PM on bid date,
- C. submit a timely and responsive bid,
- D. be determined to be a responsible bidder.

II. Preference for Non-Small Businesses.

A. Preference

The application of the five percent small business bidding preference is also extended to any non-small business that commits to subcontracting at least 25% of its Maximum Contract Amount to California certified small businesses and/or microbusinesses, not to exceed \$50,000. To receive this preference the non-small business must satisfy the following criteria:

- 1. indicate in its bid proposal its commitment to subcontract at least 25% of each Job Order Price Proposal with one or more small businesses [submit the Request for Small Business Bidding Preference form] until reaching 25% of the Maximum Contract Amount,
- 2. submit a timely and responsive bid,
- 3. be determined to be a responsible bidder,
- 4. submit the California certified small businesses on each Job Order Price Proposal and indicate the dollar amount of the small business subcontract bid for that Job Order Price Proposal on the List of Subcontractors-Additional Information form, which is to be submitted with each Job Order Price Proposal.

B. Failure to Subcontract with Listed Small Businesses.

Failure of the non-small business contractor to subcontract with the small businesses listed on its bid, or follow the substitution provisions identified in [Article 04.04](#) (II), may be grounds for the Department of General Services to impose sanctions pursuant to Government Code section 14842.5 and California Code of Regulations section 1896.16. In the event such sanctions are to be imposed, the contractor shall be notified in writing and entitled to a hearing pursuant to California Code of Regulations, sections 1896.18 and 1896.20.

III. Calculation of the Small Business Preference.

In calculating the Small Business preference, the University official shall multiply the total weighted composite Adjustment Factors by the Maximum Contract Amount to determine the lowest, responsible bidder, taking into consideration the five percent bid preference, not to exceed \$50,000. See the following example for basis of award:

Maximum Contract Amount is \$1,000,000. Use the total weighted composite Adjustment Factor in this bid evaluation.

02.00 BIDDING

Bid #1 = 0.9921

Bid #2 = 1.0201 (this bidder is a certified Small Business)

Multiply the total weighted composite Adjustment Factors by the Maximum Contract Amount: Bid #1 = 0.9921
(x \$1,000,000 = \$992,100)

Bid #2 = 1.0201 (x \$1,000,000 = \$1,020,100)

Take 5% of Bid #1, or \$49,605, and subtract that amount from Bid #2 to get \$970,495. Award to Bid #2 at 1.0201.

Even if a Small Business is the low bidder, the Trustees will calculate the Small Business Preference for any and all bidders, except when to do so would displace a Small Business with a Non-Small Business or Business that does not qualify as either Small Business or Non-Small Business (Neither). No combination of the Small Business Enterprise (SBE) Preference and/or Disabled Veteran Business Enterprise (DVBE) Incentive shall result in the displacement of a Small Business for the award, unless by another Small Business. In other words, if by the application of either/both the SBE Preference and DVBE Incentive, a Non-Small Business displaces a Small Business for the award, the SBE Preference and/or DVBE Incentive shall not be applied to the Non-Small Business. Furthermore, if despite the application of both the SBE Preference and DVBE Incentive, any Small Business mathematically cannot become the lowest bidder, then the SBE Preference and DVBE Incentive shall be applied appropriately to the Non-Small Businesses. However, a Non-Small Business cannot be displaced by a Neither Business (neither Small nor Non-Small) by the use of the DVBE Incentive. Lastly, the award is subject to the rest of the provisions in the General Conditions before the Trustees make the final determination on an award.

IV. Trustees' Reporting of Small Business Participation.

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

02.11 Disabled Veteran Business Enterprise Participation Requirement

I. Overview

The Contractor shall comply with rules, regulations, ordinances, and statutes that apply to the California Disabled Veteran Business Enterprise Program as defined in Section 999 of the Military and Veterans Code.

California state law requires that its state agencies achieve three (3) percent participation for disabled veteran business enterprises (DVBE) in state contracts. Under the Job Order Contracting system it is not feasible to identify potential DVBE subcontractors at time of bidding since the individual jobs are not known. However, the successful low bidder will be required to meet or exceed the DVBE participation requirement for sum of Job Orders completed within the master agreement. It shall be the responsibility of the contractor to identify the DVBEs that will be utilized on each Job Order during the Price Proposal submission phase and ensure that the cumulative DVBE requirement is met prior to the end of the master agreement term. Failure of the Job Order Contractor to comply with the DVBE requirement may result in sanctions.

In the event the Contractor cannot meet the DVBE requirement on a single Job Order Proposal, the contractor must provide evidence of thorough due diligence in finding and attempting to procure a DVBE contractor or vendor that could have performed Work on the Job Order. The Contractor shall complete and sign a "DVBE Exception Form." Backup or documentation must be attached. The form must include the following detailed information:

- A. A written description of the unique nature of the Scope of Work and lack of availability of DVBE contractors.
- B. An explanation of the reason for the exception.

The Contractor must then provide a signed (by a listed delegate of authority) "DVBE Exception Form" to the Campus. Upon receipt of the signed "DVBE Exception Form," the Campus shall then have the form signed by a delegated representative from the Campus. Approval or rejection of the "DVBE Exception Form" is at the sole discretion of Trustees. If the "DVBE Exception Form" is approved, Contractor may deviate from the contractual DVBE incentive **only** for the listed Job Order Proposal on the "DVBE Exception Form." The approval of the "DVBE Exception Form" cannot be applied across multiple Job Orders nor across any set length of time on a contract, only per Job Order Proposal. The Trustees have the right to reject any and all "DVBE Exception Forms" if the campus determines that it is in the best interest of the Trustees not to proceed with the Job

02.00 BIDDING

Order.

Reference [Article 05.05 \(I\), Preparation of the Proposal](#), subdivision G, Disabled Veteran Business Enterprise Participation and Incentive for more detailed information.

In accordance with section 999.5 of the Military and Veterans Code, a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the maximum amount of twenty-five thousand dollars (\$25,000).

II. Incentive.

In accordance with Government Code section 14838(f), and Military and Veterans Code sections 999.5(a) and 999.5(d), the Trustees are granting a bid incentive for bid evaluation purposes only to bidders that exceed the three percent DVBE participation requirement. The level of DVBE incentive will correlate to the level of participation; that is, the more DVBE participation proposed, the higher the incentive. The bid incentives are as follows:

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

The DVBE incentive may not exceed \$50,000. When used in combination with the Small Business Preference, the cumulative adjustment amount shall not exceed \$100,000. The application of the DVBE Incentive follows the similar guidelines as the Small Business Preference. Both the Small Business Preference and DVBE Incentive shall be applied under all conditions for all bidders, except when to do so would:

- A. Displace a Small Business with a Non-Small or Neither Business for the award.
- B. (When a Small Business, despite the application of both the SBE Preference and DVBE Incentive, cannot become the lowest bidder) Displace a Non-Small Business with a Neither Business.

Rule: No combination of the application of the SBE Preference and/or DVBE Incentive shall result in the displacement of a Small Business for the award, unless by another Small Business.

Order of Priority of the application of the Small Business Preference and DVBE Incentive

(Listed in order of priority, the classification below another classification cannot displace the level above by using either/both the SBE Preference and DVBE Incentive. For example, the application of the SBE Preference and/or DVBE Incentive on a level 3 business cannot be used to displace a level 2 business. And etc.)

1. Small Business w/DVBE Incentive
2. Small Business
3. Non-Small Business w/DVBE Incentive
4. Non-Small Business
5. Uncertified/Neither w/DVBE Incentive
6. Uncertified/Neither

Trustees shall utilize the Small Business Preference and DVBE Incentive when applicable, in the order of priority of business classifications based on the table above. For example, if classification level 1 (Certified Small Businesses w/DVBE Incentive) cannot become the lowest bidder with the application of both the SBE Preference and DVBE Incentive, then the next level of business classification (level 2) shall be prioritized above the rest. This order of priority shall be followed in sequence.

III. Sanction for Contractor’s Failure to Achieve the DVBE Incentive for Full Term of Contract.

The Trustees may sanction any Contractor who receives the DVBE incentive and does not contract the incentive percentage dollar amount of its net awarded job order amounts to DVBEs. The sanction will be calculated as two times the amount of the bid incentive received. For example, if the Contractor received a bid incentive of \$49,000, and does not contract the incentive percentage dollar amount of its net job order amounts with DVBEs, then the Trustees will assess an amount to be forfeited by the Contractor of \$98,000.

IV. Closeout Documentation

In accordance with section 999.5 of the Military and Veterans Code, upon completion of an awarded contract, the Contractor shall certify to the Trustees all the following in a final DVBE participation summary:

02.00 BIDDING

- A. The total amount the Job Order.
- B. The name and address of the disabled veteran business enterprises that participated in the performance of the contract and the contract number.
- C. The amount and percentage of work the Contractor committed to provide to one or more disabled veteran business enterprises under the requirements of the contracts and the amount each disabled veteran business enterprise received from the Contractor.
- D. The actual DVBE participation dollar amount and percentage of the Job Order.

Contractor shall submit proof that all payments under the contract have been made to DVBEs. Proof shall be in the State approved form "unconditional waivers and release on final payment." The waivers shall indicate the amount of total payment each DVBE received on the project and shall include a notarized signature from the owner or delegated officer of the DVBE.

In accordance with section 999.7 of the Military and Veterans Code, an amount of ten thousand dollars (\$10,000) must be withheld from final payment until the final participation summary and proofs of payment have been received. If the Contractor fails to comply with the certification requirement, after notice, shall be allowed to cure the defect. If after 30 calendar days from the date of notice, the Contractor cannot comply with the certification requirements, the Trustees must permanently deduct ten thousand dollars (\$10,000) from the final payment.

03.00 AWARD AND EXECUTION OF CONTRACT

03.01 **Award of Contract**

If the University deems the acceptance of the lowest responsible bid or bids is not in the best interests of the State, the University may reject all bids (Public Contract Code section 10785). If the Trustees accept the bid and award the Contract, the Trustees' award shall be to the lowest responsible bidder whose proposal complies with all the requirements prescribed (Public Contract Code section 10780). Such award shall be made within 60 Days after the opening of the proposals.

If the lowest responsible bidder refuses or fails to execute the Contract, or perform the Contract, or is found to be non-responsible, the University may award the Contract to the second lowest responsible bidder. Such award shall be made within 120 Days after the opening of proposals. The above time periods within which the award of Contract may be made are subject to such no-cost extensions as may be agreed upon in writing between the University and the bidder concerned (Public Contract Code section 10782).

03.02 **JOC Contractor Agreement Notice to Proceed and Contract Period**

To allow the contractor to perform as much work as possible within the contract duration, the one (1) year contract period will start on the date specified on the Contract Agreement Notice to Proceed (NTP). The Trustees may issue this NTP up to six (6) months after the Agreement is executed. If this NTP is not issued within the six (6) month period after the Agreement is executed, then the one (1) year contract period shall still start on the date that is exactly six (6) months from the date the Agreement is executed. The Agreement duration shall end one (1) year after the date specified on the Contract Agreement NTP or eighteen (18) months after the Agreement is executed, whichever is sooner. Job orders authorized prior to contract expiration and any supplemental job orders required to complete the work as needed to be used for its intended purpose may continue through completion.

03.03 **Return of Bidder's Security**

The Trustees may withhold the bidder's security of the second lowest responsible bidder until the Contract has been finally executed. The Trustees shall return to all other unsuccessful Bidders the cashier's checks and certified checks submitted by them within ten (10) Days after the Contract is awarded, and their bidder's bonds shall be of no further effect (Public Contract Code section 10784).

03.04 **Contract Bonds**

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

- State of California Dept. of Insurance at:
<https://interactive.web.insurance.ca.gov/companyprofile/companyprofile>,
- US Treasury listing at: <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html>.

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

The Trustees will accept Riders on original performance and payment bonds provided at award. However, this Rider can only be submitted for a Contract Change Order and the acceptance of the Rider is at the sole discretion of the Trustees. Submission of a Rider, in lieu of new performance and payment bonds for a change order, must first be approved by the Trustees. Modifications of any kind on original performance bonds and

04.00 CONDUCT OF THE WORK

The University shall make all alterations, extensions of time, extra and additional Work, and other changes authorized by any part of the Contract, including determinations made under [Article 08.01, Claims](#), without securing the consent of the surety or sureties on the Contract bonds. If the original Contract is amended during the term to increase the awarded Maximum Contract Amount, the Contractor shall furnish additional or revised performance and payment surety bonds, so that each such performance and payment bond equals 100% of the increased Maximum Contract Amount.

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

03.05 **Execution of Contract**

The successful Bidder shall sign each Contract counterpart and return the Contract counterparts to the University together with the Contract bonds and certification, along with other requisite documentation such as certificates evidencing the required insurance coverage ([reference Article 04.06, Contractor Insurance](#)), within ten (10) Business Days of receipt from the University. Reference the following [Article 03.06 for failure of successful Bidder](#) to execute the Contract timely. If the successful Bidder is a joint venture, then the joint venture shall submit with the Contract certification form a formal resolution designating the person authorized to sign on behalf of the joint venture. No contract shall be binding upon the Trustees until it has been executed by the Contractor and the University and approved by the Trustees' attorney (in the Office of General Counsel) appointed according to law and authorized to represent the Trustees (Public Contract Code section 10820).

After the Trustees' attorney has fully executed the Contract, the University will issue a Notice to Proceed for the overall Contract, documenting the overall Contract start and completion. The University may then contact the Contractor to begin joint scoping of potential projects. The University will issue individual Notices to Proceed for each discrete Job Order. The Contractor may not begin Work before receiving the Trustees' written Notice to Proceed. Any Work performed by the Contractor before receipt of the written Notice to Proceed shall be considered as having been done at the Contractor's own risk.

03.06 **Failure or Refusal to Execute Contract**

Failure or refusal by the Bidder to execute the Contract within the time set in [Article 03.05, Execution of Contract](#), shall be just cause for the Trustees' rescission of the award and the forfeiture of the bidder's security. Failure or refusal by the Bidder to file acceptable bonds within the time set in [Article 03.04](#) constitutes a failure or refusal to execute the Contract. If the successful Bidder fails or refuses to execute the Contract, the University may award the Contract as set forth in [Article 03.01, Award of Contract](#). On the failure or refusal of the first, second, or third lowest responsible Bidder to execute the Contract, Bidder's security in each case shall be forfeited (Public Contract Code sections 10781-10783).

04.00 CONDUCT OF THE WORK

04.01 **Laws to be Observed - Generally**

I. State and Federal Laws.

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

04.00 CONDUCT OF THE WORK

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

II. Child and Family Support Obligations.

The Contractor acknowledges State of California policy regarding the importance of child and family support obligations expressed in Public Contract Code section 7110(a). The Contractor acknowledges that to the best of its knowledge, it is fully complying with the earning assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the State's Employment Development Department.

III. Audit Provisions.

The contracting parties shall be subject to examination and audit by both the Trustees (or designee) of The California State University and the State Auditor of the State of California at any time during construction and for a period of three years after final payment of the Contract. Such examination and audit shall include access to the Contractor and the subcontractor records as delineated in the following:

The Contractor's records which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; supplemental job order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Trustees/Auditor General to substantiate charges related to this Contract (all foregoing hereinafter referred to as 'records') and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the Contractor's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the Contractor or any of its payees. The Contractor is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the Project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total Project costs by cost codes; and a subcontractor history report including each subcontract amount and supplemental job orders issued thereto.

IV. Building Codes.

The Contractor's Work under this Contract shall comply with all applicable building codes pertaining to the individual Project Sites. As a minimum, compliance with Title 24 will apply.

V. Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

If the Contractor is a natural person, the Contractor certifies in accepting this Contract that she/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 Stat. 2105, 2268-69).

VI. Declaration of Eligibility to Contract with the State.

If the Contractor is a corporation, the Contractor certifies and declares by signing the Agreement that it is eligible to contract with the State of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code section 10286 et seq.).

04.02 Laws to be Observed - Regarding Labor

I. Prevailing Wage.

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

04.00 CONDUCT OF THE WORK

The effective prevailing wage rate for this agreement is the determination that is in effect at the time the job order Master Enabling Agreement was first advertised by the University as indicated in the Notice to Bidders or similar advertisement.

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

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

A. Hours of Labor.

Eight (8) hours of labor constitutes a legal day's work. The Contractor or any subcontractor shall forfeit, as a penalty to State, \$25.00 for each worker employed in the execution of the Contract by the Contractor or any subcontractor, for each Day during which the worker is required or permitted to work more than eight hours in any one Day and forty hours in any one calendar week, in violation of the provisions of the Labor Code sections 1810 to 1814, thereof, inclusive. Notwithstanding the provisions of Labor Code sections 1810 to 1814, Work performed by employees of the Contractor or any subcontractor in the execution of the Contract in excess of eight hours per Day, and forty hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per Day at not less than one and one-half times the basic rate of pay as provided in Labor Code section 1815.

- B. If it becomes necessary to employ crafts other than those listed, the Contractor shall notify the Trustees immediately, and the Trustees will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.
- C. Pursuant to Labor Code section 1770, the Director of the DIR has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime Work for each craft needed in execution of the Contract as set forth in the Notice to Contractors. Contractor shall post a schedule showing all applicable prevailing wage rates at appropriate and conspicuous locations on the Project Site in accordance with Labor Code section 1773.2. The Trustees shall maintain copies of the prevailing rate of per diem wages and shall make them available to any interested party upon request. Contractor shall also post jobsite notices as required by the DIR pursuant to Labor Code section 1771.4 (a) (2) and applicable regulations.
- D. The Contractor and any subcontractor under subcontract to the Contractor on the Project shall comply with Labor Code section 1775, and the Contractor shall include provisions in its Contract with its subcontractors that will require compliance with Labor Code section 1775. As required by section 1775(b) the Contractor shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the Contract between the Contractor and the subcontractor. The Contractor shall monitor its subcontractors' compliance with the prevailing wage law as required by section 1775(b). In accordance with section 1775, the Contractor and any subcontractor under the Contractor shall forfeit as a penalty to the State not more than \$200 for each Day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the Contract by it or, except as provided in section 1775(b), by any subcontractor under it. In addition to this penalty, the Contractor or subcontractor shall pay each worker the difference between the prevailing wage rates and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate.

04.00 CONDUCT OF THE WORK

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

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

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

04.00 CONDUCT OF THE WORK

certified payrolls timely.

- F. The Contractor is required to submit to the Trustees a minimum of the first week's certified payroll for its workers and all subcontractors on each job order. Additional weeks of certified payroll records may be required at the discretion of the University.
- G. Consistent with Public Contract Code section 6109, the Contractor is prohibited from performing a portion of Work with a subcontractor who is debarred pursuant to Labor Code section 1777.1 or 1777.7.
- H. Apprentices.

If the Contractor or any subcontractor employs workers on the Project in any apprentice able craft, it may apply to any apprenticeship program in the craft in the area of the Work for a certificate approving the Contractor or subcontractor for the employment and training of apprentices. The Contractor or subcontractor shall employ the number of apprentices or the ratio of apprentices to journeymen specified in the certificate unless the conditions set out in Labor Code section 1777.5 excuse it from this requirement.

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

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

Special attention is directed to Labor Code sections 1777.5, 1777.6 and 1777.7, and California Code of Regulations, Title 8, section 200 et seq. Each Contractor and subcontractor must, before commencement of Work under this Contract, contact the Division of Apprenticeship Standards, 455 Golden Gate, 8th Floor, San Francisco, California, 94102, or one of its branch offices to ensure compliance and understanding of the law regarding apprentices and specifically the required ratio thereunder. Reference the following Division of Apprenticeship Standards website for contacts and other pertinent apprenticeship information, https://www.dir.ca.gov/das/das_contactUS.html. Responsibility for compliance with this section lies with the prime Contractor. Contractor's or subcontractor's failure to comply with Labor Code section 1777.5 may result in penalties or debarment pursuant to Labor Code section 1777.7.

II. Nondiscrimination.

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

04.00 CONDUCT OF THE WORK

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

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

III. Workers' Compensation.

The Contractor shall be required to secure payment of workers' Compensation to its employees in accordance with Labor Code section 3700 and shall file with the University prior to performing the Work the certification required in Labor Code section 1861 (refer also to [Article 04.06 \(I\), Policies and Coverage](#)).

IV. Education, Counseling, and Training Programs.

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

V. Occupational Safety and Health.

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

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

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

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

04.03 Environmental Requirements

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

I. Air Pollution Control.

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

04.00 CONDUCT OF THE WORK

A. Solvents.

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

B. Disposal of Material.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

C. Fugitive Dust.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article [04.08 \(III\), Protection of Facilities](#)).

D. Construction Vehicles and Equipment.

Trucks hauling dirt from the Site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.

Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

II. Water Pollution Control.

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

A. Storm Water Pollution Prevention Plan.

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

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

Contractor shall be responsible for development and implementation of SWPPP when required. [Reference Specifications for additional requirements.]

B. Compliance.

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

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

C. Maintenance Manual for Post-construction BMPs.

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

III. Sound Control Requirements.

The Contractor shall comply with all sound control and noise level rules, regulations and ordinances that apply to the Work. In the absence of any such rules, regulations and ordinances, the Contractor shall conduct its Work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the University's requests to reduce noise levels

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

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

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

IV. Environmental Clearances.

The Contractor shall provide state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this Project. The Contractor shall comply with the provisions, including giving notices during construction when so required. The University shall not compensate the Contractor for the delays in obtaining environmental clearances and authorizations. However, the University will grant an appropriate extension of time in accordance with the provisions in [Article 04.14](#) (VI), University's Adjustment of Job Order Completion Time, if the Contractor demonstrates to the satisfaction of the University that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.

V. Source of Aggregates.

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

VI. Archaeological Finds.

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

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

VII. Integrated Waste Management.

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

04.04 Substitution of Subcontractors

The Contractor shall not substitute any subcontractor in place of a subcontractor listed in its Job Order Price Proposal except as authorized in the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq.).

I. Bond Requirements.

It is the Trustees' interpretation of section 4108 of the Public Contract Code that the Contractor clearly advertise the specific bond requirements for the Project, including the requirement of a bond, the kind of a bond, and the amount of the bond, in order to be eligible to substitute a subcontractor under section 4107(a)(4) of the Public Contract Code.

II. Substitution of a Small Business Subcontractor.

After award of the Contract based in part on the application of the small business preference, the Non-Small Business Contractor shall use the small business subcontractor(s) and/or suppliers listed in its Job Order Price Proposal unless a substitution is requested in writing to the Trustees, and the Trustees approve the substitution in writing before the commencement of any Work. The substitution request must include at least the following:

- A. An explanation of the reason for the substitution.
- B. The Contractor must substitute a small business with another small business. If the small business substitution cannot occur, the Contractor must include a written justification and the steps taken to try to acquire a new small business subcontractor and how that portion of the Contract will be fulfilled.
- C. A description of the Work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall Job Order that the substituted business will perform. The substituted business(es), if approved, shall be required to perform a commercially useful function in the Contract pursuant to California Code of Regulations section 1896.6.

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

III. Substitution of a Disabled Veteran Business Enterprise.

The Contractor shall use the Disabled Veteran Business Enterprise (DVBE) companies listed on the List of Proposed Subcontractors form submitted with its Job Order Price Proposal unless a substitution is requested in writing to the Trustees, and the Trustees and the Department of General Services (DGS) approve the substitution in writing before the commencement of any Work. The substitution request must include at least the following:

- A. An explanation of the reason for the substitution.
- B. A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.
- C. The Contractor must substitute a DVBE with another DVBE. If the DVBE substitution cannot occur, the Contractor must include a written justification along with the "DVBE Exception Form" and the steps that were taken to try to acquire a new DVBE subcontractor and how that portion of the contract will be fulfilled.
- D. A description of the Work to be performed identified both as a task(s) and as a dollar amount or percentage of the overall contract that the substituted business will perform.

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

04.05 Delegation of Performance and Assignment of Money Earned

The performance of all or any part of this Contract may not be delegated without the written consent of the University. Consent will not be given to any proposed delegation that would relieve the Contractor or its surety of their responsibilities under the Contract.

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

04.06 Insurance Requirements

The Contractor shall not commence Work on this Site until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.

I. Policies and Coverage

04.00 CONDUCT OF THE WORK

- A. The Contractor shall obtain and maintain for the term of the Contract the following policies and coverage:
 - 1. Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering Work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Work.
 - 2. Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
 - 3. Worker's Compensation including Employers Liability Insurance as required by law.
- B. The Contractor also may be required to obtain and maintain the following policies and coverage:
 - 1. Environmental Impairment Liability Insurance may be required should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.
 - 2. Other Insurance by agreement between the Trustees and the Contractor.

II. Verification of Coverage.

The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. Contractor shall timely file renewal certifications and endorsements for all coverage until the Work is accepted as complete pursuant to [Article 09.01, Acceptance](#). The Trustees reserve the right to require the Contractor to furnish the Trustees complete, certified copies of all required insurance policies.

III. Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in [Article 04.07](#). The insurance policies shall contain, or be endorsed to contain, the following provisions:

- A. For the General and Automobile Liability Policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
- B. For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.
- C. Each insurance policy required by this Article shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty Days prior written notice by certified mail, return receipt requested, has been given to the Trustees.
- D. The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

IV. Amounts of Insurance

- A. Contractor shall furnish evidence of insurance prior to execution of this Contract. The insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following:
 - 1. Comprehensive or Commercial Form General Liability Insurance—Limits of Liability
\$2,000,000 General Aggregate
\$1,000,000 Each Occurrence—combined single limit for bodily injury and property damage.
 - 2. Business Automobile Liability Insurance – Limits of Liability (Each Accident—combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage.)

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

- 3. Workers' Compensation limits as required by law with Employer's Liability limits of \$1,000,000. These

04.00 CONDUCT OF THE WORK

requirements and limits are the same for all size contracts.

- B. For Job Orders involving hazardous materials, the Contractor shall provide additional coverage in amounts not less than the following:
1. Environmental Impairment (pollution) Liability Insurance-Limits of Liability
\$10,000,000 General Aggregate
\$ 5,000,000 Each Occurrence-- combined single limit for bodily injury and property damage, including cleanup costs.
 2. In addition to the coverage described in 4.06 (IV)(A)(2), Business Automobile Liability Insurance, the Contractor shall obtain for hazardous material transporter services:
 - a. MCS-90 endorsement
 - b. Sudden & Accidental Pollution endorsement--Limits of Liability*
\$2,000,000 Each Occurrence
\$2,000,000 General Aggregate
- *A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

With the Trustees' approval, the Contractor may delegate the responsibility to provide this additional coverage, as described in this Article 4.06 (IV)(B)(2) above, to its hazardous materials subcontractor. When the Contractor submits the Job Order Price Proposal to the Trustees, the Contractor shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Contractor shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all of the requirements in [Articles 4.06 \(II\), Verification of Coverage](#) and [4.06 \(III\), Insurance Provisions](#). Further, this letter will provide that the subcontractor's certificate of insurance will be provided to the Trustees as soon as the Contractor fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed, whichever is less.

V. Acceptability of Insurers.

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A-VII, or shall be a carrier otherwise acceptable to the University.

VI. Subcontractor's Insurance.

Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's work. Contractor shall not allow any subcontractor to commence work on its subcontract until the insurance has been obtained.

VII. Miscellaneous

- A. Any deductible under any policy of insurance required in this Article shall be Contractor's liability.
- B. Acceptance of certificates of insurance by the Trustees shall not limit the Contractor's liability under the contract.
- C. In the event the Contractor does not comply with these insurance requirements, the Trustees may opt to provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from contract sums otherwise due the Contractor.
- D. If the Trustees are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the Trustees for all such damages.
- E. The Contractor's obligations to obtain and maintain all required insurance are nondelegable duties under this contract.
- F. The Contractor's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Contractor negligence shall be limited to five percent of the Job Order Price if the Work damaged is built in accordance with the Contract and applicable building standards.

04.07 Indemnification

I. Overview

Nothing in these indemnification provisions shall be deemed to alter the insurance provisions in [Article 04.06](#).

- A. The Contractor shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of The California State University, the University, and the officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to:
 - 1. the failure of the Contractor to perform its obligations under the Contract or the performance of its obligation in a willful, reckless, or negligent manner;
 - 2. the inaccuracy of any representation or warranty by the Contractor given in accordance with or contained in the Contract Documents; and
 - 3. any claim of damage or loss by any subcontractor, or supplier, or laborer against the Trustees arising out of any alleged act or omission of the Contractor or any other subcontractor, or anyone directly or indirectly employed by the Contractor or any subcontractor.
- B. The Contractor shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of The California State University, the University, and its officers, employees, representatives and agents from and against all claims, damages and losses arising out of, resulting from, or relating to the negligent acts or omissions, recklessness, or willful misconduct of the Contractor, a subcontractor, or anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in [Article 04.07 \(I\)\(C\)](#), following. Such obligation shall, however, apply in proportion to and to the extent that any such losses result from the negligent acts or omissions by an employee of the Contractor, a subcontractor, or a person indirectly employed by the Contractor or a subcontractor, or anyone for whose acts either may be liable.
- C. In claims against any person or entity indemnified under this Article made by an employee of the Contractor or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.
- D. The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- E. The Contractor shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of The California State University, the University, and its officers, employees, representatives and agents from and against all claims, damages and losses resulting from any claim of damage made by any separate Contractor of the Trustees against the Trustees arising out of any alleged acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by either the Contractor or subcontractor, or anyone for whose acts either the Contractor or subcontractor may be liable.
- F. The Contractor shall hold harmless, defend, and indemnify the separate Contractors of the State of California, the Board of Trustees of the California State University, the University, and its officers, employees, representatives and agents from and against all claims, damages and losses arising out of the negligent acts or omissions, recklessness, or willful misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable. The Trustees shall cause a reciprocal indemnification provision in favor of the Contractor to be included in its contracts with separate Contractors of the Trustees. Liability for any negligent act or omission or willful misconduct shall be apportioned pursuant to the applicable law of the State of California.

04.08 Contractor's Responsibility for the Work

I. Overview

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

Contractor shall create a report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on Site each day, briefly describing the

04.00 CONDUCT OF THE WORK

Work the subcontractors are performing. Each subcontractor shall create report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on Site each day, briefly describing the Work the subcontractors are performing. Contractor and every subcontractor shall submit these reports to the Trustees' Construction Administrator daily. At the end of the Project, Contractor shall submit to the Trustees' Construction Administrator a complete listing of all subcontractors, suppliers and other businesses that performed Work on the Project.

The University will not arbitrate disputes among subcontractors nor between the Contractor and one or more subcontractors concerning responsibility for performing any part of the Project.

A. Quality Control.

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

B. Burden for Damage.

From the issuance of the Job Order Notice to Proceed until the formal acceptance of each discrete Job Order by the University, the Contractor shall have the charge and care of and shall bear the liability for any damage to the University facilities and materials and equipment for the Job Order.

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

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

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

C. Protection of Facilities.

From the University's issuance of the official Notice to Proceed to the Contractor, until the University's formal acceptance of the Job Order, Contractor, shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Contractor is not prosecuting Work, Contractor shall furnish such security services as necessary to safeguard materials and equipment in storage on the Project Site, including Work in place or in process of fabrication, against theft, acts of malicious mischief, vandalism and other losses or damages. The Contractor shall be liable for any loss or damage that result from its failure to protect the Site and the Work.

Contractor shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust dirt, debris and other nuisances arising out of Contractor's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to University. Contractor shall initiate an erosion and sedimentation control program, which includes measures addressing erosion caused by wind and water and sediment in runoff from Site. Also, Contractor shall initiate a regular watering program to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules (see also [Article 04.03](#), subsections: Air Pollution Control and Water Pollution Control).

D. Safety.

The Contractor shall exercise precaution at all times for the protection of persons and their property.

1. Contractor shall provide and maintain a daily sign in sheet which includes the name of each individual performing work under the job order, and number of hours worked, signed by the contractor and transmitted to the Campus by 9:00 am for the previous day. Any failure to submit daily construction activity reports along with the requisite subcontractor reports and employee sign in sheets is

04.00 CONDUCT OF THE WORK

considered an incident of contractor specific non-performance. Any incident of such specific non-performance is grounds for penalties, including but not limited to, withholding of payment.

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

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

E. Utilities

1. If the Contractor discovers utility facilities not identified in the Detailed Scope of Work, the Contractor shall immediately notify the University and the utility involved, in writing, of such discovery. When the Contractor is required by the Detailed Scope of Work to locate, remove or relocate utility facilities not identified in the individual discrete Job Order with reasonable accuracy, it shall be compensated for any reasonable actual added cost incurred by the issuance of a new Job Order. The University shall also compensate the Contractor for the cost of repairing any damage resulting from the discovery of such unidentified utility facility, when such damage does not result from the failure of the Contractor to exercise reasonable care. The Trustees shall base all such compensation to the Contractor, utilizing the pricing procedure described in [Article 02.04 \(III\), Description of the Job Order Contract Agreement](#). The University or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs, or relocation Work or permit the Contractor to do such repairs or relocation Work at a reasonable price, where such Work is required to facilitate the Project. If the Trustees or the owner of the utility fail to provide for removal or relocation of such unidentified utility facilities, the University shall not assess liquidated damages on the Contractor for delay in the completion of the Project.
2. With the exception of the identification of main or trunk line utility facilities in the Contract Documents, the foregoing provisions of subdivision 1 shall not apply to the presence of existing service laterals or appurtenances. Additionally, the Trustees shall have no obligation to indicate them whenever the presence of such utilities on the Site of the Project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Site of the construction.
3. Except as expressly provided in subdivisions 1 and 2 above, the Contractor shall be responsible at its own cost for all Work, expense, or special precautions caused by the existence or proximity of utilities encountered at the Site or in the performance of the Project Work. This would include, without limitation, repair of any damage that may result, including any damage resulting from hand or exploratory excavation.

04.00 CONDUCT OF THE WORK

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

- a. observe special precautions at its own cost, and
 - b. expose all cables and the enclosure ducts by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and
 - c. erect appropriate warning signs, barricades, and safety devices.
4. Upon completion of Work under each job order, the Contractor shall provide as-built drawings of all utilities encountered and constructed to the University, indicating the size, horizontal location, and vertical location based on the Project benchmark or a stable datum.

F. Hazardous Materials

1. Asbestos.

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

2. Lead.

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

04.09 **Payments by Contractor**

In accordance with Business and Professions Code section 7108.5, and unless otherwise agreed in writing by the parties, the Contractor agrees to promptly pay all subcontractors within seven (7) Days of receipt of each progress payment, the respective amounts allowed Contractor on account of the Work performed by its subcontractors, to the extent of each such subcontractor's interest therein.

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

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

04.11 **Patented or Copyrighted Materials**

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

04.12 **Property Rights in Materials and Equipment**

Nothing in the Contract shall be construed as vesting in the Contractor any property right in the materials or equipment after the Job Order is complete. All such materials or equipment shall become the property of University upon completion of the Job Order, and the Contractor warrants that all such property shall pass to University free and clear of all liens, claims, security interests, or encumbrances.

04.13 **Taxes**

The Contractor shall pay all levied taxes imposed by law that become payable resulting from the Contractor's performance under this Contract.

04.14 Contract Time

I. Time of the Essence.

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

II. Starting and Completion Date.

The University shall designate in the Job Order Notice to Proceed the starting date of each discrete Job Order on which the Contractor shall immediately begin and thereafter diligently prosecute the Work to completion. The Contractor agrees to complete the Work on the date specified for completion of the Contractor's performance in the Job Order unless such time is adjusted, in writing, by the University. The Contractor may complete the Work before the completion date if it will not interfere with the University or their other Contractors engaged in related or adjacent Work. The Work shall be regarded as completed on the acceptance date noted on the University's Notice of Completion. This date shall be used as the date the guarantee period begins as defined in [Article 09.05, Guarantee](#).

III. Adjustment of Job Order Completion Time Due to Acts of God, etc.

The Contractor shall not be assessed with liquidated damages, nor the cost of engineering and inspection during any delay in the completion of the Project caused by acts of God, the public enemy, fire, flood, earthquake, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or paleontological artifacts, and unusual action of the elements; provided that the Contractor shall notify the University in writing of the causes of delay within 24 hours from the beginning of any such delay. The University shall determine the facts with regard to the delay and the reasonable period of time by which the date of completion should be extended by reason thereof, if any. The University's findings thereon shall be final and conclusive.

There shall be no compensation to the Contractor for costs associated with this kind of delay.

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

The Contractor shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the Site. The time for completion of each Job Order will be calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the Site.

IV. Adjustment of Job Order Completion Time Due to Acts of the University.

If the Contractor experiences a delay in completing a Job Order:

- A. by reason of any act of the University not provided by the Contract, or
- B. by reason of changes made without reaching agreement as to any time adjustments, the University may extend the time for completion of a Job Order may for a period commensurate with the delay. The Contractor shall notify the University in writing of the causes of the delay within seven Days from the beginning of the delay.

V. Contractor to Prosecute the Work Fully.

The University will grant no extension of time for any cause, unless the Contractor demonstrates to the satisfaction of the University that the Contractor has made every reasonable effort to fully prosecute the Work and complete the Work within the Job Order Completion Time. The causes of delay shall be subject to the same determinations as stated in [Article 04.14 \(III\), Adjustment of Job Order Completion Time](#) Due to Acts of God, etc., above.

VI. University's Adjustment of Job Order Completion Time.

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

- A. all or any part, the value of the lost use of the completed Project, and
- B. the actual cost to the University of engineering, inspection, superintendence, and other overhead expenses

04.00 CONDUCT OF THE WORK

which are directly chargeable to the Contract, and which accrue during the period of such extension. Such costs will not exceed liquidated damages.

The University may also extend the time for completion if the reason is due to circumstances beyond the control of the Contractor or the University (e.g., awaiting environmental clearance).

04.15 **Labor Force and Superintendent**

I. **Overview**

- A. At all times the Contractor shall provide sufficient labor to properly prosecute the Work and to ensure completion of the Work within the Job Order Completion Time (Public Contract Code section 10843). The Contractor shall employ competent workers who are skilled in the type of Work required and whose workmanship is of the best, regardless of the quality of material. Contractor shall enforce strict discipline and good order at all times among Contractor's employees and all subcontractors. All employees assigned to the Work by Contractor shall perform in the best manner and shall cooperate fully with the University and all other representatives of the University. The Contractor shall remove from the Work any employee of the Contractor or of any subcontractor when so directed by the University.

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

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

The superintendent shall prepare a daily report that includes worker count, Work in progress and pertinent details relating to the progress of the Work. Such report shall be provided to the University upon request.

- C. Contractor's Responsibility for Work:

1. The Work shall be under the charge and care of the Contractor until final acceptance by the University, including all punch list items, unless otherwise specified in the Contract Documents. The Contractor shall assume all responsibility for injury or damage to the Work by action of the elements and fire and from any other causes whatsoever, whether arising from the execution, or from the non-execution, of the Work. The Contractor shall rebuild, repair, restore and make good, at its expense, all injuries or damages to any portion of the Work occasioned by any of the above causes before final completion.
2. When the University furnishes equipment or materials to the Contractor for use or inclusion in the Work, the Contractor's responsibility for all such equipment and materials shall be the same as if furnished by him/her.
3. The Contractor shall not have Work performed, nor shall it employ labor or means, in the carrying out of this Contract that would in any way cause or result in a suspension, or delay of, or strike upon the Work to be performed hereunder of any of the trades working in or about the premises herein described, or in or about any other building of the University.
4. As a minimum staffing level, the Contractor shall have at all times a project manager, estimator, office manager and superintendent assigned to the Contract. Additional staff will be assigned depending on the Work load level but at all times the Contractor shall maintain a ratio of at least one (1) superintendent for every six (6) Job Orders.

04.16 **Subsurface or Site Conditions Found Different**

Should the Contractor encounter subsurface or physical conditions at the Site materially differing from those shown on or described in or indicated in the Job Order, the Contractor shall immediately give written notice to the University of the differing conditions and shall not disturb the differing conditions until directed to do so by the University.

04.17 **Verifying Dimensions**

I. **Overview**

- A. The Contractor shall take all measurements at the Site and shall verify all dimensions at the Site before submitting its proposal and before proceeding with the Work.

04.00 CONDUCT OF THE WORK

- B. During the progress of Work, the Contractor shall verify all field measurements prior to fabrication of building components or equipment and proceed with the fabrication to meet field conditions.
- C. Special locations for equipment, pipelines, ductwork and other such items of Work, where not dimensioned on plans, shall be determined by sole authority of the University.
- D. The Contractor shall be responsible for the proper fitting of the Work in place.

04.18 **Meetings**

The Contractor shall attend all scheduled progress meetings and any other special meetings as directed by the University.

04.19 **Contractor's Relationship to Subcontractors**

I. **Overview**

- A. The Contractor shall have full responsibility for all portions of the Work furnished by every subcontractor and for all acts and omissions (whether willful, negligent, or otherwise) of every subcontractor and such subcontractor's employees. All Work, acts, and omissions, of every subcontractor and such subcontractor's employees shall be deemed those of Contractor for all purposes of the Contract.
- B. Before entering into any subcontract, the Contractor shall inform each subcontractor fully and completely of all requirements of this Contract relating to the Work to be performed under the subcontract. The Contractor shall require all agreements with or between subcontractors to be in writing. Every subcontract shall provide expressly that such subcontract (and all rights of any subcontractor thereunder) is subject in all respects whatsoever to all requirements of this Contract and that all Work under the subcontract shall comply with all requirements of this Contract. Each subcontract shall include a provision authorizing termination for necessity or convenience by the Contractor and a provision under which the subcontractor agrees that the subcontractor's obligations shall be assigned to the University, at the University's election, upon a termination of Contractor's rights to perform the (effective upon the giving of the University's notice of termination under either such section). Upon the University's request, the Contractor shall deliver to the University a counterpart original of the signed subcontract between Contractor and each subcontractor (and any modifications thereof). Each subcontract shall contain the same terms and conditions as to method of payment for Work, and as to retained percentages, as are set forth in this Contract; and Contractor shall pay each subcontractor in accordance with the terms of the applicable subcontract, the contract general conditions and state statutes for Work performed by such subcontractor.
- C. The University shall deem the Contractor's execution of any subcontract a representation that the Contractor has:
 - 1. informed the subcontractor fully and completely of all requirements of this Contract relating directly or indirectly to the subcontractor's Work; and
 - 2. taken all steps necessary to ensure that each and every subcontractor meets the minimum qualifications required by the University of any Contractor submitting bids for any University Work.
- D. The Contractor shall make certain that all subcontractors employed are properly licensed and are in good standing with California Department of Industrial Relations.

04.20 **Character of Workers**

I. **Overview**

- A. The Contractor shall employ only competent and efficient laborers, mechanics, or artisans. Whenever, in the opinion of the University, any employee is careless, incompetent, violates safety or security rules, obstructs the progress of the Work, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this Contract, the Contractor shall, upon request of the University, discharge or otherwise remove such person from the Work and shall not employ such person, except with the written consent of the University. The Contractor shall not permit any person to enter any part of the Work or any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.
- B. The Contractor and the Contractor's employees shall be subjected to the same general rules of conduct while on University property that apply to University employees. The University reserves the right to refuse access to any Contractor's employee if the University determines it to be in the best interests of the University.
- C. The Contractor shall make certain that all subcontractors employed are properly licensed and in good standing with the California Department of Industrial Relations.

04.21 Limitation of Construction Operations

The Contractor shall limit the area and nature of the construction operations to that which is authorized in the plans or specifications or approved by the University.

04.22 Coordination with Other Work

The University reserves the right to do other Work in connection with the Project or adjacent thereto by contract or otherwise. The Contractor shall at all times conduct the Work so as to impose no hardship on the University or others engaged in the University's Work, nor to cause any unreasonable delay or hindrance thereto. Where two or more Contractors are employed on related or adjacent Work, each shall conduct its operation in such a manner as not to cause delay or additional expense to the other.

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

04.23 Drawings Reflecting Actual Construction

During the course of construction, the Contractor, as part of their factor, shall maintain as-built drawings (if part of a Job Order) kept up each day to show the Project as it is actually constructed. Contractor shall mark every sheet of the plans that differs from the actual construction, and shall note sheets so changed on the title sheets of the plans. Contractor shall also show all Supplemental Job Orders by reference to sketch drawings and include any supplementary drawings or Supplemental Job Order drawings. Contractor shall sufficiently detail altered Contract drawings, so that future Work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Before completion of the Project, and before release of the final retention payments, Contractor shall transmit the 'as-built' drawings and marked up drawings, if any, to the Construction Administrator.

04.24 Cleanup of Project and Site

The Contractor, as part of their factor, shall clean up its Work at frequent intervals and shall clean up its Work at other times when directed by the University. At all times Contractor shall keep floors broom clean while finish Work is being done. Upon completion of the Work, the Contractor shall promptly remove from the premises construction equipment and any waste materials not previously disposed, leaving the premises thoroughly clean and ready for occupancy.

When two or more Contractors are engaged in Work at or near the Site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed. In the event the Contractor does not maintain the Project or the Site clear of debris and rubbish in a manner acceptable to the University, the University may, at its option, cause the Project or Site to be properly cleaned and may withhold the expense incurred therefor from payments due the Contractor.

04.25 Access to Work

The University shall at all times have access to the Work, and the Contractor shall maintain such access during the Work on a Project.

04.26 Notice for Testing

If the Contract Documents, the University's instructions, state laws, or regulations, require that any Work be inspected or tested, the Contractor shall give the University timely notice of readiness of the Work for inspection or testing and the date fixed for inspection or testing. The Contractor shall at all times permit the Trustees to visit and inspect the Work and shall maintain proper facilities and provide safe access for such inspection. Work requiring testing, inspection or verification shall not be covered up without such test, inspection, or approval.

04.27 Re-Examination of Work

Re-examination of any part of the Work may be ordered by the University, and if so ordered, the Contractor must uncover the Work. If the University finds such Work to be in accordance with the Contract, the University shall pay the cost of reexamination, and if the University does not find such Work to be in accordance with the Contract, the Contractor shall pay or be back-charged for the cost of re-examination.

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

04.28 Inspection of Work

I. Overview

- A. All Work, all materials whether or not incorporated in the Work, all processes of manufacture, and all methods of construction shall be, at all times and places, subject to the inspection of the University, and the University shall judge the quality and suitability of the Work, materials, processes of manufacture, and methods of construction for the purposes for which such Work, materials, processes of manufacture and methods of construction are used. The University may direct that any Work not approved by the University shall, at no cost to the University, be immediately removed, reconstructed, made good, replaced or corrected by the Contractor to the satisfaction of the University. This corrective Work shall include all Work of any third party destroyed or damaged by such removal or replacement. Rejected material shall be removed immediately from the Site at no extra cost to the University. Acceptance of material and workmanship by the University shall not relieve the Contractor from the Contractor's obligation to replace all Work that is not in full compliance with the Contract.
- B. If, after inspection, the University determines that it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work injured or not performed in accordance with the Contract, the compensation to be paid to the Contractor shall be reduced by an amount which, the University deems equitable.

04.29 Testing

All materials and equipment used by Contractor in the Work shall be subject to inspection and testing in accordance with accepted standards to establish conformance with specifications and suitability for uses intended, unless otherwise specified in the Contract. If Contractor covers or conceals any Work without the approval or consent of the University, Contractor shall uncover that Work for examination, if directed by the University. Any inspection by the University or by a testing laboratory on behalf of the University does not relieve the Contractor of the responsibility to maintain quality control of materials, equipment and installation to conform to the requirements of the Contract. If any test results are below specified minimums, the University may order additional testing. The Contractor shall pay the cost of additional testing, any additional professional services required, and any other expenses incurred by the University as a result of such additional testing.

04.30 Acceptance of Work

No previous inspection shall relieve the Contractor of the obligation to perform the Work in accordance with the Contract. No payment, either partial or full, by the University to the Contractor shall excuse any failure by the Contractor to comply fully with the Contract. The Contractor shall remedy all defects, and shall incur the cost of any damage to other work resulting therefrom.

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

05.01 Pre-Construction Conference

After award of the Contract and before the issuance of the first discrete Job Order under this Contract, the University will conduct a conference to acquaint the Contractor with University policies and procedures that are to be observed during the prosecution of the Work and to develop mutual understanding relative to the administration of the Contract.

05.02 General Scope of Work

This is an indefinite-quantity Contract for construction Work. All costs associated with preparing proposals shall be the responsibility of the Contractor.

05.03 Description of Work

I. Overview

- A. Work shall be performed only as authorized by Job Orders issued in accordance with these Contract General Conditions. The Contractor shall furnish to the University the construction services, supplies, equipment and related activities specified in the Job Orders up to and including the Maximum Contract Amount.
- B. The Work of this Contract shall be determined by individual Job Orders. The Contractor shall perform its

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

Job Order construction Work in accordance with this Contract including provision of all pricing, management, shop drawings, documents, labor, materials, supplies, parts (to include system components), transportation, facilities, supervision, and equipment needed to complete each Job Order. The Contractor shall provide quality assurance as specified in strict accordance with [Article 04.00](#) of the Contract General Conditions. The Contractor shall also be responsible for Site safety as well as Site preparation and cleanup.

- C. Contractor shall maintain accurate and complete records, files and documents to include state and local laws, ordinances, rules and regulations and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- D. Contractor, as part of their factor, shall prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor shall provide materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary for a complete job.
- E. In addition to the tasks and requirements in the University's Standard Specifications and the Construction Task Catalog, the University may, from time to time, require non pre-priced tasks. The parties will price these requirements in accordance with the procedures set forth below.
- F. The University Standard Specifications and Standard Details, as amended, shall be used in the execution of Work under the Contract and are incorporated by reference and made a part of this Contract. Each Job Order shall state the applicability of those documents and standards to the Job Order. In the case of any inconsistency between this Contract and the University's Standards, the University's Standards shall govern.
- G. The Contractor may be required to provide architectural, structural, mechanical, electrical, civil, or other engineering services for performance-based scopes of Work as requested by the University or as required for filings or permits or submittal of documents for regulatory agency approval. The services shall be provided by architects or engineers registered and insured in the State of California to practice in the particular professional field involved. Professional liability coverage shall be at least \$1,000,000. All documents prepared by architects, consultants and engineers for the Contractor under this Contract are subject to review of the University. Review by the University does not relieve any architects, consultants or engineers from the professional liability associated with documents they have prepared.
- H. The University may issue a single solicitation for bid, in which the University states it will award a single Job Order Contract to each of a specified number of contractors. In this case, the University may award an individual Job Order to any of the selected Contractors. Selection of the Contractor and award of the Job Order will be in compliance with established University procedures and based on one or more of the following criteria, in no order of priority:
 - 1. Rotational selection among all Contractors, unless otherwise determined by the University.
 - 2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, design management requirements, etc.
 - 3. Balancing of work load (Job Order dollar volume and construction backlog) among Contractors.
 - 4. Management of Job Order dollar volume within bonding limitations of the Contractor.
 - 5. Price, as it relates to the bid factor, and as is in the best interest of the University.
 - 6. Contractor's responsiveness to the University on Job Orders.
 - 7. Other appropriate criteria as deemed in the best interest of the University

05.04 Procedure for Initiating Job Order

I. Overview

- A. As the need exists for performance by the Contractor under the terms of this Contract, the University will notify the Contractor of a Project.
- B. The Contractor shall respond by:
 - 1. Obtaining from the University the scope of the requirement and collect any documents.
 - 2. Visiting the proposed Site with the University staff and participating in a Joint Scope Meeting which will at a minimum include establishment of the following:
 - a. Job order number and title

- b. Existing Site conditions to include all measurements and dimensions necessary to calculate quantities of materials and equipment required.
 - c. Methods and alternatives for accomplishing work
 - d. Definition and refinement of requirements
 - e. Detailed scope of work
 - f. Requirements for design drawings, sketches, submittals, catalogue cuts, samples, shop drawings, etc.
 - g. Tentative construction schedule (bar chart or critical path method schedule)
 - h. Preliminary quantity estimates
 - i. Proposal due date
 - j. Job Order completion date required by the University.
- C. Upon completion of the joint scoping process, the University is required to issue a Request for Proposal and a Detailed Scope of Work to the Contractor. Upon receipt of the Request for Proposal and Detailed Scope of Work, the Contractor is obligated to prepare a Proposal for the Work under consideration. The Detailed Scope of Work, unless modified by both the Contractor and the University, will be the basis on which the Contractor will develop its Proposal and the University will evaluate the Proposal. The Contractor must submit proposal fourteen (14) days after issuance of Request for Proposal or campus may consider another contractor. Contractor may be suspended if they do not submit proposals in a timely manner.

05.05 Preparation of the Proposal

I. Overview

The Contractor will prepare a Proposal in accordance with the following:

A. Pre-priced Tasks.

For pre-priced tasks the Contractor shall identify the task and quantities required from the Construction Task Catalog. The unit price set forth in the Construction Task Catalog shall serve as the base price for the purpose of the operation of this provision. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done and that the tasks proposed are reasonable for the Work to be performed. Documentation to be submitted with the Proposal shall include, as appropriate, but not be limited to, design drawings, calculations, catalog cuts, specifications, and subcontractor list, DVBE participation and construction schedule. The unit price for the pre-priced task shall be multiplied by the quantity and multiplied by the appropriate Adjustment Factor.

B. Non Pre-priced Tasks.

Non pre-priced tasks, if any, shall be separately identified and submitted in the Proposal. The Contractor shall break down any non pre-priced tasks if the labor, material or equipment required to accomplish the non pre-priced tasks are not included in the Construction Task Catalog. Information submitted in support of non pre-priced tasks shall include, but not be limited to, the following:

1. Complete specifications and technical data, including task content, support drawings, task cost data, quality control and inspection requirements.
2. Work schedule.
3. Costing data shall include a cost analysis report, establishing the basis for selecting the approach proposed for accomplishment of the requirements. Unless otherwise directed by the University, costing data will be submitted demonstrating that the Contractor sought and received three quotes. The Contractor shall provide a unit price that shall include all costs required to accomplish the non pre-priced task.
4. The final price submitted for non pre-priced tasks shall be according to the following formulas:
 - a. Non Pre-Priced Adjustment Factor:

The Trustees will base the calculation of the non pre-priced adjustment factor on the Normal Working Hours Adjustment Factor, as bid by the Contractor, in one of two ways.

(1) When the Normal Working Hours Adjustment Factor as bid is 1.0000 or less.

In this case, the formula to determine the Non Pre-priced Adjustment Factor is: the cost of the non-pre-priced item multiplied by the Normal Working Hours Adjustment

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

Factor, multiplied by 1.15. For example: if the Normal Working Hours Adjustment Factor is .8500; and the cost of the non pre-priced item is \$10,000, the mark-up formula is: $(\$10,000 * .8500) * 1.15 = \$9,775$.

- (2) When the Normal Working Hours Adjustment Factor as bid is 1.0001 or more. In this case, the University-allowed mark-up on non pre-priced items shall not exceed 15% total, and the formula is: the cost of the non pre-priced item multiplied by 1.15. For example: if the Normal Working Hours Adjustment Factor is 1.2000, and the cost of the non pre-priced item is \$10,000, the mark-up formula is: $\$10,000 * 1.15 = \$11,500$.

b. Contractor Performed Duties

- (1) A = The unit price appearing in the Construction Task Catalog for each trade classification required multiplied by the quantity and multiplied by the appropriate Adjustment Factor identified and submitted in the Job Order Price Proposal as a pre-priced task.
- (2) B = The unit price appearing in the Construction Task Catalog for each piece of equipment required multiplied by the quantity and multiplied by the appropriate Adjustment Factor identified and submitted in the proposal as a pre-priced task.
- (3) C = The lowest of three independent quotes for all materials multiplied by the quantity and multiplied by the non pre-priced Adjustment Factor identified and submitted in the Job Order Price Proposal as a non pre-priced task.

Total cost for non pre-priced tasks performed with Contractor's own forces = A + B + C.

c. Subcontractor Performed Duties

If the Work is to be subcontracted, the Contractor must submit three independent quotes for the Work from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The University may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. If three quotes or bids cannot be obtained, the Contractor will provide the reason in writing for the University's approval as to why three quotes cannot be submitted.

- (1) D = Subcontractor Costs (supported by three quotes)

Total Cost for non pre-priced tasks performed by subcontractor = D multiplied by the Non Pre-Priced Adjustment Factor.

5. Following approval by the University of a non pre-priced task and unit price, the non pre-priced task unit price will be entered into the computer database.
6. After a non pre-priced task is used on three separate Job Orders, the unit price for such task will be established, following approval by the University, and fixed as a permanent pre-priced task that will no longer require price justification.
7. The University's determination as to whether an item is a pre-priced task or a non-pre-priced task shall be final, binding and conclusive as to the Contractor.
- C. Only those tasks required to complete the detailed scope of work in the most efficient possible method. Detailed scope of work shall not contain any tasks representing that which is to be included as part of the contractor's adjustment factor under the contract. Submission of task which is to be part of the contractor's adjustment factor, and or including additional labor over and above that which is included in tasking, double tasking or including multiple tasks to perform the same function or including any task that is not most efficient method allowable for the work in question, or including any task that is not required, shall render the proposal invalid, and becomes an incident of specific non-performance. Contractor shall include comments for each task in a proposal explaining its inclusion and providing all measurements, dimensions and calculations performed in determining the quantities required to complete the detailed scope of work, and all required.

D. Documentation for Job Order Price Proposal.

The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the tasks proposed are reasonable for the Work to be performed. Documentation to be submitted with the Proposal shall include, but not be limited to:

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

1. Design drawings, calculations, specifications, and architectural renderings
 2. Catalog cuts
 3. Subcontractor and material supplier list
 4. DVBE compliance documents
 5. Construction schedule (detailed bar chart)
 6. Special insurance
 7. For special equipment a copy of the warranty document may be required.
- E. Submittal of Job Order Price Proposal.
- Contractor's Proposal shall be submitted on or before the date indicated on the Request for Proposal and will be directed by the University in its sole discretion and is to be final. Failure to provide a valid proposal on or before the date required may be considered an incident of specific non-performance, The University will give due consideration to the contractor's time required to assemble the proposal. The time allowed for preparation of the Contractor's Proposal would depend on the complexity and urgency of the Job Order. On complex Job Orders, such as Job Orders requiring engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents with the Proposal and so reflected in the Proposal due date entered on the Request for Proposal.
- F. Work Order Proposal Time Requirements
1. Job Order Proposal Submittal: Contractor shall submit the proposal for the Project on or before the due date stated in the Request for Proposal (RFP) (14 days maximum unless otherwise specified).
 2. Request for Information (RFI) Submittal: Contractor shall make a thorough analysis of each Job Order and submit all RFIs within 7 days after issuance of any RFP. Submission of RFIs shall in no way extend the Job Order Proposal due date unless deemed necessary by the University.
 3. Job Order Price Proposal Revision: After review of the original proposal, the Contractor may request a meeting with the university to discuss the proposal. The contractor is expected to revise the proposal as required to remove tasks or adjust task quantities deemed inappropriate by the University Representative and shall revise and submit the proposal within 48 hours. The Contractor may be granted the opportunity to add new valid tasks to the modified Work Order Price Proposal which may have been omitted from the original proposal. However, no new line items, quantity increases or added modifiers will be accepted absent the approval of the University.
 4. Time Requirements: Contractor agrees and understands that time is of the essence for the University, and that the Job Order due date requirements contained herein will be strictly enforced. Contractor's failure to comply with due dates as issued by the University in its sole discretion, are subject to being deemed non-responsive to the terms and intent of the contract. Repeated failure to perform, including refusal to perform any task or any work in connection with a project, may result in termination of the agreement and may impact the prequalification rating for future CSU projects.
 5. Disabled Veteran Business Enterprise Participation and Incentive.
The Contractor's Job Order Price Proposal shall comply with the disabled veteran business enterprises (DVBE) three percent participation requirement for this Contract (reference Article 02.11, Disabled Veteran Business Enterprise Requirement). Contractor understands and agrees that the DVBEs identified on the List of Proposed Subcontractors form submitted with the Job Order Price Proposal may only be replaced by another DVBE, and the substitution must be approved by the Trustees and the Department of General Services (DGS). Furthermore, in the instance of a request by the Contractor to seek approval for an exception from the agreed upon DVBE incentive on a Job Order Proposal during the life of the contract, please follow the steps for proper submittal of the "DVBE Exception Form" referenced in Article 02.11. Trustees will document changes to the scope of Work that impact the DVBEs identified in the Job Order by Supplemental Job Order and will provide their decision on DVBE substitutions in writing via the subcontractor substitution process per Public Contract Code section 4100.
Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in its bid may be cause for Contract termination, recovery of damages under rights and remedies due the State, and penalties as outlined in Military and Veterans Code section 999.9 and Public Contract Code section 10115.10 or section 4110.

6. Special Definitions

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

- a. "Disabled veteran" as used herein, means a veteran of the military, naval or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, "New Scouts," and who has at least a ten (10) percent service-connected disability and who is domiciled in the State of California.
- b. "Disabled veteran business enterprise contractor, subcontractor, or supplier" means any person or entity that has been certified by the Office of Small Business & DVBE Services and that performs a "commercially useful function," as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:
 - (1) A person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:
 - (a) Is responsible for the execution of a distinct element of the Work of the Contract.
 - (b) Carries out the obligation by actually performing, managing, or supervising the Work involved.
 - (c) Performs Work that is normal for its business services and functions.
 - (d) is responsible, with respect to products, inventories, materials, and supplies required for the Contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and
 - (e) Is not further subcontracting a portion of the Work that is greater than that expected to be subcontracted by normal industry practices.
 - (2) A contractor, subcontractor, or supplier will not be considered to perform a "commercially useful function" if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or Project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.
 - (3) Equipment Brokers
 - (a) A DVBE that rents equipment to the Trustees shall be deemed to be an equipment broker, unless one or more disabled veterans have 51-percent ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to the Trustees a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner.
 - (b) A DVBE that rents equipment to the Trustees shall, prior to performing the contract, submit to the Trustees a declaration signed by each disabled veteran owner and manager of the enterprise stating that the enterprise obtained the contract by representing that the enterprise was a DVBE meeting and maintaining all of the requirements of a DVBE. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the contract.
 - (c) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the DVBE participation requirement.
 - (d) A DVBE that is a broker or agent and that obtains a contract pursuant to these provisions shall, prior to performing the contract, disclose to the Trustees that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.
- c. DVBE as used herein, means a business concern certified by the Office of Small Business & DVBE Services as meeting all of the following:
 - (1) The business is:
 - (a) at least 51 percent owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51 percent of its stock is unconditionally owned by one or more disabled veterans.
 - (b) a subsidiary that is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is unconditionally owned by one or more

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

- disabled veterans; or
 - (a) a joint venture in which at least 51 percent of the joint venture's management, control, and earnings are held by one or more disabled veterans.
 - (2) The business is one or more disabled veterans manage and control the daily business operations. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
 - (3) The business is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign-based business.
 - b. Notwithstanding subdivision (1) (a), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a DVBE prior to that death or certification of a permanent disability, that business shall be deemed to be a DVBE for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons. A business is a DVBE pursuant to this subdivision under either of the following circumstances:
 - (1) for the duration of any contract entered into prior to the death or certification of permanent medical disability for the sole purpose of fulfilling the requirements of that contract.
 - (2) after the date of the majority owner's death or certification of permanent medical disability established by this subdivision for the sole purpose of providing sufficient time to make orderly and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a DVBE for purposes of the program if the contract would not be completed within the three-year period.
2. Participation Requirement.
- In order to satisfy and be responsive to this requirement, the Contractor must meet the three (3) percent DVBE participation requirement, which is attained when:
- a. the Contractor is not a DVBE and is committed to use DVBE subcontractors for not less than three (1) percent of the Maximum Contract Amount (including alternatives); or
 - b. the Contractor is a DVBE and is committed to performing not less than three (3) percent of the Maximum Contract Amount (including alternatives) with its own forces or in combination with those of other DVBEs.
3. Documentation Requirements.
- The Contractor must document its satisfaction of the DVBE participation requirement. Final determination of DVBE participation attainment by the Contractor shall be at the Trustees' sole discretion. If the Contractor meets or exceeds the three percent DVBE participation requirement for the Maximum Contract Amount before the expiration of the Contract term, the Trustees may waive the DVBE participation requirement for subsequent Job Orders. Contractor shall continue to satisfy the DVBE participation requirement until the Trustees shall waive this requirement in writing.
- a. Required Documentation.
- In addition to documentation submitted with each Job Order Price Proposal, the Contractor must complete the following DVBE documentation forms. Instructions for completing the required forms correctly are included to assist the Contractor.
- (1) DVBE Transmittal Form. Contractor must fill out the DVBE transmittal form as a cover sheet to the required documents, attach and submit it and the additional required documentation. Contractor must complete all requested DVBE documentation on the forms provided and submit with the DVBE Transmittal Form.
 - (2) Summary of Disabled Veteran Owned Business Participation (Attachment 1).
Summary of Disabled Veteran Owned Business Participation, Attachment 1, must be completed showing the type of Work and company proposed for DVBE participation, their subcontractors (if any), and other related information. Complete the form providing the information as follows:
 - (a) Company Name. List the name of the company proposed for DVBE participation. If the prime contractor is a DVBE, list its name in order to receive participation credit.

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

- (a) Nature of Work. Identify the proposed Work or service to be provided by the listed company.
 - (b) Contracting With. List the name of the party with which the company listed is contracting.
 - (c) Tier. Identify the contracting tier using the following level designations:
 - 0=Prime contractor.
 - 1=First tier subcontractor/supplier.
 - 2=Second tier subcontractor/supplier of first tier subcontractor/supplier;
 - 3=Third tier subcontractor/supplier of second tier subcontractor/supplier; etc.
 - (d) Claimed DVBE Value. State the total dollar amount of the DVBE's bid.
 - (e) Percentage of Bid. State the percentage (%) of the claimed DVBE's bid as it relates to the Contractor's total Job Order Price Proposal.
 - (f) DVBE Certification. The Contractor must include one copy of the DVBE certification from the Office of Small Business & DVBE Services for each DVBE listed on the Summary of Disabled Veteran Owned Business Participation.
- (2) Contractor's Certification (Attachment 2).
The Contractor must sign and include the Contractor's Certification, certifying that each DVBE listed on the Summary of Disabled Veteran Owned Business Participation (Attachment 1) complies with the legal definition of DVBE.
- (3) Disabled Veteran Business Enterprise Declarations (STD. 843).
The disabled veteran owner(s) and disabled veteran manager(s) of the DVBE must complete this declaration when a DVBE contractor or subcontractor will provide materials, supplies, services or equipment.
DVBE Exception Form.
In the event the Contractor cannot meet the DVBE requirement on a Job Order Proposal, the contractor shall complete and sign a "DVBE Exception Form." Please see section 02.11 Disabled Veteran Business Enterprise Participation Requirement.
- b. Timeframe for Submitting Documentation.
The Contractor must submit the DVBE participation documentation with each discrete Job Order.
2. Use of Proposed DVBE.
If awarded the Job Order, the Contractor must use the DVBE suppliers and/or subcontractors proposed in its Job Order Price Proposal unless it has requested substitution and has received approval of the Trustees in compliance with the Subletting and Subcontracting Fair Practices Act. Reference [Article 04.04, Substitution of Subcontractors](#).
3. Trustees' Reporting of DVBE Participation.
Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of DVBE in contract awards. To this end, the Contractor shall inform the Trustees of any contractual arrangements with subcontractors, consultants or suppliers that are certified DVBE.
4. Additional DVBE Information Sources.
For more information regarding general DVBE information, DVBE certification, or copies of directories, contact: Office of Small Business & DVBE Services
Department of General Services,
Procurement Division 707 Third Street, West Sacramento, CA 95605
Telephone number: (916) 375-4940; E-mail: OSDSHelp@dgs.ca.gov, or, Via Internet at <https://www.dgs.ca.gov/PD/Services>, and search on "DVBE".
5. Prime Contractor's DVBE Subcontracting Report.
Contractor shall include in the Prime Contractor's DVBE Subcontracting Report all completed Job Orders issued under the overall Job Order Contract. Upon completion of each Job Order, Contractor shall add the completed Job Order to the report and report the information in subsections '7-a' and '7-b' below, until the overall Job Order Contract is no longer in effect.

05.00 SCOPE AND PROCEDURE FOR JOB ORDER WORK

- a. At the end of each Job Order and upon completion of the Work, Contractor shall submit the Prime Contractor's DVBE Subcontracting Report to the Trustees within 60 days of receipt of the final (retention) payment.
 - b. In submitting the DVBE Subcontracting Report for the overall Job Order Contract, the Contractor certifies the following information provided in the report is true and correct for each completed Job Order:
 - (1) the total amount Contractor received from the Trustees for each Job Order completed under the overall Job Order Contract, and the cumulative total amount paid for the overall Job Order Contract,
 - (2) the name, address, and DVBE number for the DVBE(s) that participated in the performance of each Job Order,
 - (3) the total contracted amount for each DVBE,
 - (4) the total payment amounts made to the DVBEs, and
 - (5) the actual percentage of DVBE participation that was achieved for each Job Order and for the overall Job Order Contract.
- A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in accordance with Military and Veterans Code section 999.5(d).

05.06 Review of the Job Order Price Proposal and Issuance of Job Order

I. Overview

- A. The University will evaluate the Contractor's Job Order Price Proposal and proposed tasks and compare these with the University's cost estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the nature and quantity of tasks proposed.
- B. The University reserves the right to reject a Proposal for any reason, including, but not limited to, the quantities or tasks selected by the Contractor, schedule, inadequate documentation, unacceptable pricing for non-pre-priced tasks, selection of material, equipment or subcontractors. The University also reserves the right not to issue a Job Order if that is determined to be in the best interests of the University or the proposed cost exceeds the University's estimate. The Contractor has no claim to recoup Proposal expenses. The University may pursue the performance of such Work by other means.
- C. By submitting a signed proposal to the University, the Contractor agrees to accomplish the Work set forth in the Detailed Scope of Work in accordance with the Request for Proposal. It is the Contractor's responsibility to include the necessary tasks and quantities in each discrete Job Order Price Proposal prior to delivering it to the University.
- D. Each discrete Job Order provided to the Contractor shall state the agreed upon requirements. All clauses of this Contract shall be applicable to each discrete Job Order. Job Orders will be written on a university provided form. The Job Order, signed by the University and delivered to the Contractor constitutes the University's acceptance of the Contractor's Proposal. A signed copy will be provided to the Contractor.
- E. In the event that immediate emergency response is necessary the Contractor shall be required to conform to alternative procedures as established by the University. The Contractor shall begin Work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The Contractor shall be compensated in accordance with the Construction Task Catalog and non-pre-priced tasks as if the Work had been ordered under the standard process.

05.07 Computer and Communications Equipment Requirements

The Contractor shall maintain at its office for its use a computer with, at a minimum, a 1 GHz processor, an internet connection, and software such as Word, Excel, Bluebeam, Microsoft Project, and other construction related software as may be required for the Contract. The Contractor shall maintain individual e-mail accounts for each of its project managers.

05.08 Required Training

All JOC Contractors awarded contracts shall be expected to have their representative(s) managing the project to attend and complete online training prior to first Proposal.

06.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

05.09 **Job Order Contracting Software**

Job Order Contracting software will be provided to the Contractor for preparing and submitting Job Order Price Proposals, subcontractor lists, and other requirements specified by the University. See Supplementary General Conditions for further information.

05.10 **Contractor's Detailed Schedule of Work**

I. **Overview**

- A. The Contractor shall submit with each Proposal a bar chart or critical path method schedule setting forth the manner and sequence of the Work. The Contractor shall schedule the Work in accordance with the time duration set forth in the Request for Proposal. The Contractor shall have broad discretion in scheduling the Work. The University's basis for disapproval of any schedule shall generally be limited to a determination that the work sequence lacks logic, is unreasonable, is incomplete or is inconsistent with any other contractual requirement, such as a phasing plan or work shift requirements, noise, class schedules, campus holidays or non-construction activity days.
- B. With respect to any submission by the Contractor under this Article, no review, acceptance or approval by the University shall release or relieve the Contractor from its obligation to fully and properly complete the Work, or any other duty, responsibility or liability imposed on it under this Contract, including, but not limited to the obligation to complete the Work within the Job Order Completion Time.

05.11 **Stop Work Order**

I. **Overview**

- A. The University may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the Work or change or delete any item of the Work from the Job Order.
- B. Upon receipt of the notice of termination, the Contractor shall act promptly to minimize the expenses resulting from such termination. The University shall pay the Contractor the costs actually incurred by the Contractor up to the date of such termination, but in no event shall the Contractor be entitled to compensation in excess of the total consideration of the Job Order Price. In the event of such termination the University may take over the Work and prosecute it to completion by Contract or otherwise and may take possession of and may utilize such materials, appliances, and equipment as may be on the Site and necessary or useful in completing the Work.

05.12 **Unilateral Work Order**

If the Contractor has failed to submit an acceptable Proposal, or after failing in multiple attempts to reach agreement on the Proposal, the University may issue a Unilateral Job Order. Compensation for the Work shall be in accordance with the Contract Documents. Contractor shall commence Work issued under a Unilateral Job Order in the time stated in the Job Order. Contractor's failure to commence Work will result in the Trustees exercising their rights per Public Contract Code section 10843. The issuance of a Unilateral Job Order will not prejudice any of the Contractor's rights to make claims or appeal disputed matters.

06.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

06.01 **Interpretation of Contract Requirements**

I. **Correlation.**

Contract Documents shall be interpreted as including all elements required for a code compliant and complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the specifications address quality, types of materials and Contract conditions, while the Plans show placement, sizes, fabrication details of materials.

II. **Conflicts.**

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

- A. Addenda shall govern over all other Contract Documents, and subsequent addenda shall govern over prior addenda only to the extent modified.
- B. Supplementary General Conditions shall govern over the Contract General Conditions.
- C. Contract General Conditions shall govern over all sections of the Specifications and any notation on the Plans. No other section of the Specifications shall modify the Contract General Conditions.

- D. In case of conflict between Plans and Specifications, the specifications shall govern.
- E. Conflicts within the Plans:
 - 1. Material and equipment schedules, when identified as such, shall govern over all other portions of the Plans.
 - 2. Specific notes shall govern over all other notes and all other portions of the Plans except the material and equipment schedules described in Article 6.01 (II)(E)(1), above.
 - 3. Larger scale drawings shall govern over smaller scale drawings.
 - 4. Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- F. In the event that provisions of codes, safety orders Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

III. Omissions.

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

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

06.02 Issuance of Interpretations, Clarifications, Additional Instructions

Should the Contractor discover any conflicts, omissions, or errors in the Contract or have any question concerning interpretation or clarification of the Contract, the Contractor shall provide a written request to the University with copies to the Project Manager/Construction Inspector for interpretation, clarification, or additional detailed instructions, before proceeding with the Work affected.

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

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

Should any interpretation, clarification, or additional detailed instructions, in the opinion of the Contractor, constitute Work beyond the scope of the Contract, the Contractor must submit written notice thereof to the University within seven (7) Days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of Work thereon. The Contractor shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes Work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts.

If, in the judgment of the University, the notice is justified, the University shall either revise the interpretation, clarification or additional detailed instructions or authorize the extra Work by Supplemental Job Order or by field instruction with a Supplemental Job Order to follow. If the University decides that the claim is not justified, the University shall give the Contractor a written order that the claim is not justified and direct the Contractor to perform such Work.

The Contractor must proceed with the Work upon receipt from the University of a written order to do so. If the Contractor objects to the written order, the Contractor must notify the University in writing of its objection and the reasons therefor, within seven (7) Days of receipt of the order. The Contractor shall have the right to have this claim later determined by a Claims Review Board pursuant to this Contract (reference [Article 08.01, Claims](#)). When performing disputed Work, the Contractor shall prepare time and materials records for each day, and the Construction Inspector shall verify these records at the conclusion of each day. The Contractor shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives the written notices to the University within seven (7) Days as specified above.

06.03 Product and Reference Standards

I. Product Designation.

When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referenced in the Contract, Contractor shall consider such designations as those found in industry publications of current issue as of the bid opening date specified in the Notice to Contractors.

II. Reference Standards.

When the Contract references standards of the federal government, trade societies, or trade associations by specific date of issue, Contractor shall consider these a part of this Contract. When such references do not bear a date of issue, Contractor shall consider the current and most recently published edition as of the bid opening date specified in the Notice to Contractors a part of this Contract.

06.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions

I. Submittal Procedure.

'Shop drawings' include drawings, diagrams, illustrations, material and equipment schedules, performance charts, brochures and catalogs and other data prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work. The Contractor shall review and approve all shop drawings. Once approved, the Contractor shall promptly mark the shop drawing "approved" and submit it to the University, so as to cause no delay in the Work, together with samples as required by the Contract, and shall also submit any offers of alternatives or substitutions. Contractor shall submit at least six copies of shop drawings. Contractor shall send all such submittals to the party given in the instructions to the Contractor at the job start meeting. A letter shall accompany the submitted items containing a list of all matters submitted and identifying all deviations in the shop drawings and samples from the requirements of the Contract. Failure by the Contractor to identify all deviations may render any action taken on the materials submitted to be void. Whether to void such action shall be in the discretion of the University. In the letter and all items accompanying it, the Contractor shall fully identify the Job Order name and location, the Contractor's name, and Job Order number. In submitting the letter transmitting the approved shop drawings and samples, the Contractor represents that Contractor has verified the data contained therein with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract.

II. Samples.

"Samples" are physical examples furnished by the Contractor to illustrate materials, equipment, color, texture, or workmanship, and to establish standards for judging the Work. Physical samples shall govern in the case of a conflict between the finish schedules, specifications, other submittals, and the physical sample.

III. Alternatives or Equals.

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as 'designated by brand name.' Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Contractor complies with the following requirements:

- A. The Contractor shall submit its proposal to the University for an alternative as an "equal" in writing no later than 35 Days after the Notice to Proceed, unless otherwise specified in the Supplementary General Conditions. In exceptional cases the University may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. Contractor is responsible for timely submittal of its proposed "or equal."
- B. The University will consider no Proposal, unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Provide samples when requested by the University.
- C. The burden proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Contractor. Where the material specifies capacity or performance, the burden of proof shall be on the Contractor to show that any particular equipment or materials meet the minimum capacities, or the performance requirements specified. The Contractor shall furnish at its own expense all information necessary for a determination regarding meeting the minimum capacities or performance requirements and shall submit such information prior to issuance of the Job Order Notice to Proceed per Public Contract Code section 3400.

06.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

The University shall be the judge of such matters. If the University rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, Contractor shall make such changes or delays at Contractor's expense without recourse for reimbursement from the University.

06.05 Quality of Materials, Articles and Equipment

Materials, articles and equipment furnished by the Contractor for incorporation into the Work shall be new. When the Contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, the Contractor shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment that are specified.

06.06 Testing Materials, Articles, Equipment and Work

The University specifies in this Contract the materials, articles, equipment or other Work requiring tests. Contractor shall deliver to the Site all such materials, articles and equipment requiring tests, in ample time before intended use to allow for testing. Contractor shall not use these prior to testing and receipt of written approval. The Contractor shall be solely responsible for notifying the University where and when materials, articles, equipment and Work are ready for testing. Should Contractor cover any such materials, articles, equipment or Work without testing and approval, if required, Contractor shall uncover them at the Contractor's expense.

06.07 Rejection

Should any portion of the Work fail to comply with the requirements of the Contract, the University shall reject such Work in writing, and Contractor shall immediately make the rejected Work satisfactory to the University, at no additional expense to the University. Contractor shall immediately remove any rejected Work from the premises at the Contractor's expense. The University may retain one and one-fourth times the cost of the rejected Work from any payments due the Contractor until Contractor makes the rejected Work acceptable to the University. The University may back charge the Contractor for design costs incurred in the correction of the rejected Work.

06.08 Responsibility of Quality

The testing and inspection provided by the University shall not relieve the Contractor of its responsibility for the quality of materials and workmanship provided by the Contractor, and the Contractor shall make good all defective Work discovered during or after completion of the Project.

06.09 Accident Prevention

The Contractor shall, at all times, take every precaution against injuries to persons or damage to property and for the safety of persons engaged in or surrounding the performance of the Work (see Article 04.08).

06.10 Protection of Work and Property

I. Overview

- A. The Contractor shall, at all times, guard each Site from injury or loss in connection with the Work. The Contractor shall, at all times, guard and protect the Contractor's Work, and adjacent property. In carrying out its obligations hereunder, Contractor shall take into account that the Site is an educational facility which may be or may become fully or partially occupied and utilized by teachers and students and in that event the Contractor must take into account that the students utilizing or attending the educational facilities are susceptible to the hazards of attractive nuisances or other hazards present on construction sites.
- B. The Contractor shall have full responsibility to install, protect, and maintain all materials and supplies in proper condition and forthwith repair, replace and make good any damage thereto until final acceptance. The Contractor shall maintain an inventory of all materials and supplies for the Work at the Site that are delivered to the Site or approved for offsite storage facilities.

06.11 Construction Site Emergency

I. Overview

- A. A construction emergency is defined as an unforeseen condition or event requiring prompt action by the Contractor. Construction Site Emergencies include, but are not limited to, construction related accidents;

07.00 CHANGES IN THE WORK

uncontrolled release of asbestos, lead dust or other hazardous materials; natural disasters; automobile accidents; and fires.

- B. Contractor must notify the University of a Construction Site Emergency within half an hour of the event's occurrence.

06.12 **Failure to Comply with Provisions of Articles 06.09 - 06.11**

This Contract may, at the sole option of the University, be declared void and no effect if Contractor fails to comply with the provisions of Articles [06.09, Accident Prevention](#), [06.10, Protection of Work and Property](#), and [06.11, Construction Site Emergency](#).

06.13 **Non-Performance Conditions**

If contractor delays or fails to respond, submits a delayed or unreasonable proposal, contractor may be deemed unresponsive. Contractor's failure to comply with due dates as issued by the University in its sole discretion, are subject to being deemed non-responsive to the terms and intent of the contract. Repeated failure to perform, including refusal to perform any task or any work in connection with a project, may result in termination of the agreement and may impact the prequalification rating for future CSU projects. Please refer to [Section 04.00 Conduct of Work](#) as well as [Section 10.10 Failure of Contractor](#).

07.00 CHANGES IN THE WORK

07.01 **Supplemental Job Orders**

Additive or deductive changes in the Work requested in a Job Order (unless very minor) are dealt with by the issuance of a Supplemental Job Order to accommodate the changes. The procedures for the issuance of a Supplemental Job Order are the same as the procedures for the issuance of the original Job Order. Any additions are therefore calculated by using the appropriate item in the Construction Task Catalog, times the quantity to be added, times the appropriate Adjustment Factor. Time will be negotiated as appropriate for the Detailed Scope of Work.

07.02 **Emergency Changes**

I. Overview

Following are the kinds of emergency changes that the University may authorize in writing to the Contractor:

- A. changes in the Work agreed by the Trustees to be necessary due to unforeseen Site conditions,
- B. discovery of Insurance
- C. in plans or specifications requiring immediate clarification in order to avoid a serious Work stoppage,
- D. changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the University.

The Contractor shall make every reasonable effort to commence performance of the emergency change immediately upon receipt of written direction from the University. Compensation for emergency changes shall be accommodated by the same process described in [Article 02.04 \(III\), Description of the Job Order Contract Agreement](#), subdivision E(2), and [Article 05.06 \(I\), Review of the Proposal and Issuance of Job Order](#), subdivision E.

07.03 **Time Extensions, Net Credit Changes, or Minor Additive Changes**

I. Overview

University may issue a Supplemental Job Order to extend the Job Order Completion Time as provided in [Article 04.14](#) to:

- A. assess liquidated damages as provided in [Article 08.02, Delay in Completion – Liquidated Damages](#),
- B. adjust the Contract for a net credit per [Article 04.28, Inspection of the Work](#),
- C. delete a portion of the scope, or
- D. perform a minor additive portion of Work.

University shall use the Construction Task Catalog for additive Work, and University shall take the appropriate cost for deleted Work from the approved Job Order Price Proposal

08.00 CLAIMS AND DAMAGES

08.01 Claims

I. Claim and Dispute Submittals

Contractor shall promptly submit any dispute related to this Contract or its breach that is not resolved by agreement in accordance with this Article 08.01, with adequate supporting data. Adequate supporting data shall include but is not limited to a statement of the reasons for the asserted entitlement, the certified payrolls, invoice(s) for material and equipment rental, an itemized breakdown of any adjustment sought, and supporting schedules.

Contractor’s submission of a claim, properly certified, with all required supporting documentation, and Trustees’ written rejection or denial of all or part of the claim(s) are conditions precedent to any action, proceeding, litigation, suit, or demand for arbitration by the Contractor.

At the time of submission of any claim, the Contractor shall certify as follows:

SUBMISSION UNDER PENALTY OF PERJURY	
<p>“I, <u>(insert full name)</u>, am the <u>(insert title--must be an Officer)</u> of <u>(insert name of firm)</u>. I declare under penalty of perjury under the laws of the State of California and do personally certify and attest: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, and know its contents, and made said claim in good faith; and that:</p> <ul style="list-style-type: none"> • the supporting data is truthful and accurate, • the amount requested accurately reflects the contract adjustment for which the Contractor believes the Trustees are liable, and further, • I am familiar with California Penal Code section 72 and California Government Code section 12650 <i>et seq.</i> pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.” 	
By: _____ (signature)	Date: _____ (insert date of signature)

II. Contractor’s Claim(s) – Notice of Claim

In accordance with [Article 06.02, Issuance of Interpretations, Clarifications, Additional Instructions](#), should the Contractor disagree with the determination of the University on a matter that substantially affects the Contractor’s costs, compensation, or extent of Work, the Contractor may file a preliminary claim with the Trustees. For purposes of this [Article 08.01](#), “claim” means a separate demand by Contractor, sent by registered or certified mail with return receipt requested, for one or more of the following:

- A. A time extension for relief from damages or penalty for delay,
- B. Trustees’ payment which is not otherwise expressly provided or to which the Contractor is not otherwise entitled,
- C. Payment of an amount that the Trustees dispute,
- D. Subcontractor claims.

III. Actions Prior to Claims Review Board

- A. Contractor’s Claim Submittal / Documentation.
Contractor submitted its claim in accordance with [Article 08.01](#), subsections I and II.
- B. Trustees’ Review of Contractor’s Claim upon Receipt.
The Trustees shall conduct a reasonable review of the claim upon receipt and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying disputed and undisputed portions of the claim. Upon receipt of the claim and by mutual agreement, the Trustees and Contractor may extend the time provided herein.

The Trustees’ failure to issue a written statement shall result in the rejection of the claim in its entirety. A claim that is denied by reason of the Trustees’ failure to respond to the claim or to meet the time requirements contained herein shall not constitute an adverse finding regarding the merits of the claim or the responsibility/qualifications of the Contractor.
- C. Trustees’ Payment of Undisputed Portion of Claim.

The Trustees shall pay the undisputed portion of the claim within 60 days after issuing the written statement.

IV. Informal Meet and Confer Conference

- A. If Contractor disputes the Trustees' response, or if the Trustees fail to respond to Contractor's claim within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered or certified mail with return receipt requested, the Trustees shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- B. Post-Meet and Confer Conference
Within ten business days following conclusion of meet and confer conference, the Trustees shall provide Contractor a second written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. The Trustees shall pay the undisputed portion within 60 days after the Trustees issue the second written statement.

V. Nonbinding Claims Review Board

Contractor shall submit any remaining disputed portion of the claim to nonbinding Claims Review Board. If the Claims Review Board is unsuccessful, Contractor may submit the disputed portion of the claim to mediation.

VI. Contractor Submission of Unresolved Claims.

Contractor shall submit all claims in writing in accordance with this [Article 08.01](#) to the Trustees no later than 30 Days after the County Recorder's recordation date on the Trustees' Notice of Completion. The Contractor's failure to submit its claims to the Trustees within this 30-Day period shall constitute a waiver by the Contractor of such claims. Once Contractor has submitted the claims, and the 30 Days after the County Recorder's recordation date on the Notice of Completion have expired, Contractor may not submit any additional claims. Contractor shall have 30 additional Days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-Day period shall constitute a waiver by the Contractor of such claims.

VII. False Claims.

Contractor submits the claim recognizing the significant civil penalties and treble damages, which follow from making a false claim or presenting a false claim to the Trustees (see Government Code sections 12650 et seq.).

VIII. Trustees' Claim(s) Submittal.

The Trustees shall submit a rebuttal to the Contractor's claim, along with any Trustees' claims to the Claims Review Board within a reasonable time after the submission by the Contractor of a total and detailed claims package or the expiration of the time to file Contractor's claims.

IX. Contractor Rebuttal to Trustees' Claims.

Upon submission of any Trustees claims, the Contractor shall have an additional 30-day period to submit to the Claims Review Board the Contractor's rebuttal to the Trustees' claims.

X. Claims Review Board.

The Trustees will convene a Claims Review Board to hear the submitted claims at the completion of the Project. Each Claims Review Board shall continue to function until the members review all pertinent facts and arrive at a recommendation. The Assistant Vice Chancellor for Capital Planning, Design and Construction, or a designee administers the Claims Review Board process. These administrative responsibilities include, but are not limited to, selection of the Claims Review Board members, determination of the time and location of the hearing, and application of the Claims Review Board procedures. The Claims Review Board is comprised of representatives of the California State University, which may include representatives of Capital Planning, Design and Construction staff who have not had any direct connection to the Project. It is a neutral, lay dispute resolution board, in which an independent third-party board assists the parties in dispute resolution through negotiation or by issuance of an evaluation or recommendation. Attorneys and third-party claims specialists may not participate in the hearings, with the exception of scheduling consultants. The Board's recommendation will be made as soon as possible after the conclusion of the hearing, and that recommendation is made to the appropriate University official and the Assistant Vice Chancellor of Capital Planning, Design and Construction.

08.00 CLAIMS AND DAMAGES

The decision to accept or reject the Board’s recommendation is the responsibility of either the University official, if the University administered the Project, or the Assistant Vice Chancellor, Capital Planning, Design and Construction, if the Chancellor’s Office administered the Project. The decision of the University official or the Assistant Vice Chancellor (as appropriate) exhausts the Contractor’s contractual and administrative remedies with the Trustees.

XI. Actions Post Claims Review Board.

A. Initial Mediation.

Should a dispute remain unresolved following exhaustion of the Claims Review Board process, the parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute.

Within ten business days after the Trustees have identified the disputed portion in the Trustees’ second written statement, the Trustees and Contractor shall mutually agree to a mediator, for which the Trustees and the Contractor shall share the costs equally. If Contractor and Trustees cannot agree on a mediator, each party shall select a mediator, and these mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

B. Other Dispute Resolution.

If, on completion of such mediation, the parties are unable to agree and settle the dispute, then the parties may pursue the dispute in litigation or through some other dispute resolution technique, except arbitration.

08.02 Delay in Completion - Liquidated Damages

If the Contractor does not complete the Work within the time required, damage will be sustained by the University. It is, and will be, impractical and extremely difficult to determine the actual damage that the University will sustain due to the delay. It is therefore agreed that the Contractor will pay to the University the sum of money stipulated per day in the Job Order for each day’s delay in completing the Work beyond the time prescribed, see [Article 09.01 Acceptance](#). A credit Supplemental Job Order shall be executed to assess liquidated damages. If the Contractor fails to pay such liquidated damages, the University may deduct the amount thereof from any money due or that may become due the Contractor under the Contract (Public Contract Code section 10826). If the University has occupancy of all or a portion of the Project, the University may reduce the amount of assessment of liquidated damages, if it is determined to be in the best interest of the University. The University’s assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

The application of liquidated damages shall be noted on the Request for Proposal for each Job Order. The University reserves the right to negotiate the amount of liquidated damages for each Job Order, but in no event will the liquidated damages be less than the following schedule:

SCHEDULE FOR LIQUIDATED DAMAGES

Job Order Amount	Calendar Day
\$1.00 to \$100,000.00.....	\$ 350.00
\$100,000.01 to \$250,000.00.....	\$ 450.00
\$250,000.01 to \$400,000.00.....	\$ 600.00
\$400,000.01 to the limit set for Minor Cap projects.....	\$ 800.00

08.03 Failure to Meet Terms of Contract

If the University deems that the Contractor has failed to supply an adequate working force, or material of proper quality, or has failed in any other respect to prosecute the Work with the diligence and force specified in the Contract, it may take any of the actions authorized in Public Contract Code section 10843 et seq. The Contractor’s failure to complete a punch list with diligence is an example of such failure to meet the terms of the Contract.

09.00 PAYMENT AND COMPLETION

08.04 **Third-Party Claims**

The Trustees have full authority to compromise or otherwise settle any claim relating to a contract at any time. However, the Trustees shall notify the Contractor of the receipt of any third-party claim relating to the Contract (Public Contract Code section 9201).

08.05 **Termination for Cause**

If the Trustees deem that Contractor has failed to supply an adequate working force or material of proper quality, or Contractor has failed in any other respect to prosecute the Work with the diligence and force as required by the Contract, which will include the timely submission of a valid price proposal that meets all requirements of the contract, then the Trustees may take any of the actions authorized by Public Contract Code section 10843 et seq. If the costs of finishing the Work exceed the unpaid balance of the Job Order Price, the Contractor shall credit the difference back to the Trustees.

The Contractor's failure to submit an acceptable Proposal conforming with the terms of this contract, on or before the due date assigned by the University in each instance, is an example of a failure to prosecute the Work with the diligence and force required by the Contract.

09.00 PAYMENT AND COMPLETION

09.01 **Acceptance**

When the University deems that the discrete Job Order is complete in all respects in accordance with the Contract Documents to the University's full satisfaction, the University will then file a Notice of Completion with the County Recorder in the county in which the Project is located. The date of acceptance of the Job Order as stated on the Notice of Completion shall be the official completion date related to the assessment of liquidated damages. Acceptance shall be final and conclusive except for latent defects, gross mistakes amounting to fraud, audit rights, or Trustees' rights under any warranty or guarantee.

The County Recorder's date of recording on the Notice of Completion, if filed timely (within fifteen Days of acceptance), shall be the official completion date relating to claims and stop payment notices. Contractor and all subcontractors must file all stop payment notices with the University within 30 Days after the County Recorder's recordation date on the University's timely Notice of Completion. Contractor and all subcontractors shall submit claims arising from this Contract in writing to the University no later than 30 Days after the recordation date on the University's Notice of Completion, see [Article 08.01, Claims](#).

09.02 **Partial Payments**

Once each month during the progress of the Work on each discrete Job Order, the Contractor shall submit a partial payment request. The Contractor shall base the partial payment request on the approved bid breakdown for the cost of the Work completed plus, where applicable, a maximum of 90% of the verified supplier-invoiced and Contractor-purchased value for the acceptable materials delivered to the Site or stored subject to the control of the Contractor but identified as the property of the Trustees, and not yet installed and as allowed on the Contract Payment Request, Form 702.12, line 2-f.

The partial payment request shall be submitted on the monthly anniversary of the day selected by the Contractor in the pre-construction conference. Partial payment requests shall be processed with five percent retention. The University holds retention as security for the fulfillment of an individual Job Order by Contractor. The University will withhold sufficient funds in addition to the retention to cover for anticipated liquidated damages, stop payment notices, Labor Code wage and penalty assessments, unacceptable Work, punch list Work and University back-charges such as for retesting and re-inspection. The Trustees will withhold monies from partial payments for incomplete punch list Work in addition to retention. The Trustees shall not process partial release of retention before Contract completion (Public Contract Code section 10781).

The University shall not construe partial payments as acceptance of any Work that is not in accordance with the requirements of the Job Order. Payment will be processed in accordance with section 10853 of the Public Contract Code, which provides for 39 Days processing, from the date of receipt at the University, prior to assessment of late payment interest.

09.03 Stop Payment Notices

For each discrete Job Order, the University shall retain out of any money due or that may become due the Contractor, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop payment notice provisions of the law (Civil Code, section 9000 et seq.).

All parties shall present preliminary notices and stop payment notices for each discrete Job Order, shall be presented to the Construction Administrator in proper form, and should send a copy to the Trustees at the address identified in the letter transmitting the Contract for signature and at the preconstruction conference. Contractor shall be responsible to communicate this information to all subcontractors.

09.04 Payment

After Trustees' acceptance of the Job Order as complete, the Contractor shall submit to the Construction Administrator a payment request of the total due under the Contract less the retention. The University shall process this payment request in the same manner as the partial payment requests. Reference [Article 09.02, Partial Payments](#).

The University shall notify the Contractor of the date of recordation of the Notice of Completion. The Contractor shall submit a request for payment of the retention to the Construction Administrator, who will process the retention payment 30 Days after the date of recordation by the County Recorder.

The University shall continue to retain funds to cover liquidated damages, stop payment notices, state labor commissioner claims, back charges from the University, unexecuted credit Supplemental Job Orders, and other such claims received up to the end of the 30 Days period following recordation. Upon receiving any stop payment notice, the University shall withhold payment in an amount of at least 125 percent of the total claims filed until either the rights under the stop payment notices have been settled, or the Contractor has posted sufficient bond in an amount of at least 125 percent of the total claims filed to secure payment of such claims.

09.05 Guarantee

The Contractor hereby unconditionally guarantees the Work under this Contract to be in conformance with the Contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the Job Order pursuant to [Article 04.14 \(II\), Starting and Completion Date](#), unless the Trustees stipulate to a longer guarantee period in the Job Order Contract Documents. Contractor shall obtain and deliver to the University all manufacturers' warranties; the manufacturers' warranties shall start on the acceptance date noted on the Notice of Completion and shall run through the full term of each manufacturer's warranty. By this guarantee the Contractor agrees, within the guarantee period, to repair or replace any Work, together with any adjacent Work that may be displaced in so doing which is not in accordance with the requirements of a Job Order issued under this Contract or which is defective in its workmanship or material, all without any expense whatsoever to the University.

The Contractor who is responsible for the entire Work and the subcontractor that performs the Work shall sign special guarantees required by any Job Order.

Contractor agrees that within ten (10) Days after University notifies Contractor in writing of any Work not in accordance with the requirements of any Job Order issued under this Contract or any defective Work, Contractor agrees to commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee and to complete the Work in accordance with the requirements of the Contract within a reasonable period of time. The Contractor, in the event of failure to comply, does hereby authorize the University to proceed to have the Work done at the Contractor's expense, and agrees to pay the cost thereof upon demand. The University shall be entitled to all costs necessarily incurred upon the Contractor's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Trustees' employees, property, or licenses, the University may undertake at the Contractor's expense, without prior notice, all Work necessary to correct hazardous conditions caused by the Work of the Contractor that is not in accordance with the requirements of any Job Order issued under this Contract.

09.06 Contractor Evaluation

A contractor evaluation will be performed by the University, and a report filed with the Trustees after completion of the Contract. If the Contractor fails to perform the construction Contract responsibly by failing to complete all Work and requirements, including honoring the warranty, the construction administrator shall so

10.00 MISCELLANEOUS

state the facts on the Contractor Evaluation Form. If an evaluation results in a non-responsible contractor finding, it could affect the Contractor's prequalification and the Trustees Prequalification Administrator may deem the Contractor ineligible to bid on Trustees' Work. Refer also to [Article 02.09, Failure to be a Responsible Bidder](#).

10.00 MISCELLANEOUS

10.01 **Governing Law**

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

10.02 **Successors and Assigns**

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

10.03 **Rights and Remedies**

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

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

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

10.04 **Waiver**

A waiver of or failure by Trustees or Trustees' representative to enforce any requirement in this Agreement will not constitute a waiver of and will not preclude the Trustees or Trustees' representative from enforcing, any other requirement of the Agreement, and the Agreement will remain valid.

A waiver of or failure by Trustees or Trustees' representative to enforce any requirement in this Agreement in connection with any adjustment of the Job Order Price or Job Order Completion Time will not constitute a waiver of and will not preclude the Trustees or Trustees' representative from enforcing, such requirements in connection with any other adjustments of the Job Order Price or Job Order Completion Time.

The Contractor agrees and understands that no oral directive, approval or representation, either express or implied, by Trustees or its agents shall be binding upon Trustees.

10.05 **Survival**

The provisions of the Contract which by their nature survive termination of the Contract or Acceptance under [Article 09.01](#), including all warranties, indemnities, payment obligations, and Trustees' right to audit Contractor's books and records, shall remain in full force and effect after Acceptance or any termination of the Contract.

10.06 **Complete Agreement**

The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in [Article 07.00, Changes in the Work](#).

10.07 Severability of Provisions

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

10.08 Notices

I. Overview

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

- A. Personally delivered.
- B. Sent by facsimile copy where receipt is confirmed.
- C. Sent by courier where receipt is confirmed.
- D. Sent by registered or certified mail, postage prepaid, return receipt requested.

Such notices and other communications in this Article 10.08 shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this [Article 10.08](#).

10.09 Counterparts

Agreements may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (".pdf") form or by any other electronic means shall constitute effective execution and delivery of this Agreement and shall have the same effect as copies executed and delivered with original signatures.

10.10 Failure of Contractor

Failure of Contractor to meet all provisions of the General Conditions can result in termination of contract or disqualification as an unresponsive bidder. Repeated failure to perform, including refusal to perform any task or any work in connection with a project, may result in termination of the agreement and may impact the prequalification rating or ability to prequalify for future CSU projects. Please refer to Section 08.00 Claims and Damages.

- End of Contract General Conditions for Job Order Contracts -