

Rider B
LICENSE POWER PURCHASE AGREEMENT GENERAL CONDITIONS

31.00 - DEFINITIONS

Acceptance - When the Project has been completed in all respects in accordance with the Plans and Specifications, and the Contract has been otherwise fully performed by the Licensee, to the full satisfaction of the Trustees, and the Commercial Operation Date has been achieved, the Trustees will accept the Project as complete.

Addendum - A document issued to the Licensee by the Trustees, prior to the agreement on the Guarantee Final PPA Rate that modifies or supersedes portions of the Contract Documents.

Agreement - Exhibit A SLPPA executed by both the Licensee and the Trustees, that provides the Work will be done in accordance with the Contract Documents as specified, as approved and on file with the Trustees and as incorporated into the Contract Documents by reference.

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

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

Budgeted Direct Construction Cost - The budgeted total cost of the Work, excluding Design Fees, Preconstruction Fees, the Licensee's site management fee, the Licensee's contingency, and the Licensee's overhead and profit, line 7 on CPDC form 2-7.

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

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

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

Change Order - A written agreement entered into after the award of the SLPPA that alters or amends or adds to the Scope of Work specified in Rider I and/or the Final Construction Documents and specifies the compensation to be paid Licensee for the extra or changed work, as described and to be governed by the provisions of Article 38 of this Rider B.

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

Final Construction Documents - The Contract General Conditions, Supplementary General Conditions, Plans, Specifications, and Addenda related to the bidding of trades and construction of the Project at the issuance of building permits/notice to proceed to construction.

Construction Inspector - The Inspector of record for the Project who works under the direction of the University Deputy Building Official.

Construction Schedule - The Licensee's time use plan for completing the Work within the Contract Time.

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

Power Purchase Agreement (PPA) rate - The amount of compensation for delivered Electricity from the System stated in the Agreement expressed in terms of \$0.XXXX/KWh generated.

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

Contract Time - The period of time, set out in Calendar Days, established in the Contract Documents within which the Work must be completed. The Contract Time may be adjusted by Change Orders or by time extensions as provided in Section 8.6 of the Agreement.

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

Construction Documents - A product of the SLPPA Contract Documents, the progress design documents prepared by the Licensee, represented by the Design Documents as further developed in Design Development through the submittal of the 95% CD documents.

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

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

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

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

Licensee - The individual or business entity that has entered into an SLPPA with the Trustees.

Licensed area - The area specified in SLPPA Rider A-1 for the Project and the area made available for the Licensee's operation.

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

Preliminary Project Criteria Documents - The SLPPA Contract Documents of the Project at the time of award.

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

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

Project - The total Work to be designed and constructed as approved by the Trustees and as required by the Agreement and any Change Orders.

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

SLPPA – Solar License Power Purchase Agreement or Exhibit A and all Riders including Construction Documents produced and Final Construction Documents.

SLPPA Contract Documents - Exhibit A and all Riders

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

State - State of California.

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

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

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

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

Trustees – The State of California, acting by and through 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 Polytechnic University Humboldt upon which the Project is located, and the University President and other University officers and employees acting within the scope of their duties.

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

Work - That total design and construction work required to be performed, or done under the Agreement and any Change Orders, including the furnishing of all design services, labor, materials, and equipment.

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

32.00 - PROPOSALS

Refer to Request for Proposal **No. 1** Solar Photovoltaic (PV) Project, which contains the process and conditions under which a Proposer will be selected to negotiate the terms of the SLPPA and Riders with the Trustees.

33.00 – ACCEPTANCE OF PROPOSAL – SLPPA

33.01 Award of SLPPA

If the Trustees deem the acceptance of a proposal or proposals is not in the best interests of the State, the Trustees may reject all proposals (Public Contract Code section 10785). If the Trustees accept the proposal(s) and award an SLPPA agreement, the Trustees' award shall be made to the Proposer whose proposal complies with all the requirements prescribed and whose proposal is determined to be the best value among the submitted proposals.

33.02 Execution of Agreement

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

After the Trustees' Office of General Counsel has fully executed the Design Services Agreement, Licensee can expect to start Work within 30 days. The Trustees will issue to the Licensee a written Notice to Proceed in substantially similar form to Attachment 2 of the RFP that authorizes the start of design Work only. The Licensee may not begin Work before receiving the Trustees' written Notice to Proceed. Any Work performed by the Licensee before receipt of the written Notice to Proceed shall be considered as having been done at the Licensee's own risk.

34.00 - DESIGN REQUIREMENTS

34.01 Scope of Work

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

34.02 Intent of the Contract Documents

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

34.03 Laws and Codes

a. Codes.

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

- (1) The California Building Standards Code (CBC), in Title 24 of the California Code of Regulations, as adopted and published by the California Building Standards Commission.
- (2) Compliance with the Department of State Architect, Access Compliance Unit's accessibility regulations in the California Code of Regulations Title 24 (Parts 2 and 3); 2010 federal ADA standards for accessible design; standards for state and local government facilities – Title II (where more restrictive than CBC).

- (3) Compliance with the Office of the State Fire Marshal, fire and life safety regulations, including the most recent editions of NFPA 101, Life Safety Code and NFPA Fire Protection Handbook.
- (4) Compliance with the California State University Seismic Review Board seismic project peer review comments.
- (5) Other agencies (as may apply) elevators and escalators, Division of Occupational Safety & Health (DOSH), county health department (food and aquatics).

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

b. Plan Review Related Appointments by Trustees.

(1) Plan Check Service Provider.

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

(2) Seismic Peer Reviewer.

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

(3) Mechanical Review Board electrical systems review

(4) Solar and energy peer review – economic pro forma analysis

(5) Section 7.4 of Exhibit A SLPPA describing electric power requirements.

(6) Materials Testing and Inspection Services.

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

c. Plans and Specifications – Miscellaneous Requirements.

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

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

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

d. Plan Check Review.

The Licensee shall submit to the Trustees three (3) copies of the completed Plans and Specifications and two (2) copies each of the structural calculations and soils report, for code review, and shall

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

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

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

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

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

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

e. Seismic Safety Structural Peer Review.

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

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

f. Access Law Compliance.

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

The Licensee shall supply one (1) copy of the Construction Documents (structural calculations are not required) for certification of access compliance (Government Code section 4450 *et seq.*). The Licensee shall incorporate modifications required in the Construction Documents without additional cost to the Trustees. Access compliance review and certification can take six to eight weeks or more. The Trustees will consider administrative appeals in the event that Access Compliance review extends beyond eight weeks when due to reasons outside the control of the Licensee.

g. State Fire Marshal.

The Licensee shall direct its design team to interact with the appointed State Fire Marshal Reviewer at the beginning of the design process, as required by Trustees' policy, and continue at regular intervals during the design process and during construction as required. Licensee shall submit copies of the Construction Documents as required (structural calculations are not required) for review and approval by the State Fire Marshal. The Licensee shall incorporate modifications required in the Construction

Documents without additional costs to the Trustees. Complex code issues will increase State Fire Marshal plan review times.

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

h. Plan Approval by University Deputy Building Official.

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

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

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

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

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

34.04 Trustees' Review of Construction Documents

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

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

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

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

34.05 Partial Permit Approvals

Review and approval of Construction Documents shall be obtained from the Trustees before the start of

construction. The Trustees will consider design submissions for site development and, if found satisfactory, may allow the Licensee to proceed with preliminary grading, foundations, and other elements of site development while completing final Construction Documents for the balance of the Work.

The Licensee is responsible for final approvals per Articles 34.03 and 34.04, and approval of portions of the Work by the Trustees does not relieve the Licensee of responsibility for construction should changes be required due to items disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the Contract Documents shall remain with the Licensee.

34.06 Submittals

The Licensee shall submit shop drawings, samples, material lists, and manufacturer's equipment brochures setting forth in detail the Work as it is to be performed by the Licensee. Submittals shall be made in accordance with Article 36.04. The Licensee shall secure Trustees' written approval of submittals prior to use of the materials for the Work.

34.07 Divisions of the Performance Specifications

The performance specifications are divided into sections for convenience. The actual Scope of Work for the various trades and/or sections of the specifications remain the responsibility of the Licensee.

34.08 Standard Specifications

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

34.09 Layout of the Work

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

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

The Licensee shall prepare surveys and design for excavations and shorings, where required, for the Project.

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

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

34.10 Use of Documents

Article 7.7 of Exhibit A SLPPA covers the use of the Construction and As-built documents.

35.00 - AUTHORIZATION TO PROCEED TO CONSTRUCTION OF SLPPA AGREEMENT

35.01 Direct Cost of the Work

The costs included in the Direct Cost of the Work shall not be at rates higher than the standard paid at the place of the Project, except with prior written consent of the Trustees. Licensee attests that the stated costs are

a true and accurate representation of the cost of the work as detailed on the completed CPDC Form 2-7 which can be found http://www.calstate.edu/cpdc/Facilities_Planning/forms.shtml

35.02 Clarification Prior to Guaranteeing the Final PPA Rate

The Licensee shall examine the Preliminary Contract Documents in preparing the Final PPA Rate and shall report to the Construction Administrator any omissions, discrepancies, or errors found in the plans and specifications. Before the date of agreeing to the Final PPA Rate, the Licensee shall submit a written request for clarification to the Construction Administrator who may give such clarification in the form of an addendum. Otherwise, in obtaining the cost of the Project, the Licensee shall consider that any conflicts shall be governed by Article 37.01, Interpretation of Contract Requirements.

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

35.03 Guaranteed Final PPA rate

The Licensee shall guarantee the final PPA rate, as set forth in the Agreement. The Guaranteed Final PPA rate shall be subject to additions and deductions by change order as provided in Article 38, Change Orders.

35.04 Notice of Authorization to Proceed to Construction

The Trustees and the Licensee have agreed to a schedule, design, specifications, and a Guaranteed Final PPA Rate and, the Trustees have issued a building permit and Attachment 3 Authorization to proceed to Construction to the Licensee to complete the design and construct the Project.

35.05 Contract Bonds

Contract bond requirements can be found in Section 8.10 of Exhibit A SLPPA.

36.00 - CONDUCT OF THE CONSTRUCTION WORK

36.01 Laws to be Observed--Generally

a. State and Federal Laws.

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

b. National Labor Relations Board-Compliance with Order.

In executing this Agreement, the Licensee 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 Licensee within the immediately preceding two-year period because of the Licensee's failure to comply with an order of a federal court which directs the Licensee to comply with an order of the National Labor Relations Board. The Trustees may rescind this Agreement if the Licensee falsely swears to this statement (Public Contract Code section 10296.)

c. Child and Family Support Obligations.

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

d. Audit Provisions.

The contracting parties shall be subject to examination and audit by both the Trustees (or designee) of the California State University and the Auditor General of the State of California at any time during construction and for a period of three (3) years after final payment of the Contract (Government Code section 8546.7). Such examination and audit shall include access to the Licensee and the subcontractor records as delineated in the following:

- (1) The Licensee's records which shall include but not be limited to accounting records (hard copy, as well as electronic data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful proposers, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Trustees/Auditor General to substantiate charges related to this Contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the Licensee's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the Licensee or any of his payees. The Licensee is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the Project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total Project costs by cost codes; and a subcontractor history report including each subcontract amount and change orders issued thereto.
- (2) Inspection and copying from time to time and at reasonable times and places any and all information, materials and data of every kind and character, including but not limited to records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this contract.
- (3) The Trustees/Auditor General shall be allowed to interview any of the Licensee's employees, pursuant to the provisions of this article throughout the term of this Contract and for a period of three years after final payment or longer if required by law.
- (4) The Licensee shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between the Licensee and payee. Such requirements will also apply to subcontractors and sub-subcontractors, etc. The Licensee will cooperate fully and will cause all related parties and all of the Licensee's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making any and all such information, materials and data available to Trustees/ Auditor General from time to time, whenever requested, in an expeditious manner.
- (5) The Trustees/Auditor General shall have access to the Licensee's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and any Change Orders, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

- (6) If an audit inspection or examination in accordance with this Article discloses overcharges (of any nature) in excess of one-half of one percent (.5%) of the total Contract billings by the Licensee to the Trustees, the Licensee shall reimburse to the Trustees the reasonable actual cost of the Trustees/ Auditor General audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Licensee's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 Days) from presentation of the Trustees/Auditor General findings to Licensee.
 - (7) If an audit discloses overcharges on change orders, where a Licensee has submitted costs and has received payment of costs for a subcontractor's Work, but has not passed on such payment to the subcontractor (including mark-up charged), and the Licensee's records do not reflect offsetting back charges, the Licensee shall reimburse the Trustees for such overcharges upon receipt of a request from the Trustees.
- e. Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
If the Licensee is a natural person, the Licensee certifies in accepting this Agreement that it is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).
- f. Declaration of Eligibility to Contract with the State.
If the Licensee is a corporation, the Licensee certifies and declares by signing the Agreement that it is eligible to contract with the state of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code section 10286 *et seq.*).

36.02 Laws to be Observed--Regarding Labor

- a. Prevailing Wage.
The Work under this Agreement and any Change Orders is a public works project (see definition of public works, Labor Code section 1720 *et seq.*) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8 California Code of Regulations sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Licensee and all subcontractors must comply with all applicable laws and regulations, and perform all obligations required by the DIR pursuant to such authority.
- The prevailing wage rates set forth are the minimum that must be paid by the Licensee on a public works contract. Nothing herein contained shall be construed as preventing the Licensee 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 Licensee is liable for any penalties under section 1775(a), if the Licensee fails to comply with the requirements of section 1775(b). Licensee shall periodically review and monitor all subcontractors' certified payroll records. If Licensee learns that any subcontractor has failed to comply with the prevailing wage requirements herein, Licensee shall take corrective action.
- Licensee represents and warrants that the Contract Amount includes sufficient funds to allow Licensee and all subcontractors to comply with all applicable laws and contractual agreements. Licensee 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 Licensee or any subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. Licensee agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against the Trustees in relation to such failure.
- (1) Hours of Labor.

Eight (8) hours of labor constitutes a legal day's work. The Licensee or any subcontractor shall forfeit, as a penalty to State, \$25.00 for each worker employed in the execution of the Contract by the Licensee 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 Licensee or any subcontractor in the execution of the Contract in excess of eight hours per Day, and forty hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per Day at not less than one and one-half times the basic rate of pay as provided in Labor Code section 1815.

- (2) If it becomes necessary to employ crafts other than those listed, the Licensee shall notify the Trustees immediately, and the Trustees will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.
- (3) Pursuant to Labor Code section 1770, the Director of the DIR has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime Work for each craft needed in execution of the Contract as set forth in the Notice to Contractors. Licensee 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. Licensee shall also post job site notices as required by the DIR pursuant to Labor Code section 1771.4 (a) (2) and applicable regulations.
- (4) The Licensee and any subcontractor under subcontract to the Licensee on the Project shall comply with Labor Code section 1775, and the Licensee 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 Licensee shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the contract between the Licensee and the subcontractor. The Licensee shall monitor its subcontractors' compliance with the prevailing wage law as required by section 1775(b). In accordance with section 1775, the Licensee and any subcontractor under the Licensee 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 Licensee or subcontractor shall pay each worker the difference between the prevailing wage rates and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate.
- (5) In accordance with Labor Code section 1776, the Licensee and subcontractors shall keep an accurate payroll record on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division). The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified herein.

Payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the public work. Each payroll record shall contain verification by written declaration under penalty of perjury that the information contained in the payroll record is true and correct and that the Contractor and

subcontractors have complied with the requirements of Labor Code sections 1771, 1776, 1777.5, 1811 and 1815 for any work performed by its employees on the Project.

- (a) The Licensee, and all subcontractors must furnish payroll records to the Labor Commissioner at least monthly and in a format prescribed by the Labor Commissioner, as required by Labor Code section 1776.
- (b) The Licensee and subcontractors' certified payroll records shall be available for inspection at all reasonable hours, or certified copies furnished upon request to the following requesting parties:
 - (i) the employee or his or her authorized representative,
 - (ii) the Trustees, the Division of Labor Standards Enforcement (DLSE), the Division of Apprenticeship Standards (DAS),
 - (iii) the public; however, a request by the public shall be made through the Trustees or the DLSE or DAS. If the requested payroll records have not been provided pursuant to paragraph (ii) above, the Licensee shall collect from the requesting party the costs of preparation by the Licensee subcontractors, and the Trustees. The public may not be given access to the records at the principal office of the Licensee.
- (c) Records made available for inspection as copies and furnished upon request to the public or any public agency by the Trustees or the DLSE or the DAS shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the Licensee or subcontractor awarded the contract or subcontractor performing the contract shall not be marked or obliterated.
- (d) Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c) (5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number.
- (e) Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 75a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.
- (f) Any copy of records made available for inspection by, or furnished to, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code, and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records.

Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.
- (g) The Licensee 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 Licensee or subcontractor fails to comply within the 10-Day period, the Licensee 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 Licensee is not subject to a penalty

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

(6) The Licensee is required to submit to the Trustees a minimum of the first two weeks of certified payroll and the Hourly Labor Rate Worksheet for its workers and all subcontractors included in change orders. Additional weeks of certified payroll records may be required at the discretion of the Trustees.

(7) Consistent with Public Contract Code section 6109, the Licensee is prohibited from performing a portion of Work with a subcontractor who is debarred pursuant to Labor Code section 1777.1 or 1777.7.

(8) Apprentices.

If the Licensee or any subcontractor employs workers on the Project in any apprenticeable craft, it may apply to any apprenticeship program in the craft in the area of the Work for a certificate approving the Licensee or subcontractor for the employment and training of apprentices. The Licensee 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 Licensee or subcontractor employing journeymen or apprentices in any apprenticeable craft or trade shall contribute to the fund or funds set up in the area of Work to administer the apprenticeship program in each trade in which it employs such journeymen or apprentices in the same amount and manner as the contributing contractors.

Special attention is directed to Labor Code sections 1777.5, 1777.6 and 1777.7, and California Code of Regulations, Title 8, section 200 *et seq.* Each Licensee and subcontractor must, before commencement of Work under this Agreement and any Change Orders, 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. Responsibility for compliance with this section lies with the prime Contractor.

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

b. Nondiscrimination

(1) During the performance of the Contract, the Licensee and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Design Builder shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

(2) Design Builder shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 *et seq.*), the regulations promulgated thereunder (California

Code of Regulations, Title 2, section 7285 *et seq.*) and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2, sections 11135-11139.5 of the Government Code.

- (3) Design Builder shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Trustees shall require to ascertain compliance with this clause.
- (4) Design Builder and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (5) Design Builder shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the Agreement (Title 2, California Code of Regulations section 8107).

c. Workers' Compensation.

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

d. Education, Counseling, and Training Programs.

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

e. Occupational Safety and Health.

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

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

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

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

36.03 Environmental Requirements

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

a. Air Pollution Control.

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

(1) Solvents.

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

(2) Disposal of Material.

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

(3) Fugitive Dust.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article 36.08-c, Protection of Facilities).

(4) Construction Vehicles and Equipment.

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

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

b. Water Pollution Control

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

(1) Storm Water Pollution Prevention Plan.

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

The Licensee shall pay all costs associated with development and implementation of the SWPPP. See Specifications for additional requirements.

- (2) Compliance.
The Licensee 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 Licensee shall comply with the University's Post Construction Storm Water Management Program requirements. Post Construction Storm Water Management Program Best Management Program Practice (BMP) details shall be designed by a competent individual licensed to practice as a Civil Engineer in California.
- (3) Maintenance Manual for Post-construction BMPs.
The Licensee 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 (www.casqa.org) New Development & Redevelopment BMP Handbook.
- c. Sound Control Requirements.
The Licensee shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Work. In the absence of any such rules, regulations and ordinances, the Licensee shall conduct its Work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Trustees' requests to reduce noise levels.

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

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

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to University activities. Construction activities will be scheduled to minimize disruption to the University and to University users.
- d. Environmental Clearances.
The Licensee shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this Project. The Licensee shall comply with the provisions, including giving notices during construction when so required. The Licensee shall not be compensated for the delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions in Article 36.15-g, Adjustment of Contract Time Due to Reasons Beyond Trustees' Control, if the Licensee demonstrates to the satisfaction of the Trustees that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.
- e. Source of Aggregates.
The Public Contract Code section 10295.5 requires that no State agency shall purchase or utilize sand, gravel, aggregates, or other minerals unless the source is on an eligible list identifying operations that have met certain requirements of the Surface Mining and Reclamation Act of 1975 (Public Resources Code section 2710 *et seq.*). Accordingly, the Licensee shall submit to the Trustees documentation that it is complying with the requirements of this law in purchasing these materials.
- f. Archaeological Finds.
If the Licensee discovers any artifacts during excavation and/or construction, the Licensee shall stop all affected Work and notify the Trustees, who will call in a qualified archaeologist designated by the

California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary.

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

g. Integrated Waste Management.

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

h. **Buy** Clean California Act.

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

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

For product category rules and more information on applicable materials or products, go to:
<https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Buy-Clean-California-Act>

36.04 Substitution of a Disable Veteran Business Enterprise

a. Substitution of a Disabled Veteran Business Enterprise.

The Licensee shall use the listed Disabled Veteran Business Enterprise (DVBE) companies listed on the List of Subcontractors for Design-Build Projects form, unless a substitution is requested in writing to the Trustees, and the Trustees and the Department of General Services (DGS) approve the substitution in writing before the commencement of any Work. The substitution request must include at least the following:

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

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

36.05 Delegation of Performance and Assignment of Money Earned

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

36.06 Insurance Requirements

Insurance requirements are found in Section 18 of Exhibit A SLPPA.

36.07 Indemnification

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

- a. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to: (1) the failure of the Design-Builder to perform its obligations under the Contract or the performance of its obligation in a willful, reckless, or negligent manner or contrary to the provisions of the Contract; (2) the inaccuracy of any representation or warranty by the Design-Builder given in accordance with or contained in the SLPPA 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 Design-Builder or any other subcontractor, or anyone directly or indirectly employed by the Design-Builder or any subcontractor.
- b. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of, resulting from, or relating to the negligent acts or omissions, recklessness, or willful misconduct of the Design-Builder, a subcontractor, or anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Article 36.07-c, following. Such obligation shall, however, apply in proportion to and to the extent that any such losses result from the negligent acts or omissions by an employee of the Design-Builder, a subcontractor, or a person indirectly employed by the Design-Builder or a subcontractor, or anyone for whose acts either may be liable.
- c. In claims against any person or entity indemnified under this Article made by an employee of the Design-Builder or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.
- d. The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- e. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses resulting from any claim of damage made by any separate contractor of the Trustees against the Trustees arising out of any alleged acts or omissions of the Design-Builder, a subcontractor, anyone directly or indirectly employed by either the Design-Builder or subcontractor, or anyone for whose acts either the Design-Builder or subcontractor may be liable.
- f. The Design-Builder shall hold harmless, defend, and indemnify the separate contractors of the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses

arising out of the negligent acts or omissions, recklessness, or willful misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable.

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

36.08 Licensee's Responsibility for the Work

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

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

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

a. **Quality Control.**

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

On projects with new foundations (for buildings, site improvements, bridges, light poles, others), the Licensee shall prepare a certified survey illustrating dimensions, locations, angles and elevations of the construction associated with the new foundation, and shall show the as-built location of the construction on the Project Site Boundary drawing provided by the Trustees. The Licensee shall specify the horizontal location using California Coordinate System, NAD 83 Coordinates. An appropriately licensed Professional Land Surveyor or Registered Civil Engineer (pre-1982 license) shall stamp the certified survey, after which the Licensee shall submit it promptly to the Trustees.

b. **Burden for Damage.**

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

The Licensee, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the Project and materials therefor before the acceptance of the Project by the Trustees except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of Work from any cause whatever, the Licensee 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 Licensee damages any property belonging to the Trustees, the Trustees may, in addition to other remedies available to the Trustees, retain from the money due to the Licensee an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

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

c. Protection of Facilities.

Once the Licensee mobilizes and occupies the Site, and until the formal acceptance of the Project by the Trustees, Licensee shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Work is not prosecuted, Licensee shall furnish such watchman's 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 Licensee shall be liable for any loss or damage that result from its failure to protect the Site and the Work.

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

d. Safety.

The Licensee shall exercise precaution at all times for the protection of persons and their property. The Licensee 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. The Licensee shall provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Licensee shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the Licensee designates other employees, its superintendent shall have the duty of prevention of accidents. The Licensee shall institute a safety program which includes all trades on the site.

Renovation, expansion, or remodel Work of any existing building may expose workers to lead-containing materials such as paint, flashings, and pipe joints. The Licensee shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, CA Code of Regulations, section 1532.1).

The Trustees and the Construction Inspector may bring to the attention of the Licensee a possible hazardous situation in the field regarding the safety of personnel on the site. Licensee 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 Licensee absolve the Licensee of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Licensee has assumed any responsibility for field safety operations.

The Licensee shall not use Explosives without first obtaining written permission from the Trustees and then shall use them only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the Project site or University premises is prohibited. 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 Licensee shall make available to the Trustees copies of its accident report to its insurance carrier. The Licensee shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

e. Utilities

- (1) If the Licensee discovers utility facilities not identified in the SLPPA Contract Documents, the Licensee shall immediately notify the Trustees and the utility involved, in writing, of such discovery. When the Licensee is required by the Plans and Specifications to either locate, remove or relocate utility facilities not identified in the SLPPA Contract Documents with reasonable accuracy, it shall be compensated for any reasonable actual added cost incurred. The Licensee shall also be compensated 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 Licensee to exercise reasonable care. All such compensation to the Licensee shall be based on an actual cost plus Licensee and subcontractor mark-up, as identified in Article 38.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5), and (6), except that both the Licensee's and subcontractor's mark-up shall be reduced by six (6) percent each, where the damage results from the failure of the Licensee or subcontractor to exercise reasonable care. The Trustees or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs, or relocation Work or permit the Licensee to do such repairs or relocation Work at a reasonable price, where such Work is required to facilitate the Project. The Licensee shall not be assessed liquidated damages for delay in the completion of the Project which is caused by the failure of the Trustees or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.
- (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, and Trustees shall have no obligation to indicate, the presence of existing service laterals or appurtenances 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 Licensee shall be responsible at its own cost for all Work, Work, expense, or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the Project Work including, without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation. The Licensee is cautioned 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 cables, special precautions are to be observed by the Licensee at its own cost and shall include the following: all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and appropriate warning signs, barricades, and safety devices shall be erected.
- (4) The Licensee shall provide to the University as-built drawings of all utilities encountered and constructed indicating the size, horizontal location, and vertical location based on the Project bench mark or a stable datum.

f. Hazardous Materials

- (1) Asbestos. The Licensee is prohibited from installing any asbestos-containing materials or products in any Work to be performed under this Agreement and any Change Order. The Licensee 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 Agreement or the Change Order.
- (2) Lead. The Licensee is prohibited from installing any lead-containing materials or products, including paint, in any Work to be performed under this Agreement and any Change Order without the written consent of the Executive Facilities Officer and the Director of Environmental Health and Safety. The Licensee 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 Agreement or the Change Order.

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

36.09 Occupancy by Trustees Prior to Acceptance

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

The Trustees' occupancy shall not constitute acceptance by the Trustees (see Article 40.01, Acceptance) either of the Project as completed or of any portion thereof, nor will it relieve the Licensee of full responsibility for correcting defective Work or materials found at any time before the formal written acceptance of the Project as completed by the Trustees and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages.

36.10 Payments by Licensee

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

The Licensee shall pay and shall require its subcontractors to pay each employee engaged in Work on the Project under this Agreement and any Change Order in full (less deductions made mandatory by law) not less often than once each week.

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

The Licensee shall secure all permits and licenses required for any operations required under this Agreement and any Change Order 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. It is the Licensee's responsibility to ascertain the necessity of such permits and licenses in preparing its bid and include in its bid the cost thereof as well as adjustments for any delays which may be caused by securing permits and licenses.

36.12 Patented or Copyrighted Materials

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

36.14 Taxes

The Licensee shall pay all taxes imposed by law which are levied or become payable as a result of the Licensee's performance under this Agreement and any Change Orders.

36.15 Contract Time

- a. Time of the Essence.

All time limits specified in this Contract are of the essence of the Agreement and any Change Orders.

b. Starting and Completion Date.

The Trustees shall designate in the Notice to Proceed the starting date of the Work on which the Licensee shall immediately begin and thereafter diligently prosecute the Work to completion. The Licensee agrees to complete the Work on the date specified for completion of the Licensee's performance in the Contract unless such time is adjusted, in writing, by change order by the Trustees. The Licensee may complete the Work before the completion date if it will not interfere with the Trustees or other contractors engaged in related or adjacent work. The Work shall be regarded as completed on the acceptance date noted on the Trustees' Notice of Completion. This date shall be used as the date the guarantee period begins as defined in Article 40.06, Guarantee.

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

The Licensee 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, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or paleontological artifacts, and unusual action of the elements; provided that the Licensee shall notify the Trustees in writing of the causes of the delays within 24 hours from the beginning of any such delay. The Trustees 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 Trustees' findings thereon shall be final and conclusive.

There shall be no compensation to the Licensee 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 the Contract.

The Licensee 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 the Contract has been calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the site.

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

If the Licensee is delayed in completing the Contract by reason of any act or omission of the Trustees not provided by the Contract, or by reason of changes made pursuant to Article 38.01, Change Orders, without reaching agreement as to any time adjustments, the time for completion of the Contract may be extended for a period commensurate with the delay. The Licensee shall notify the Trustees in writing of the causes of the delay within seven (7) Days from the beginning of the delay.

e. Licensee's Duty to Fully Prosecute Work.

No extension of time will be granted for any of the causes for which extensions may be granted unless the Licensee demonstrates to the satisfaction of the Trustees that the Licensee has made every reasonable effort to fully prosecute the Work and complete the Work within the Contract Time. The causes of delay shall be subject to the same determinations as stated in Article 36.15-c, Adjustment of Contract Time Due to Acts of God, etc., above. Licensee shall refer to Article 36.16, Schedule.

f. Trustees' Adjustment of Contract Time.

Even though the Licensee has no right to an extension of time for completion, the Trustees may extend the time at the request of the Licensee, if they determine it to be in the best interest of the State. If the time is extended, the Trustees may, in lieu of assessing liquidated damages, charge the Licensee, its successors, heirs, assigns, or sureties, and deduct from the final payment for the Work all or any part, as they may deem proper, the value of the lost use of the completed Project, and of the actual cost to the Trustees of engineering, inspection, superintendence, and other overhead expenses which are

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

- g. Adjustment of Contract Time Due to Reasons beyond Trustees' Control.
Should the Trustees be prevented or enjoined from proceeding with Work either before or after the start of construction by reason of any litigation or other reason beyond their control, the Licensee shall not be entitled to make or assert any claim for damage by reason for said delay; but time for completion of the Work will be extended to such reasonable time as the Trustees may determine will compensate the Licensee for time lost by such delay. Any such determinations will be set forth in writing.

36.16 Schedule

The following scheduling provisions apply to each SLPPA.

- a. Time is of the essence of this Agreement, including the time of beginning, the rate of progress, and the time of completion of the Work. The Work shall be prosecuted at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in the Contract Documents and the approved CM Construction Schedule.
- b. The CM shall submit a bar chart or critical path method schedule setting forth the manner and sequence of the Work. The CM shall schedule the Work in accordance with the time duration set forth in the Service Order Request. The CM 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, University holidays or non-construction activity days.
- c. The CM initial Construction Schedule shall show the sequence, duration in Days, and interdependence of activities required for the complete performance of all Work. The CM initial Construction Schedule shall begin with the date of issuance of the Notice to Proceed and conclude with the date of final completion.
- d. The CM may submit an initial Construction Schedule that shows the Work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time.
- e. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Work. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service or other approved source.
- f. The CM's submittal of a fully revised and acceptable Construction Schedule shall be a condition precedent to the processing of the each monthly payment application.
- g. The Trustees will not grant any time extensions or pay any indirect costs unless the CM can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred, and which delay cannot be mitigated, offset, or eliminated through revising the intended sequence of Work or other means. The CM shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract time extension or delay damages.
- h. Once each week, or as approved in writing by the Trustees, the CM shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, be completed or be in progress for the succeeding three (3) weeks. This schedule shall cover all Work activities listed on the Progress Schedule for the reporting period.

- i. With respect to any CM submission under this Article, no review, acceptance or approval by the Trustees shall release or relieve the CM from its obligation to fully and properly complete the Work, or any other duty, responsibility or liability imposed on it under this Agreement and any Change Orders, including, but not limited to the obligation to complete the Work within the Contract Time.

36.17 Labor Force and Superintendent

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

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

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

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

36.18 Limitation of Construction Operations

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

36.19 Coordination with Other Work

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

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

36.20 Drawings Reflecting Actual Construction

During the course of construction, the Licensee shall maintain drawings daily to show the Project as it is actually constructed. Every sheet of the Plans and Specifications which differs from the actual construction shall be marked, and sheets so changed shall be noted on the title sheets of the Plans and Specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. Licensee shall review the "as-built" drawings with the Construction Inspector at least once a month to demonstrate that the Licensee is fully and accurately recording all changes that have occurred. The altered Contract drawings shall be sufficiently detailed so that future Work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Before the completion of the Project, and before release of the final retention payments, the "as-built" drawings and specifications shall be transmitted to the

Trustees' Construction Administrator for further handling. Additionally, Licensee shall turn over to the Trustees a re-drafted and complete set of "as-built" drawings of the actual construction on AutoCAD, Version 12 or other version as approved by the Trustees, and Mylar reproduces generated from AutoCAD. Final payment will not be made to Licensee until the "as-builts" are received and spot checked by the Trustees. Corrections, if any, shall be made to the AutoCAD and to the Mylar reproduces.

36.21 Access for Inspection

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

a. Inspections on Premium Time.

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

b. Reinspections.

The Trustees may back-charge all reinspection costs to the Licensee.

c. Additional Inspections.

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

36.22 Cleanup of Project and Site

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

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

In the event the Licensee does not maintain the Project or the Site clear of debris and rubbish in a manner acceptable to the Trustees, the Trustees may cause the Project or Site to be properly cleaned and may withhold the expense incurred therefor from payments due the Licensee.

36.23 Project Sign, Advertising

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

36.24 Assignment of Trade Contracts to Trustees

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

37.00 - INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

37.01 Interpretation of Contract Requirements

a. Correlation.

Licensee shall interpret Contract Documents as complementary, requiring a complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the Specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.

b. Conflicts.

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

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

c. Omissions.

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

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

d. Quality.

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

37.02 Issuance of Interpretations, Clarifications, Additional Instructions

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

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

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

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

If, in the judgment of the Trustees, the notice is justified, the interpretation, clarification or additional detailed instructions shall be revised or the extra Work authorized by Change Order or by Field Instruction with a Change Order to follow. If the Trustees decide that the claim is not justified the Trustees shall give the Licensee a written order that the claim is not justified and direct the Licensee to perform such Work.

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

37.03 Product and Reference Standards

- a. Product Designation.
When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract, such designations shall be considered as those found in industry publications of current issue at the date specified in the RFP.
- b. Reference Standards.
When the Contract references standards of the federal government, trade societies, or trade associations by specific date of issue, these shall be considered a part of this Agreement. When such references do not bear a date of issue, the current and most recently published edition at the date specified in the RFP shall be considered a part of this Agreement.

37.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions

- a. Submittal Procedure.
The Licensee shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, materials and equipment schedules, performance charts, brochures and catalogs and other data prepared by the Licensee or any subcontractor, manufacturer, supplier or distributor, which illustrate some portion of the Work. To prevent delay in the Work, the Licensee shall promptly review, mark the shop drawing approved, and submit it to the Trustees, together with samples as required by

the Contract and shall also submit any offers of alternatives or substitutions. Licensee shall submit at least four copies of shop drawings with three to be retained by the Trustees. All such submittals shall be sent to the Trustees at the address given in the instructions to the Licensee at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the Contract. Failure by the Licensee to identify all deviations may render any action taken by the Trustees on the materials submitted to be void. Whether to void such action shall be in the discretion of the Trustees. The letter and all items accompanying it shall be fully identified as to Project name and location, the Licensee's name, and Contract number. By submitting the approved shop drawings and samples, the Licensee represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract.

b. Samples.

Samples are physical examples furnished by the Licensee to illustrate materials, equipment, color, texture, or workmanship, and to establish standards by which the Work will be judged.

The Work shall be in accordance with the samples, submitted as required by the Contract and reviewed by the Trustees. The Licensee shall remove samples from the site when directed by the Trustees. Samples not removed by the Licensee, at the Trustees' option, will become the property of the Trustees or will be removed or disposed of by the Trustees at the Licensee's expense.

c. Alternatives or Equals.

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

- (1) The Proposer shall submit its proposal to the Trustees for an alternative as an "equal" in writing no later than 35 Days after the award of the subcontract. In exceptional cases where the best interests of the Trustees so require, the Trustees may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The Proposer is responsible for a timely submittal of its proposed "or equal."
- (2) No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Trustees.
- (3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Proposer. Where the material is specified by capacity or performance, the burden of proof shall be on the Proposer to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. Proposer shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

The Trustees shall be the judge of such matters. If the Trustees reject 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, such changes or delays shall be made at the Licensee's expense without recourse for reimbursement from the Trustees.

d. Substitutions.

If the proposer proposes a product that is of lesser or greater quality or performance than the specified material or equipment, it must comply with these provisions of this Article, but, in addition, the proposer must submit any cost impact of this substitution. By submitting a substitute, the Licensee

and proposer waives any rights to claim a delay due to the processing of this substitution. The time for submission of a substitute of an unequal product shall be restricted to 35 Days after the award of the subcontract. The Trustees are not obligated to review or accept substitutions.

37.05 Quality of Materials, Articles and Equipment

Materials, articles and equipment furnished by the Licensee 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 Licensee shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

37.06 Testing Materials, Articles, Equipment and Work

- a. Materials, articles, equipment or other Work requiring tests are specified in the Contract. Materials, articles and equipment requiring tests shall be delivered to the Site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The Licensee shall be solely responsible for notifying the Trustees where and when materials, articles, equipment and Work are ready for testing. Should any such materials, articles, equipment or Work be covered without testing and approval, if required, they shall be uncovered at the Licensee's expense. The Trustees have the right to order the testing of any other materials, articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the Trustees from materials, articles or equipment to be used on the Project or from Work performed. All tests will be under the supervision of, and at locations convenient to, the Trustees. The Trustees shall select the laboratories for all tests. Decisions regarding the adequacy of materials, articles, equipment or Work shall be issued to the Trustees in writing.
- b. With the exception of the meter tests required under Sections 6.2 and 6.3 of the Agreement, all costs of the initial required tests shall be borne by the Trustees. The Trustees may decide to take further samples and tests, and if the results show that the Work was not defective, the Trustees shall bear the costs of such samples and tests.
- c. In the event the results of such additional samples and tests show that the Work was defective, the Licensee shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the Licensee. All retesting costs may be back-charged to the Licensee by the Trustees.

37.07 Rejection

Should any portion of the Work done or any materials, articles or equipment delivered fail to comply with the requirements of the Contract, such Work, materials, articles or equipment shall be rejected in writing and shall immediately be made satisfactory to the Trustees, by the Licensee, at no additional expense to the Trustees. Licensee shall, at its expense, immediately remove from the Site and Licensed Area any rejected materials, articles or equipment. The Trustees may retain one and one-fourth times the cost of the rejected materials, articles, equipment, and Work from any payments due the Licensee until it is made acceptable to the Trustees. The Trustees may back charge the Licensee for the Trustees' costs incurred in the correction of Licensee's rejected Work.

37.08 Off-Site Testing

The Trustees shall bear the cost of off-site testing up to a distance of fifty (50) miles from the Project site and up to one fabrication yard or manufacturing plant per manufactured item, for example, structural steel. If the cost of testing is increased because the fabrication yard or manufacturing plant is located beyond this fifty mile radius, then the increased costs shall be borne by the Licensee. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall be borne by the Licensee.

37.09 Responsibility of Quality

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

38.00 - CHANGES IN THE WORK

38.01 Change Orders

The Trustees reserve the right to issue written orders, or Field Instructions, to the Licensee, which shall be signed by the Trustees' Construction Administrator. Through the use of Field Instructions, the Construction Administrator may direct changes in the Work at any time prior to the acceptance of the Project without voiding the Contract, and Licensee shall promptly comply with such orders, provided that the scope of the changed Work and the basis on which compensation will be paid to the Licensee for the changed Work (i.e., a lump sum amount, time and materials) are agreed by the Parties and memorialized in a Change Order signed by both Parties.

On the basis set forth herein, a Contract price (i.e., the compensation to be paid to the Licensee for the changed or extra Work to be performed pursuant to the Change Order, which compensation shall be calculated and paid separately from the Guaranteed Final PPA Rate unless the Parties specifically state otherwise in the Change Order) shall be established or adjusted for any written order or Field Instruction requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the Licensee, set forth in Article 40.02, Partial Payments, shall be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the Trustees in writing, the Licensee shall take all necessary steps to halt such other Work in the area of the change that might be affected by the ultimate change. Changed Work shall be performed in accordance with the original Agreement requirements except as modified by the Change Order. Except as provided in this Article 38, the Licensee shall have no claim for any other compensation due to changes in the Work associated with a Change Order (Public Contract Code section 10841).

a. **Proposed Change Orders.**

The Trustees shall issue to the Licensee a cost request bulletin via the Construction Administrator, or a field instruction via the Project Manager/Construction Inspector, hereinafter called the cost request bulletin, for a proposed change order describing the intended change, and shall require the Licensee to respond with a proposed amount to be the Contract Price or, in the case of sequential Change Orders added to or subtracted from the Contract price due to the change supported by a detailed estimate of cost (hereinafter called a change order request). Upon request by the Trustees, Licensee shall permit inspection of the original Contract estimate, subcontract agreements, or purchase orders relating to the change. Any request for adjustment in time of final completion of the Project which is directly attributable to the changed Work shall also be included, with substantiating detailed explanation, by the Licensee in its response to the cost request bulletin. Licensee's failure to request adjustment of time on the change order request shall waive any right to subsequently claim an adjustment of the time for final completion based on the changed Work. Licensee shall submit the change order request with detailed estimates and any time extension request thereon to the Trustees and to the Project Manager/Construction Inspector within fifteen (15) Days after issuance of the cost request bulletin. If not submitted within the required fifteen (15) Days, and the Licensee has not obtained the Trustees' permission for a delay in submission, the Trustees may order the Licensee in writing to begin the Work immediately in accordance with Articles 38.01-c or 38.02, and the Contract price shall be adjusted in accordance with the Trustees' estimate of cost, unless the Licensee within fifteen days following completion of the changed Work presents proof convincing to the Trustees that the Trustees' estimate was in error. For any amount to be included in or added to a Contract price for the changed Work, the Trustees shall determine payment will be made in one of the following three ways: a lump sum amount, time and materials with a guaranteed maximum price, or time and materials with no guaranteed maximum price. If either of the latter two methods is agreed upon, Licensee shall keep and submit

time and materials records verified daily by the Construction Inspector to substantiate its costs and to furnish such proof.

When the Trustees and the Licensee agree on the amount of the Contract Price (or the amount to be added to or deducted from the Contract price) and the time to be added to or deducted from the completion date, and a Change Order is signed by the Trustees and the Licensee, the Licensee shall proceed with the changed Work. When the Trustees and the Licensee agree to the adjustment in the Licensee's compensation or an adjustment thereto for the performance of changed Work, but fail to agree to the time adjustment for such Work, the Licensee shall proceed with the Work at the agreed price, reserving the right to further pursue its claim for a time adjustment (see Article 36.15-d, Adjustment of Time Due to Acts of the Trustees). Any costs incurred to acquire information relative to a proposed change order shall not be borne by the Trustees.

b. Allowable Costs upon Change Orders.

The only costs (estimated or actual) that will be allowed due to changed Work, and the manner in which such costs are computed, shall be in accordance with the following nine provisions. In submitting a change order request, the Licensee affirms that the cost is submitted in good faith, that the cost is accurate and is in accordance with the provisions of the Contract requirements, and the Licensee submits the cost recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim to the Trustees (see Government Code section 12650 *et seq.*). Direct cost is defined as the actual cost of Work before the application of any mark-ups for overhead and profit. In addition to items identified in the following provisions, direct cost items may include: hoisting, clean-up (both periodic and final), trash removal, traffic control and dust control.

(1) Labor.

Costs are allowed for the actual payroll cost to the Licensee for labor, field supervision of changed Work, (but not field office supervision nor indirect supervision) and engineering or technical services directly required for the performance of the changed Work (but not site management such as field office estimating, clerical, purchasing, as-builts, change order coordination, or warranty). Costs include payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act.

No labor cost will be recognized at a rate in excess of the wages that are paid by the Licensee for similar Work on the Project at the time the Work is performed, nor will the use of a classification which would increase the labor cost be permitted unless the Licensee established to the satisfaction of the Trustees the necessity for use of such higher classifications of workers. The Licensee and subcontractors shall submit a fully detailed breakdown of the cost of every labor classification to be utilized on a proposed change on the Hourly Labor Rate Worksheet. The Trustees may verify wage and burden per Article 36.02-a, Prevailing Wage, subdivision (6). The unit cost of labor shall be an accurate accounting of actual costs paid in accordance with the allowances herein, and it shall be submitted under penalty of perjury.

(2) Materials.

Licensee's costs are allowed for the cost of the materials directly required for the performance of the changed Work. Such cost of materials may include the costs of transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual supplier is available to the Licensee, it shall be credited to the Trustees. If the materials are obtained from a supply or source owned wholly or in part by the Licensee, payment therefor will not exceed the current wholesale price for such materials. Cost for consumed materials may be charged on a reasonably estimated basis, but may not be a percentage of labor.

If, in the opinion of the Trustees, the cost of materials is excessive, or if the Licensee fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Trustees reserve the right to furnish such materials as they deem advisable, and Licensee shall have no claim for costs or profits on material furnished by the Trustees.

(3) Equipment.

Licensee's costs are allowed for the actual cost of the use of equipment directly required in the performance of the changed Work except that no payment will be made for time while equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the Project site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project in any other way than upon the changed Work. Individual pieces of equipment having a replacement value of \$200.00 or less shall be considered to be small tools or small equipment, and no payment therefor will be made unless it has been rented specifically for the changed Work. Consumed equipment or tools, such as paint brushes, rollers, drill bits, etc. may be charged on an actual or reasonably estimated cost basis and are not to be charged as a percentage.

For equipment owned, furnished, or rented by the Licensee, no cost therefor shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the Work is performed.

The amount to be paid to the Licensee including mark-up for the use of equipment as set forth above shall constitute full compensation to the Licensee for the cost of fuel (unless the Licensee has demonstrated that mark-up does not cover consumed fuel cost), power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and any and all costs to the Licensee incidental to the use of such equipment. Equipment operators shall be paid for as provided in Article 38.01-b (1), above.

(4) Mark-ups on Change Orders.

The mark-ups allowed on the direct cost of changed Work include all incidental overhead support costs and profit. Such incidental overhead support costs include: estimating and purchasing; indirect supervision and project management; home office overhead; site overhead including facilities and utilities; change order coordination; as-built drawings; warranties; bonds; liability insurance including labor; and small tools. Any incidental overhead support cost not expressly identified herein shall be included in the Licensee's mark-up. No mark-up on mark-up is permitted. If the subcontractor is owned, partially owned, or has a shared profits arrangement with the Licensee, any mark-up otherwise applicable to a change shall be reduced in proportion with the shared profits.

(5) Work by Subcontractors and Vendors.

For any portion of the changed Work which is to be performed by a subcontractor (any tier), the Licensee shall furnish to the Trustees a detailed estimate prepared and signed by subcontractor of the cost to subcontractor for performing the changed Work. At the option of the Trustees, a lump sum estimate of such cost to subcontractor may be accepted in lieu of the detailed estimate. The combined costs for subcontractor's overhead, profit, taxes, indirect supervision, insurance, bonds, warranty and any other costs not specifically allowed by Article 38.01-b (1), (2) and (3), shall not exceed fifteen (15) percent on the first \$50,000 of the direct

cost; thereafter, ten (10) percent on the balance beyond \$50,000. The maximum allowable mark-up of a first tier subcontractor on any subsequent tiers shall be seven (7) percent. The aggregate mark-ups allowed by multiple tiered subcontractors shall not exceed twenty-six (26) percent of the direct cost on the first \$50,000; thereafter, twenty-one (21) percent on the balance beyond \$50,000. Estimates of the amount to be deleted from subcontractor's portion of the Work shall be gross value of the deducted Work plus at least six percent for overhead, bonds, insurance, and related savings added to the direct value of the deleted Work. For changed Work to be furnished by a vendor, the Licensee shall furnish upon demand of the Trustees, a lump sum estimate of the cost of the items including taxes and cartage to the Licensee prepared by the vendor. No vendor mark-up for overhead, profit, layout, supervision or bonds will be allowed for changed Work furnished by a vendor.

(6) Licensee Mark-up for Added Work.

When changed/added Work is performed by a subcontractor, the Licensee may add no more than ten (10) percent mark-up to the subcontractor's total direct cost estimate (excluding the subcontractor's mark-up) for such Work on the first \$50,000; thereafter the mark-up is seven (7) percent on the balance beyond \$50,000. The Licensee's ten (10) percent mark-up in this case is for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs not specifically allowed by Article 38.01-b (1), (2) and (3). Also refer to Article 36.08-e, Utilities, for special mark-up on repair of utilities. The Licensee may add up to fifteen (15) percent to its direct cost when self-performing the changed Work on the first \$50,000 and ten (10) percent thereafter on the balance beyond \$50,000.

(7) Credit for Deleted Work.

Where an entire item or section of Work is deleted from the Contract, the entire subcontract value or bid value shall be considered the appropriate deduction less the value of Work performed, and shall have at least six percent mark-up added thereto for the Licensee's saved overhead, bonds, and insurance. If the subcontract value or bid value is not identifiable, then the amount to be deducted from the Contract amount shall be the estimated value of the deducted Work plus at least six (6) percent for saved overhead, bonds, and insurance. The value submitted on the schedule of values shall be used to calculate the credit amount, and may not be further marked up if it includes the value for general conditions (overhead, bonds, insurance, etc.).

For a proposed change order that involves both added and omitted Work, the Licensee shall separately calculate its total added costs and its total deducted costs, and shall then sum its total added and deducted costs, resulting in the Licensee's net cost for the change order. The Licensee shall then apply the mark-up to this net cost. Similarly, the Licensee shall separately calculate each subcontractor's total added costs and total deducted costs, and shall then sum each subcontractor's total added and deducted costs, resulting in each subcontractor's net cost for the change order. If the resulting net costs for each subcontractor will increase the Contract price, then the Licensee shall apply separate mark-ups for added Work as specified in Article 38.01-b (6). If the resulting net costs for each subcontractor will decrease the Contract price, then the Licensee shall apply separate mark-ups for deleted Work as specified in this Article. For example:

Licensee - net cost is \$30,000, Licensee's mark-up is 15%, or \$4,500.

Subcontractor A - net cost is \$20,000, Licensee's mark-up is 10%, or \$2,000.

Subcontractor B - net cost is <\$10,000>, Licensee's mark-up is six percent, or <\$600>.

The Licensee's total mark-up for this example change order is \$5,900.

(8) Market Values.

Cost for added Work shall be no more than market values prevailing at the time of the change, unless the Licensee can establish to the satisfaction of the Trustees that it investigated all

possible means of obtaining Work at prevailing market values and that the excess cost could not be avoided.

When a change order deletes Work from the Contract, the computation of the amount thereof shall be the values which prevailed at the time bids for the Work were opened, if the Work is contained in a subcontract agreement or purchase order executed at or near the time proposals were opened.

- (9) Architect/Engineer's Extra Services for Change Order Work.
- (a) Negotiated Fee.
The Trustees may elect to negotiate a fixed fee for design extra services on Change Order Work.
 - (b) Work Performed by Principals and Employees of the Architect/Engineer.
Unless as identified in (a) above, for any Work performed by the Architect/Engineer on a change order, the Architect/Engineer shall receive an amount not to exceed two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra services. Reimbursement for principals when providing drafting or other related services normally provided by an employee shall be reimbursed at the maximum rate for services of employees. The Architect/Engineer shall provide an Hourly Labor Rate Worksheet at the onset of the Project, listing rates applicable to this Project within the limits listed above.
 - (c) Work Performed by Firms or Individuals Not Employees of the Architect/Engineer.
Unless as identified in (a) above, for Work performed by firms or individuals not employees of the Architect/Engineer, but engaged by the Architect/Engineer to assist in providing the authorized extra service, the Architect/Engineer shall receive one and one tenth (1.1) times the amount to be paid by the Architect/Engineer to the consultants for said services. Payment to consultants for services rendered is limited to direct Project costs, including a maximum of two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra service.
 - (d) Architect/Engineer Reimbursables.
The Architect/Engineer shall be paid only the actual and reasonable costs of reimbursable expenses incurred on change order Work as approved in writing by the Trustees prior to the Architect/Engineer incurring the costs, with no mark-up for overhead and profit.

c. Failure to Agree as to Cost

- (1) For Added Work.
Notwithstanding the failure of the Trustees and the Licensee to agree as to the cost of the proposed change order, the Licensee, upon written order from the Trustees, shall proceed immediately with the changed Work. A Field Instruction or letter signed by the Trustees shall be used for this written order. At the start of each day's Work on the change, the Licensee shall notify the Trustees in writing as to the size of the labor force to be used for the changed Work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's Work, the Licensee shall furnish to the Construction Inspector a detailed summary of all labor, materials, and equipment employed in the changed Work. The Construction Inspector will compare his/her records with Licensee's daily summary and may make any necessary adjustments to the summary. After the Construction Inspector and the Licensee agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional Work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed Work. Subsequent

adjustments, however, may be made based on later audits by the Trustees. When changed Work is performed at locations away from the job site, the Licensee shall furnish in lieu of the daily summary, a summary submitted at the completion of the Work containing a detailed statement of labor, material, and equipment used in the Work. This latter summary shall be signed by the Licensee who shall certify thereon under penalty of perjury that the information is true, and the costs are as allowed in Article 38.01-b(1), (2), and (3). If changed Work is to be paid on the basis of time and materials, a credit for deleted Contract Work shall be included. Mark-up shall be as covered in Article 38.01-b(4), (5), (6), (7) and (9).

The Licensee shall maintain and furnish on demand of the Trustees itemized statements of cost from all vendors and subcontractors who perform changed Work or furnish materials and equipment for such Work. All statements must be signed by the vendors and the subcontractors.

(2) For Deleted Work.

When a proposed change order contains a deletion of any Work, and the Trustees and the Licensee are unable to agree upon the value thereof, the Trustees' estimate may be deducted from the Contract price and may be withheld from any payment due the Licensee until the Licensee presents proof convincing to the Trustees that the Trustees' estimate was in error. The amount to be deducted, other than deletion of an entire item as addressed in Article 38.01-b (7), shall be the costs to the Licensee for labor, materials, and equipment which would have been used on the deleted Work together with the credit mark-up. The guidelines set forth in Article 38.01-b, shall be used in computing the amounts involved for changes other than deletion of an entire item.

d. Allowable Time Extensions.

For any change in the Work, the Licensee shall be entitled only to such adjustments in time by which completion of the entire Work is delayed due solely to performance of the changed Work. However, no extension of time shall be granted for a change in the Work unless the Licensee demonstrates to the satisfaction of the Trustees that the Work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the Licensee is making, or has made, every reasonable effort to guarantee completion of the additional Work called for by the change within the time originally allotted for the Work (Public Contract Code section 10842). Attention is directed to Article 36.15, Contract Time, and Article 36.16, Schedule.

e. Use of Licensee's Contingency.

(1) If there is an omission or correction in the Construction Documents that should have been identified through a reasonable constructability check and coordination review of the Construction Documents by the Licensee, then the Licensee shall purchase and install the omitted equipment or material utilizing the Licensee's contingency. The Licensee shall obtain the Trustees' approval of the use of any of the Licensee's contingency, and this approval shall not be unreasonably withheld.

(2) The Licensee shall not include mark-up for overhead and profit on changes necessitated by omissions or corrections to the Construction Documents that should have been identified by a reasonable constructability check and coordination review.

The Licensee shall not utilize the Licensee Contingency to pay BRIP insurance deductibles described in Articles 36.06-b and 36.06-c.

(3) With each monthly payment request, the Licensee shall submit an accounting of the Licensee's use of their contingency, along with a documentation of the Trustees' approval. This accounting shall be presented to the Trustees as a draw against the Licensee's contingency.

f. Use of Allowances

The Trustees limit the use of allowances; however, the Trustees shall approve the use of any allowance, on a case by case basis. If the Trustees so approve, allowances may only be used for specific and discrete scopes of Work that were indeterminate at the time of producing the Guaranteed Final PPA Rate. The Licensee shall not aggregate allowances to create another Project contingency; the Licensee bears the cost risk of completing the Work covered by a Licensee Allowance, and shall return unused portions of the Licensee Allowance to the Trustees in a credit change order. The Trustees are responsible for the estimate on a Trustees' allowance.

The Licensee shall only use allowances for their identified specific and discrete purpose. The Licensee may not use allowance balances to make up deficits on other line items. The Trustees shall authorize each debit from an allowance in writing, using a field instruction. The Licensee shall maintain a detailed cost accounting, including allowances, and submit it with the monthly payment application for the Trustees' approval. The trade contractors shall markup direct cost items in accordance with this Article, however, Trustees will not award to Licensee additional mark-ups or fees on allowances.

38.02 Emergency Changes

Changes in the Work agreed by the Trustees to be made necessary due to unforeseen site conditions, discovery of errors in the Contract Documents requiring immediate clarification in order to avoid a serious Work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the Trustees are kinds of emergency changes which may be authorized by the Trustees in writing to the Licensee. The Licensee shall commence performance of the emergency change immediately upon receipt of written direction from the Trustees.

If agreement is reached as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 38.01 relating to ordinary changes. If agreement is not reached as to compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 38.01-c, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment and/or a time extension, as provided in Article 38.01-d, is agreed upon, or the changed Work is completed.

39.00 - CLAIMS AND DAMAGES

39.01 Claims

a. Claim and Dispute Submittals.

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

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

SUBMISSION UNDER PENALTY OF PERJURY

"I, (insert full name), am the (insert title--must be an Officer) of (insert name of firm), and I declare under penalty of perjury under the laws of the State of California and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, and know its contents, and said claim is made in good faith; that the supporting data is truthful and accurate; that the amount requested accurately reflects the contract adjustment for which I believe the Trustees are liable, and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650 *et seq.*, pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences."

BY: _____ (signature) _____ Date: _____ (insert date of signature) _____

Licensee'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 Licensee.

- b. Licensee's Claim(s) – Notice of Claim.
In accordance with Article 37.02 (Issuance of Interpretations, Clarifications, Additional Instructions), should the Licensee disagree with the determination of the Trustees on a matter that substantially affects the Licensee's costs, compensation or extent of Work, the Licensee shall file a preliminary claim with the Trustees. For purposes of this Article 39.01, "claim" means a separate demand by Licensee, sent by registered or certified mail with return receipt requested, for one or more of the following:
- (1) A time extension for relief from damages or penalty for delay;
 - (2) Trustees' payment which is not otherwise expressly provided or to which the Licensee is not otherwise entitled.
 - (3) Payment of an amount that is disputed by the Trustees.
 - (4) Subcontractor claims.
- c. Actions Prior to Claims Review Board
- (1) Licensee's Claim Submittal / Documentation.
Licensee submitted its claim in accordance with Article 39.01, subsections 'a' and 'b'.
 - (2) Trustees' Review of Licensee'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 Licensee a written statement identifying disputed and undisputed portions of the claim. Upon receipt of the claim, the Trustees and Licensee may, by mutual agreement, 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 Licensee.
 - (3) Trustees' Payment of Undisputed Portion of Claim.
The Trustees shall pay the undisputed portion of the claim within 60 days after issuing the written statement.
- d. Informal Meet and Confer Conference
- (1) If Licensee disputes the Trustees' response, or if the Trustees fail to respond to Licensee's claim within the time prescribed, the Licensee may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered or certified mail with return receipt requested, the Trustees shall schedule a meet and confer conference within 30 days for settlement of the dispute.
 - (2) Post-Meet and Confer Conference
Within ten business days following conclusion of meet and confer conference, the Trustees shall provide Licensee a second written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. The Trustees shall pay the undisputed portion within 60 days after the Trustees issue the second written statement.
- e. Nonbinding Claims Review Board
Any remaining disputed portion of the claim shall be submitted to nonbinding Claims Review Board. If the Claims Review Board is unsuccessful, Licensee may submit the disputed portion of the claim to mediation.
- f. Licensee Submission of Unresolved Claims.
Licensee shall submit all claims in writing in accordance with this Article 39.01 to the Trustees no later than 30 Days after the County Recorder's recordation date on the Trustees' Notice of Completion. The Licensee's failure to submit its claims to the Trustees within this 30-Day period shall constitute a waiver by the Licensee of such claims. Once the claims have been submitted, and the 30 Days after the

County Recorder's recordation date on the Notice of Completion have expired, Licensee may not submit any additional claims. Licensee 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 Licensee of such claims.

g. False Claims.

Licensee 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.*).

h. Trustees' Claim(s) Submittal.

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

i. Licensee Rebuttal to Trustees' Claims.

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

j. Claims Review Board.

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

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

k. Actions Post Claims Review Board.

(1) Initial Mediation.

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

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

(2) Other Dispute Resolution.

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

39.02 Delay in Completion--Liquidated Damages

If the Work is not completed within the time required, the Trustees will sustain damage. It is, and will be, impractical and extremely difficult to determine the actual damage which the Trustees will sustain by reason of the delay. It is therefore agreed that the Licensee will pay to the Trustees the sum of money stipulated per Day in Section 8.5 of this Agreement for each Day's delay in completing the Work beyond the time prescribed (see Article 40.01, Acceptance). If the Licensee fails to pay such liquidated damages, the Trustees may deduct the amount thereof from any money due or that may become due the Licensee under this Agreement or any Change Order (Public Contract Code section 10826). If the Trustees have occupancy of all or the majority of the Project and can use it for its intended purpose, including operation of fire and life safety systems, the Trustees may reduce the amount of assessment of liquidated damages (if it is determined to be in the best interest of the Trustees). In this case, the Trustees may reduce the liquidated damages assessment to **[\$X00]** per Day or half of the value originally stipulated per Day, whichever is higher. The Trustees' assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

39.03 Termination

Termination provisions are found in Article 11 and 15 of Exhibit A SLPPA of the Master Enabling Agreement.

39.06 Third-Party Claims

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

40.00 - PAYMENT AND COMPLETION

40.04 Stop Payment Notices

Trustees shall retain out of any money due or that may become due the Licensee, 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.*).

Preliminary notices and stop payment notices shall be presented to the Trustees in proper form and should be addressed to the Construction Administrator and sent to the Trustees at the address identified in the letter transmitting the Contract for signature and at the preconstruction conference. The Licensee shall be responsible to communicate this information to all subcontractors.

In the event Trustees receive a stop payment notice, Licensee shall post an additional bond of 125% of the claim amount to cover the claims filed pursuant to the stop payment notice provisions of the law (Civil Code section 9000 *et seq.*)

40.07 Contractor Evaluation

The University will perform a contractor evaluation, and a report filed with the Trustees after completion of the Project. If the Licensee fails to perform the Work responsibly by failing to complete all Work and requirements, including honoring the warranty, the Construction Administrator shall so state the facts on the Contractor Evaluation Form. If an evaluation results in a non-responsible contractor finding, it could affect the Licensee's prequalification and may cause the Licensee to be deemed ineligible to bid on Trustees' Work. Refer also to Article 32.09, Failure to be a Responsible Bidder.