**APPROVED DOCUMENT—**This document is approved by the Office of the President and Office of the General Counsel for use by the Facility.

**Cover Sheet and Instructions**

**GENERAL CONDITIONS**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| PURPOSE OF DOCUMENT: | Describes the rights, responsibilities, and relationships of the Contractor (the Design Builder or the CM/Contractor) and the University. | | | | | |
| CROSS-REFERENCES TO FACILITIES MANUAL (FM): | FM4:4.6.2 | | | | | |
| CONTENTS: | General Conditions | | | | | |
| FOR USE WITH: *(check if applicable)* |  | Long Form  (LF) |  | Brief Form  (BF) | √ | Multiple Prime  (MP) w/UCIP |
|  | Design Build  (DB) |  | CM at Risk  (CM) |  | Job Order Contract  (JOC) |
|  | Mini Form  (MF) |  |  |  |  |
| COMPLETED BY: |  | Filling In |  | Adding Text | √ | No Data Required |
| ITS USE IS: | √ | Required |  | Optional | | |

**NOTE:** To use the electronic file of this document, you must go to the “Tools” pull down menu in Microsoft Word, select “Options,” select the “View” tab, and then put a check in the box “Hidden text.” Most instructions and alternate language is displayed in hidden text. Do not print the hidden text for the final document.

**Completion Instructions:**

1. The General Conditions is a core document; therefore, no revisions are required or allowed. Revisions to the General Conditions are made and issued by the Office of the President.
2. The Supplementary Conditions provide a means of specifying varying project conditions without revising the General Conditions.
3. Insert project identification information as indicated in the header. The header contains coded instruction within the brackets. The instructions and shading will disappear when the required information is typed.

**Modifications and Additions:**

1. Add Article 3.22 University-Designated Data Systems: Contractor is required to use University-designated data systems, which may include but is not limited to those for document review workflows, document retention, labor compliance software, and supplier diversity software.

**Comments:**

None.

# **END OF COVERSHEET**

# **GENERAL CONDITIONS**

# (Multiple Prime Trade Contract – With UCIP Coverage)

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**ARTICLE 1**

**GENERAL PROVISIONS**

**1.1 BASIC DEFINITIONS**

1.1.1 APPLICABLE CODE REQUIREMENTS

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

1.1.2 APPLICATION FOR PAYMENT

The term “Application for Payment” means the submittal from Prime Trade Contractor wherein payment for certain portions of the completed Work is requested in accordance with Article 9 of the General Conditions.

1.1.3 BENEFICIAL OCCUPANCY

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

1.1.4 CERTIFICATE FOR PAYMENT

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

1.1.5 CHANGE ORDER

See Article 7.2 of the General Conditions

1.1.6 CLAIM

See Article 4.3 of the General Conditions.

1.1.7 COMPENSABLE DELAY

The term “Compensable Delay” means a delay that entitles the Prime Trade Contractor to an adjustment of the Contract Sum and an adjustment of the Contract Time pursuant to Articles 7 and 8 of the General Conditions.

1.1.8 CONTRACT

The term “Contract” shall have the meaning identified in Article 2 of the Agreement.

1.1.9 CONTRACT DOCUMENTS

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

1.1.10 CONTRACT MILESTONE

The term “Contract Milestone” means any requirement in the Contract Documents that reflects a planned point in time for the start or completion of a portion of the Work measured from I) the date of the Notice to proceed or ii) the date of another Contract Milestone defined in the contract Documents, as applicable.

1.1.11 CONTRACT SUM

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

1.1.12 CONTRACT TIME

The term “Contract Time” means the number of days set forth in the Agreement, as adjusted by Change Order, within which Prime Trade Contractor must achieve full completion of the Work.

1.1.13 COST OF EXTRA WORK

See Article 7.3 of the General Conditions.

1.1.14 DAY

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

1.1.15 DEFECTIVE WORK

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

1.1.16 DRAWINGS

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

1.1.17 EXCUSABLE DELAY

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

1.1.18 EXTRA WORK

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

1.1.19 FIELD ORDER

See Article 7.2 of the General Conditions.

1.1.20 FINAL COMPLETION

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

1.1.21 GUARANTEE TO REPAIR PERIOD

See Article 12.2 of the General Conditions.

1.1.22 MASTER PROJECT SCHEDULE

The term “Master Project Schedule” means the graphical representation of a practical plan, in accordance with Article 3 of the General Conditions and the Specifications, to perform and complete the Project within the Project Time.

1.1.23 PRIME TRADE CONTRACTOR

The term “Prime Trade Contractor” means the person or firm identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

1.1.24 PRIME TRADE CONTRACTOR FEE

See Article 7.3 of the General Conditions.

1.1.25 PRIME TRADE CONTRACTOR SCHEDULE

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

1.1.26 PROJECT

The term “Project” means the Work of the Contract and all other work, labor, equipment, and materials necessary to accomplish the construction of the improvement of which the Work is a part. The Project will include construction by Separate Contractors.

1.1.28 PROJECT SITE

The term “Project Site” or “Project site” or “Site” or “site” means lands and facilities upon which the Work pertaining to physical construction operations is performed, including such access and other lands and facilities designated in the Contract Documents for use by Contractor.

1.1.28 PROJECT SUBSTANTIAL COMPLETION

The term “Project Substantial Completion” means the stage in the progress of the Project, as determined by University's Representative, when all work of the Project is complete and in accordance with the Contract Documents and Substantial Completion of all Prime Trade Contracts have occurred except only for completion of minor items which do not impair University's ability to occupy and fully utilize all work of the Project for its intended purpose and a Certificate of Occupancy for the Project has been issued by the University’s Building Official.

1.1.29 PROJECT TIME

The term “Project Time” means the number of days from the first Notice to Proceed issued to a Prime Trade Contractor to the date for completion of the Project.

1.1.30 SEPARATE CONTRACTOR

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

1.1.31 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.12 of the General Conditions.

1.1.32 SPECIFICATIONS

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

1.1.33 SUBCONTRACTOR

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

1.1.34 SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.35 SUPERINTENDENT

The term “Superintendent” means the person designated by Prime Trade Contractor to represent Prime Trade Contractor at the Project Site in accordance with Article 3 of the General Conditions.

1.1.36 TIER

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

1.1.37 UNEXCUSABLE DELAY

The term “Unexcusable Delay” means a delay that does not entitle the Prime Trade Contractor to an adjustment of the Contract Sum and does not entitle the Prime Trade Contractor to an adjustment of the Contract Time.

1.1.38 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.39 UNIVERSITY

The term “University” means The Regents of the University of California.

1.1.40 UNIVERSITY BUILDING OFFICIAL

The term “University’s Building Official,” or “Certified Building Official,” shall mean the individual the University has designated to act in the capacity as the “Building Official” as defined by the California Building Standards Code. The University’s Building Official will determine whether the all work of the Project complies with Applicable Code Requirements and will determine whether and when it is appropriate to issue a Certificate of Occupancy.

1.1.41 UNIVERSITY'S REPRESENTATIVE

The term “University's Representative” means the person identified as such in the Agreement.

1.1.42 UNIVERSITY’S RESPONSIBLE ADMINISTRATOR

The term “University’s Responsible Administrator” means the person, or his or her authorized designee, who is authorized to sign the Agreement and other applicable contract Documents on behalf of the University.

1.1.43 WORK

The term “Work” means all construction, services, and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Prime Trade Contractor to fulfill Prime Trade Contractor's obligations. The Work will constitute a part of the Project.

**1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS**

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

**1.3 INTERPRETATION**

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

.1 The Agreement

.2 The Supplementary Conditions

.3 The General Conditions

.4 The Specifications

.5 The Drawings

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

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

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

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

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

**ARTICLE 2**

**UNIVERSITY**

**2.1 INFORMATION AND SERVICES PROVIDED BY UNIVERSITY**

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

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

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

**2.2 ACCESS TO PROJECT SITE**

2.2.1 University will provide, no later than the earliest start date for the Prime Trade Contractor as shown in the Master Project Schedule, access to the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents for use by Prime Trade Contractor.

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

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

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

If Prime Trade Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Master Project Schedule, fails to start any activity by its start date as directed by the University Representative which will be no earlier than the early start date nor later than the late start date reflected in the Master Project Schedule, fails to complete any activity by its completion date as directed by the University Representative which will be no earlier than the early completion date nor later than the late completion date as reflected in the Master Project Schedule, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written notice from University, fails within 2 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the University may specify, to correct such failure and thereafter diligently continue to completion, University may, without prejudice to other remedies University may:

.1 Correct such failure at Prime Trade Contractor's expense. In such case, University will be entitled to deduct from payments then or thereafter due Prime Trade Contractor the cost of correcting such failure, including compensation for the additional services and expenses of University's Representative and University's consultants made necessary thereby. If payments then or thereafter due Prime Trade Contractor are not sufficient to cover such amounts, Prime Trade Contractor shall pay the additional amount to University.

.2 Supply additional workers to the Prime Trade Contractor in such quantity and for such period as deemed necessary by the University’s Representative, all at the Prime Trade Contractor’s expense. In such case, University will be entitled to deduct from payments then or thereafter due Prime Trade Contractor the cost of such additional workers, including compensation for the additional services and expenses of University's Representative and University's consultants made necessary thereby. If payments then or thereafter due Prime Trade Contractor are not sufficient to cover such amounts, Prime Trade Contractor shall pay the additional amount to University.

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

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

**2.6 UNIVERSITY’S RIGHT TO ACCELERATE THE WORK**

2.6.1 University may direct the acceleration of the Work by Prime Trade Contractor to meet schedule requirements when the Work has been delayed by one or more Separate Contractors and such delay would otherwise give rise to a time extension. The University will compensate the Prime Trade Contractor for the additional costs incurred by such acceleration to the extent that such costs are directly attributable to the acceleration and are incurred through no fault or negligence of the Prime Trade Contractor.

2.6.2 Any acceleration directed by University pursuant to the foregoing provision will be by a Change Order. The University will not be obligated, under any circumstances, to direct such acceleration and may elect, at its option, not to accelerate the Work of the Prime Trade Contractor.

2.6.3 University may accelerate the work of one or more Separate Contractors to meet schedule requirements when the Work of Prime Trade Contractor does not adhere to the Master Project Schedule and said failure to adhere causes, in whole or in part, a delay in the work of such Separate Contractors and if such delay would otherwise give rise to a time extension. The University may reduce the Contract Sum by the amounts incurred due to the acceleration.

**ARTICLE 3**

**PRIME TRADE CONTRACTOR**

**3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY PRIME TRADE CONTRACTOR**

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

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

3.1.3 If Prime Trade Contractor performs any construction activity which it knows or should know involves an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2 above, without notifying and obtaining the written consent of University's Representative, Prime Trade Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

**3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

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

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

**3.3 LABOR AND MATERIALS**

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

**3.4 PRIME TRADE CONTRACTOR'S WARRANTY**

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

**3.5 TAXES**

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

**3.6 PERMITS, FEES, AND NOTICES**

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

**3.7 APPLICABLE CODE REQUIREMENTS**

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

.1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, Prime Trade Contractor, any Subcontractor, the Project, the Project Site, the Work, or the prosecution of the Work.

.2 All requirements of any insurance company issuing insurance required hereunder.

.3 The Federal Occupational Safety and Health Act and all other Applicable Code Requirements relating to safety.

.4 Applicable titles in the State of California Code of Regulations.

.5 Applicable sections in the State of California Labor Code.

.6 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

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

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

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

**3.8 SUPERINTENDENT**

3.8.1 Prime Trade Contractor shall employ a competent Superintendent satisfactory to University who shall be in attendance at the Project Site at all times during the performance of the Work. Superintendent shall represent Prime Trade Contractor and communications given to and received from Superintendent shall be binding on Prime Trade Contractor.

3.8.2 Failure to maintain a Superintendent on the Project Site at all times that Work is in progress shall be considered a material breach of this Contract, entitling University to terminate the Contract or alternatively, issue a stop Work order until the Superintendent is on the Project Site. If, by virtue of issuance of said stop Work order, the Project is not completed within the Contract Time, Prime Trade Contractor will be assessed Liquidated Damages in accordance with the Agreement.

3.8.3 The Superintendent approved for the Project must be able to read, write and verbally communicate in English.

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

**3.9 SCHEDULES REQUIRED OF PRIME TRADE CONTRACTOR**

3.9.1 The University's Representative has developed an overall "Preliminary Master Project Schedule" indicating major milestones and construction sequences for the Project, showing the general timing for the work of Prime Trade Contractor. This Preliminary Master Project Schedule is for Bidder information and guidance only, and is not intended to serve as the Master Project Schedule that will be utilized for construction. However, the construction milestones and sequences shall be the basis for the Master Project Schedule, unless the University's Representative modifies them to improve the overall progress and completion by utilizing revised logic and revised schedule.

* + 1. Using the Prime Trade Contract Schedules submitted by each of the Prime Trade Contractors, the University’s Representative will develop and issue the Master Project Schedule showing completion of the Project within the Project Time. University Representative may require additional information from the Prime Trade Contractor during development of the Master Project Schedule.
    2. The University Representative may impose upon the Prime Trade Contractor, in the initial Master Project Schedule, whatever scheduling requirements are deemed appropriate, consistent with the Preliminary Master Project Schedule, and the Prime Trade Contractor shall comply with any such requirements, at no additional cost to University.
    3. The Prime Trade Contractor shall submit updated schedule information to University’s Representative within the time limits required by the Specifications and acceptable to University’s Representative. The University Representative may, at any time, make reasonable adjustments, at no cost to the University, to the Master Project Schedule so that the Project may be completed within the Contract Time, or if completion within the Contract Time is impracticable, to mitigate damages to the University resulting from late completion of the Project.
    4. The Master Project Schedule shall represent a practical plan to complete the Work so that the entire Project can be fully completed within the Project Time.
    5. The Prime Trade Contractor shall prepare and keep current, to the satisfaction of University's Representative, a Submittal Schedule, in the form contained in the Exhibits, for each submittal, as required by the Specifications, and that are coordinated with the other activities in the Master Project Schedule.
    6. Prime Trade Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work activities conform to the current Master Project Schedule. Prime Trade Contractor shall continuously obtain from Subcontractors updated information and data about the planning for and progress of the Work and the delivery of equipment, shall coordinate, and monitor the progress of the Work and the delivery of equipment. Prime Trade Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. Prime Trade Contractor shall cooperate with University's Representative in the development of the Prime Trade Contract Schedule, the Master Project Schedule, and their updates.

University's Representative's acceptance of or its review comments about Prime Trade Contractor Schedule or scheduling data provided by Prime Trade Contractor shall not relieve Prime Trade Contractor of its sole responsibility to plan for, perform, and fully complete its Work within the Contract Time. Acceptance of or review comments about the Prime Trade Contractor Schedule shall not imply the University’s agreement with (1) any assumption upon which such Prime Trade Contractor Schedule is based, or (2) any matter underlying or contained in such Prime Trade Contractor Schedule.

Failure of University's Representative to discover errors or omissions in the Prime Trade Contractor Schedules that it has reviewed, or to inform Prime Trade Contractor that Prime Trade Contractor is behind schedule, or to direct or enforce procedures for complying with the Master Project Schedule shall not relieve Prime Trade Contractor from its sole responsibility to perform and complete the Work and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

* + 1. The Work may require performance in several areas of the project simultaneously in order to fully complete the Project within the Project Time. As each area becomes available, Prime Trade Contractor shall begin work in those respective areas with additional crews if necessary to avoid a reduction of effort in other areas already under construction.

3.9.9 Subject to University's rights under the Prime Trade Contract or at law, time is of the essence in the Prime Trade Contractor's performance of this Contract. Prime Trade Contractor agrees to promptly commence work when directed by University's Representative.

3.9.10 In addition to any completion dates required under the Prime Trade Contract, the Prime Trade Contractor agrees to perform the work in accordance with University's Representative's Master Project Schedule, including all subsequent modifications to the Master Project Schedule by University's Representative. Prime Trade Contractor agrees to perform the work in a way that will not delay University, University's Representative, or the progress of the Project, all at Prime Trade Contractor's cost and without additional cost or liability to University.

3.9.11 If, at any time during Prime Trade Contractor's performance of the work, the actual progress of the Prime Trade Contractor's Work falls behind the Master Project Schedule, then Prime Trade Contractor agrees to immediately take any steps necessary per University's Representative's sole discretion to improve progress in the Work or the Project. All these steps will be taken at Prime Trade Contractor's cost and without additional cost or liability to the University. If for any reason the Prime Trade Contractor's progress is not in accord with University's Representative's current Master Project Schedule, including remedial schedules, or any dates or intervals required elsewhere by the Prime Trade Contract, University's Representative may require Prime Trade Contractor to increase its labor force, its supervision force, the number of work shifts, overtime, work on weekends and holidays, the equipment on the Project, revise or modify its construction procedures and sequences and any other measures which University's Representative considers necessary, all without additional cost or liability to University. Neither notice by University's Representative nor the failure to issue notice that Prime Trade Contractor's progress is inadequate shall relieve Prime Trade Contractor from its obligation to achieve the quality of work and rate of progress required by University's Representative.

If University incurs expense or loss or it appears that University may sustain expense or loss due to Prime Trade Contractor's failure to comply with the above provisions, University or University's Representative may either deduct that amount from any progress payment or retention payable to Prime Trade Contractor and/or delay payment of any sums otherwise owing to Prime Trade Contractor until the situation is remedied or adjusted to University’s or University’s Representative’s satisfaction.

3.9.12 The University Representative will schedule and coordinate the activities of the Prime Trade Contractor in accordance with the latest approved Master Project Schedule. The Prime Trade Contractor shall cooperate with the University Representative in the reasonable determinations of scheduling and performing the Prime Trade Contractor's work to avoid conflict, delay in or interference with the Work or other Prime Trade Contractors, or Separate Contractors, regardless of their float shown on the Master Project Schedule.

3.9.13 University's Representative may, at any time, update, supplement or revise its Master Project Schedule and/or require Prime Trade Contractor to suspend, delay or re-sequence its work. Such updates, supplements, revisions, suspensions, delays or re-sequencing shall be without additional cost or liability to University except to the extent they result in Prime Trade Contractor working beyond the Contract Time, through no fault of the Prime Trade Contractor. To the extent such updates, supplements, revisions, suspensions, delays or re-sequencing result in Prime Trade Contractor working beyond the Contract Time, through no fault of the Prime Trade Contractor, the Prime Trade Contract shall be subject to adjustment provided the Prime Trade Contractor complies with the requirements of the Prime Trade Contract for seeking an adjustment, including without limitation, the requirements set forth in Articles 4, 7 and 8 of the General Conditions. Notwithstanding the foregoing, the University may elect to accelerate the work of one or more Separate Contractors to reduce or eliminate the delay and require the Prime Trade Contractor to complete its Work within the Contract Time.

**3.10 AS-BUILT DOCUMENTS**

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

**3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE**

3.11.1 Prime Trade Contractor shall maintain the following at the Project Site:

.1 One as-built copy of the Contract Documents, in good order and marked to record current changes and selections made during construction.

.2 The current accepted Master Project Schedule and Prime Trade Contractor Schedule.

.3 Shop Drawings, Product Data, and Samples.

.4 All other required submittals.

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

**3.12 SHOP DRAWINGS, PRODUCT DATA, SAMPLES** **AND ENVIRONMENTAL PRODUCT DECLARATIONS**

3.12.1 Definitions:

.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by Prime Trade Contractor or a Subcontractor to illustrate some portion of the Work.

.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Prime Trade Contractor to illustrate or describe materials or equipment for some portion of the Work.

.3 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

.4 Environmental Product Declarations are those documents and other submissions required to be furnished by Prime Trade Contractor or a Subcontractor pursuant to California Public Contract Code Section 3500 et seq., the Buy Clean California Act (BCCA), as further described in Article 3.12.9 below.

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

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

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

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

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

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

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

* + 1. **Environmental Product Declarations**

3.12.9.1 Prime Trade Contractor shall comply with California Public Contract Code Section 3500 et seq., the Buy Clean California Act (“BCCA”).

3.12.9.2  Compliance with the BCCA and this Article applies to all Eligible Materials for the Project.

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| --- |
| See Supplementary Conditions |

**3.13 USE OF SITE AND CLEAN UP**

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

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

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

**3.14 CUTTING, FITTING, AND PATCHING**

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

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

**3.15 ACCESS TO WORK**

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

**3.16 ROYALTIES AND PATENTS**

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

**3.17 DIFFERING SITE CONDITIONS**

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

.1 Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or if not indicated in this Contract, in the Information Available to Bidders; or

.2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

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

.1 Prime Trade Contractor fully complies with Article 3.17.1 above; and

.2 Prime Trade Contractor fully complies with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

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

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

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

.1 To bear the risk of concealed, unforeseen or unknown conditions and events, if any, which may be encountered in performing the Contract; and

.2 That Prime Trade Contractor’s bid for the Contract was made with full knowledge of this risk.

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

3.18.2 If Prime Trade Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, Prime Trade Contractor shall immediately notify University’s Representative in writing such that University’s Representative can determine if such conditions require design details which differ from those design details shown in the Contract Documents. Prime Trade Contractor shall be liable to University for any extra costs incurred as the result of Prime Trade Contractor’s failure to immediately give such notice.

3.18.3 If concealed or unknown conditions are encountered which require, in the opinion of University’s Representative, design details which differ from those design details shown in the Contract Documents and the University’s Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if University agrees with the University’s Representative’s determinations, University will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 of the General Conditions.

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

**3.19 INFORMATION AVAILABLE TO BIDDERS**

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

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

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

.3 Other components of the information, including but not limited to recommendations, may not be relied upon by Prime Trade Contractor. University shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Prime Trade Contractor.

**3.20 LIABILITY FOR AND REPAIR OF DAMAGED WORK**

3.20.1 Prime Trade Contractor shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, or otherwise) prior to University’s acceptance of the Project as fully completed except that Prime Trade Contractor shall not be liable for:

.1 Losses covered by the builder’s risk property insurance provided by University pursuant to Article 11 of the General Conditions, except that the Prime Trade Contractor shall be liable for any deductible(s) and any amounts exceeding policy limits.

.2 Earthquake, tidal wave, or flood, provided that the loss was not caused in whole or in part by the negligent acts or omissions of Prime Trade Contractor, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, “flood” shall have the same meaning as in the builder’s risk property insurance.

3.20.2 Prime Trade Contractor shall promptly repair and replace any Work or materials damaged or destroyed for which the Prime Trade Contractor is liable under Article 3.20.1 above.

**3.21 INDEMNIFICATION**

3.21.1 Prime Trade Contractor shall Indemnify University, University's consultants, University's Representative, University's Representative's consultants, and their respective directors, officers, agents, and employees from and against losses arising out of, resulting from, or relating to the following:

.1 The failure of Prime Trade Contractor to perform its obligations under the Contract.

.2 The inaccuracy of any representation or warranty by Prime Trade Contractor given in accordance with or contained in the Contract Documents.

.3 Any claim of damage or loss by any Subcontractor or Separate Contractor against University arising out of any alleged act or omission of Prime Trade Contractor or any other Subcontractor, or anyone directly or indirectly employed by Prime Trade Contractor or any Subcontractor.

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

3.21.3 In claims against any person or entity indemnified under this Article 3.21that are made by an employee of Prime Trade Contractor or any Subcontractor, a person indirectly employed by Prime Trade Contractor or any Subcontractor, or anyone for whose acts Prime Trade Contractor or any Subcontractor may be liable, the indemnification obligation under this Article 3.21 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Prime Trade Contractor or any Subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

3.21.4 The indemnification obligations under this Article 3.21 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

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

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

**3.22 UNIVERSITY-DESIGNATED DATA SYSTEMS**

3.22.1 Contractor is required to use University-designated data systems, which may include but is not limited to

those for document review workflows, document retention, labor compliance software, and supplier diversity software.

**ARTICLE 4**

**ADMINISTRATION OF THE CONTRACT**

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

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

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

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

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

4.1.5 Based on University's Representative's Project Site visits and evaluations of Prime Trade Contractor's Applications For Payment, University's Representative will recommend amounts, if any, due Prime Trade Contractor and will issue Certificates For Payment in such amounts.

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

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

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

**4.2 PRIME TRADE CONTRACTOR CHANGE ORDER REQUESTS**

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

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

.1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2 below; and

.2 If requested, timely submission of additional information requested by the University Representative pursuant to Article 4.2.3.3 below.

4.2.3 Change Order Request:

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

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

.1 A completed Cost Proposal in the form contained in the Exhibits meeting the requirements of Article 7 of the General Conditions; OR

.2 A partial Cost Proposal and a declaration of what required information is not then known to Prime Trade Contractor. If Prime Trade Contractor failed to submit a completed Cost Proposal with the Change Order Request, Prime Trade Contractor shall submit a completed Cost Proposal meeting the requirements of Article 7 within 7 days of the date the Prime Trade Contractor submitted the Change Order Request unless additional time is allowed by the University’s Representative.

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

.1 If Prime Trade Contractor seeks an adjustment of the Contract Sum or other monetary relief, actual cost records for any changed or extra costs (including without limitation, payroll records, material and rental invoices and the like), shall be submitted by the deadline established by the University’s Representative, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the University’s Representative and/or representatives of the University’s Representative.

.2 If Prime Trade Contractor seeks an adjustment of the Contract Time, written documentation demonstrating Prime Trade Contractor's entitlement to a time extension under Article 8.4 of the General Conditions, which shall be submitted within 15 days of the date requested.

.3 If Prime Trade Contractor seeks an adjustment of the Contract Sum or other monetary relief for delay, written documentation demonstrating Prime Trade Contractor's entitlement to such an adjustment under Article 7.3.9 of the General Conditions, which shall be submitted within 15 days of the date requested.

.4 Any other information requested by the University’s Representative for the purpose of evaluating the Change Order Request, which shall be submitted by the deadline established by the University’s Representative.

4.2.4 University's Representative will make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. A final decision is any decision on a Change Order Request which states that it is final. If University's Representative issues a final decision denying a Change Order Request in whole or in part, the Prime Trade Contractor may contest the decision by filing a timely Claim under the procedures specified in Article 4.4 below.

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

**4.3 CLAIMS**

4.3.1 The term “Claim” means a written demand or assertion by Prime Trade Contractor seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between University and Prime Trade Contractor arising out of or related to the Contract Documents or the performance of the Work. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4, including but not limited to arbitration, shall not apply to the following:

.1 Claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine.

.2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.

.3 Claims by University, except as set forth in Articles 4.5, 4.6, and 4.7 of the General Conditions.

.4 Claims respecting stop payment notices.

4.3.2 A Claim arises upon the issuance of a written final decision denying in whole or in part Prime Trade Contractor's Change Order Request pursuant to Article 4.2.4 and 4.2.5 above.

4.3.3 A Claim must include the following:

.1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5 of the General Conditions.

.2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.

.3 A certification executed by Prime Trade Contractor, that the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified.

.4 A certification, executed by each Subcontractor claiming not less than 5% of the total monetary amount sought by the claim, that the subcontractor’s portion of the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified. Exhibit.

.5 A statement demonstrating that a Change Order Request was timely submitted as required by Article 4.2.3 above.

.6 If a Cost Proposal or declaration was required by Article 4.2.3, a statement demonstrating that the Cost Proposal or the declaration was timely submitted as required by Article 4.2.3.

.7 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:

.1 If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Article 7.3.2 of the General Conditions. The cost breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within 7 days of the date the cost reflected in the record is incurred. At the request of the University's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged Extra Work on a daily basis). The cost breakdown must include an itemization of costs for i) labor including names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; ii) materials stored or incorporated in the work including invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information; and iii) itemization of machinery and equipment including make, model, serial number, hours of use, dates of use and equipment rental rates of any rented equipment Contract.

.2 If the Claim involves an extension of the Contract Time, written documentation demonstrating the Prime Trade Contractor's entitlement to a time extension under Article 8.4 of the General Conditions, including the specific dates for which a time extension is sought and the specific reasons for entitlement of a time extension. The Master Project Schedule must demonstrate Prime Trade Contractor’s entitlement to an adjustment of Contract Time under Article 8.4.

.3 If the Claim involves an adjustment of the Contract Sum for delay, written documentation demonstrating the Prime Trade Contractor's entitlement to such an adjustment under Article 7.3.9 of the General Conditions, including but not limited to, a detailed time impact analysis of the Master Project Schedule. The Master Project Schedule must demonstrate Prime Trade Contractor’s entitlement to such an adjustment under Article 7.3.9.

**4.4 ASSERTION OF CLAIMS**

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

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

4.4.3 Prime Trade Contractor shall submit a Claim in writing, together with the supporting data specified in Article 4.3.3 above, to University's Representative as soon as possible but not later than 30 days after the date the claim arises under Article 4.3.2 above.

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

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

4.5.1 University's Representative will timely review Claims submitted by Prime Trade Contractor. If University's Representative determines that additional supporting data are necessary to fully evaluate a Claim, University's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. University's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the Claim or the deadline for furnishing such additional supporting data; provided that, if the amount of the Claim is in excess of $50,000, the aforesaid 30-day period shall be 45 days. Failure of University's Representative to render a decision by the applicable deadline will be deemed a decision denying the Claim on the date of the deadline, unless, upon receipt of a Claim, Contractor and University mutually agree to extend the time periods provided herein, or unless otherwise extended by law. The decision of University's Representative will be final and binding unless appealed in accordance with Articles 4.5.2, 4.6, and 4.7 below.

The University's Representative's decision on a Claim or dispute will include a written statement identifying all disputed and undisputed portions of the Claim substantially including the following:

“This is a decision under Article 4.5 of the General Conditions of your contract. If you are dissatisfied with the decision, and if you complied with the procedural requirements for asserting claims specified in Article 4 of the General Conditions of your contract, you may have the right to demand in writing an informal conference to meet and confer for settlement of any remaining issues in dispute, following which, if still dissatisfied, you may demand in writing a further resolution via nonbinding mediation, after which you have the right to arbitrate or litigate this decision. If you fail to take appropriate action within 30 days of the date of this decision, the decision shall become final and binding and not subject to further appeal.”

4.5.2 If either Contractor or University disputes University’s Representative’s decision on a Claim, then, within 30 days after the decision of University’s Representative on the Claim, or, if no decision has been issued, within 30 days from the date of the applicable deadline in Article 4.5.1 for University Representative to render a decision, such party (the “Disputing Party”) must provide written notice demanding an informal conference to meet and confer. University shall schedule the conference within 30 days upon receipt of the notice demanding an informal conference. The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Contract by negotiation at the conference.

**4.6 MEDIATION**

4.6.1 Within 10 business days following the informal conference to meet and confer stated in Article 4.5.2, if the Claim or any portion of the Claim remains in dispute, the University shall provide a written statement identifying the disputed and undisputed portions of the Claim. Within 30 days of receipt of the statement, if either Contractor or University disputes any portion of the Claim, then the Disputing Party must provide written notice to the non-disputing party demanding non-binding mediation. The Contractor and the University shall share the associated costs equally and shall mutually agree to a mediator within 10 business days. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim, with each party bearing the fees and costs of its respective mediator. Mediation shall include, but not be limited to, neutral evaluation, a dispute review board, or other negotiation or evaluation through an independent third party or board. The Contractor and the University may mutually agree to waive any individual mediation in writing and proceed to arbitration or litigation pursuant to this Contract.

**4.7 ARBITRATION**

4.7.1 1 Either party may provide a written notice of its election to arbitrate or provide written notice of its election to litigate the Claim within 30 days after the mediation pursuant to Article 4.6.1, or, if the parties mutually agreed in writing to waive mediation, within 30 days after the agreement is signed by both parties.

4.7.2 If a notice of election to arbitrate or litigate is not given by either party within 30 days pursuant to Article 4.7.1, University's Representative's decision on the Claim will be final and binding and not subject to appeal or challenge.

4.7.3 If the Disputing Party gives timely notice of its election to arbitrate the University's Representative's decision on a Claim, Disputing Party shall have the right, within 120 days after a Notice of Completion, or a Notice of Cessation, as applicable, is filed for the Contract, to make a demand for arbitration in accordance with Article 4.7. Failure to perfect a Claim for which a timely election to arbitrate has been made by the timely filing of a demand for arbitration and timely payment of all applicable and required fees to the American Arbitration Association (“AAA”) shall result in the University’s Representative’s decision on said Claim becoming final and binding and not subject to appeal or challenge. If the Disputing Party makes a timely demand for arbitration, and the amount of the Claim in question, when combined with all other Claims, if any, which are the subject of previously filed demands for arbitration that have not been resolved by settlement or arbitration award, is $100,000 or more, then the other party may elect to litigate all such Claims by filing a written notice with the AAA within 30 days after its receipt of notice from the AAA of the Disputing Party's demand for arbitration of the Claim that raises the total amount of Claims subject to arbitration to $100,000 or more. If the other party fails to give notice of its election to litigate within such 30-day period, it shall be deemed to have consented to arbitration and waived the right to litigate. If after commencement of arbitration the amount of unresolved Claims in arbitration are allowed to be increased to $100,000 or more, through an AAA-allowed amendment or otherwise, either party may elect to litigate within 30 days following the date that the electing party first receives written notification from the AAA that total Claims in arbitration equal or exceed $100,000. If neither party gives notice of its election to litigate within such 30-day period as applicable, then both parties shall be deemed to have consented to arbitration and waived the right to litigate.

4.7.4 A demand for arbitration pursuant to Article 4.7.3 above shall include a copy of the Claim presented to University’s Representative pursuant to Article 4.4 above, a copy of the decision of University's Representative pursuant to Article 4.5, if any, a copy of the University’s written statement identifying the portion of the Claim that remained in dispute following the informal conference pursuant to Article 4.6.1, and a summary of the remaining portions of the Claim in dispute. The demand shall state the amount in controversy, if any, and state the remedy sought. The demand shall identify the University’s Responsible Administrator as the representative of the responding party and the Office of the General Counsel as counsel for the responding party. The demand shall be filed with the AAA and shall not be deemed to have been made until all applicable fees have been paid to the AAA by the demanding party. Copies of the demand and attachments shall be sent to University's Responsible Administrator as the representative of the responding party and the University’s Office of General Counsel as attorney for the responding party, at the addresses set forth in the Project Directory, at the time the demand for arbitration is initiated with the AAA.

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

.1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted at the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.

.2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University join in and be bound by the Arbitration. University's Representative and University's consultants will have the same rights in any arbitration proceeding as are afforded by the AAA rules to Prime Trade Contractor and University.

.3 Prime Trade Contractor's sureties shall be bound by any arbitration award and may join in any arbitration proceeding.

.4 Except as provided in Articles 4.7.5.2. and 4.7.5.3 above, no Subcontractor or other person shall have a right or obligation to join in or be a party to any arbitration proceeding provided for in this Article 4 either directly, by joinder, by consolidation or actions, by counterclaim or cross claim, or otherwise without the express written consent of University, Prime Trade Contractor, and the joining party.

.5 If more than one demand for arbitration is made by a party with respect to Claims referred to University's Representative, all such Claims shall be consolidated into a single arbitration unless the parties otherwise agree in writing.

.6 If total Claims are less than $50,000, AAA expedited procedures as modified by this Article 4 shall apply. If total Claims are between $50,000 and $100,000 they shall be heard by a single arbitrator who shall be an attorney. If total Claims are in excess of $100,000 and are submitted to arbitration, either by agreement or by failure to elect litigation the controversy shall be heard by a panel of three arbitrators, one of which shall be an attorney.

.7 No arbitrator shall be appointed and no discovery may be commended prior to the date of Final Completion unless University and Prime Trade Contractor otherwise agree.

.8 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California. The AAA shall not submit to any arbitrator any matter concerning the arbitrability of the dispute if the arbitrability is contested.

.9 If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 7 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to the AAA within 10 days from the date of receipt.

.10 Except as provided herein, the arbitration shall be conducted and enforced under California law, including the California Arbitration Act (California Code of Civil Procedure section 1280 and following). The Federal Arbitration Act shall not apply to the arbitration.

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

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

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

**4.8 WAIVER**

4.8.1 A waiver of or failure by University or University's Representative to enforce any requirement in this Article 4in connection with any Claim shall not constitute a waiver of, and shall not preclude the University or University's Representative from enforcing such requirements in connection with any other Claims.

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

**ARTICLE 5**

**SUBCONTRACTORS**

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

5.1.1 Unless otherwise stated in the Contract Documents, Prime Trade Contractor shall submit in writing, prior to entering into subcontract agreements, the names and addresses of all Subcontractors proposed for the Work that were not previously listed in Prime Trade Contractor's Bid.

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

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

5.1.4 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor, as required by University or University's Representative pursuant to Article 5.1.1 above shall be borne solely by Prime Trade Contractor and Prime Trade Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution.

**5.2 SUBCONTRACTUAL RELATIONS**

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

.1 Subcontractor waives all rights that Subcontractor may have against University for damages caused by fire or other perils covered by builder's risk property insurance carried by Prime Trade Contractor or University, except for such rights Subcontractor may have to the proceeds of such insurance held by University under Article 11 of the General Conditions.

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

.3 Subcontractor recognizes the rights of University under Article 5.3, Contingent Assignment of Subcontracts, below and agrees, upon notice from University that University has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by University, to execute a written agreement confirming that Subcontractor is bound to University under the terms of the subcontract.

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

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

**5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

**ARTICLE 6**

**CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS**

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

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

6.1.2 University will provide coordination of the activities of University's forces and of each Separate Contractor with the Work of Prime Trade Contractor. Prime Trade Contractor shall participate with University and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so.

6.1.3 The Project, of which this Contract is a part, will include other contracts for work to be performed and work to be performed by the University on the same site. By entering into this Contract, Prime Trade Contractor acknowledges that University has the right to enter into such other contracts and to perform work, and that the work of said contracts and University may (i) be in close proximity to and/or performed contemporaneously with the work of this Contract, and (ii) result in delays in or disruptions to Prime Trade Contractor's Work. Prime Trade Contractor further agrees as follows:

.1 The University shall afford Prime Trade Contractor, Separate Contractors or University forces reasonable opportunity for the introduction and storage of their materials and the execution of their work. Prime Trade Contractor shall properly connect and coordinate its construction and operations with the construction and operations of Separate Contractors and University forces, as required by the Contract Documents.

.2 Prime Trade Contractor shall cooperate with Separate Contractors and University on the Project Site and will do nothing to delay, hinder, disrupt, or interfere with the work of Separate Contractors, or University. Prime Trade Contractor shall coordinate its work with the work of any Separate Contractor and agrees to attend any coordination meetings scheduled for this purpose by the University Representative. Any dispute between the Prime Trade Contractor and any Separate Contractor over how the work of the various trades should be coordinated, shall be promptly submitted by Prime Trade Contractor to the University Representative. Prime Trade Contractor agrees to cooperate with the development of, and to be bound by, any reasonable coordination plan directed by University Representative to address the dispute, even if Prime Trade Contractor does not agree with the coordination plan so developed. Prime Trade Contractor agrees that if its work is delayed, hindered, disrupted or interfered with by a Separate Contractor to the extent such delays, hindrances, disruptions, and interferences result in Prime Trade Contractor working beyond the Contract Time, through no fault of the Prime Trade Contractor, the Prime Trade Contract shall be subject to a time extension, but no compensation from the University, provided the Prime Trade Contractor complies with the requirements of the Prime Trade Contract for seeking a time extension, including without limitation, the requirements set forth in Articles 4, 7 and 8 of the General Conditions.

.3 Prime Trade Contractor agrees that its sole remedy for damage or loss, including delay damages, suffered as a result of actions by a Separate Contractor, other than that specified in Article 6.1.3.2 above, shall be against such Separate Contractor, their officers, agents, employees, consultants, subcontractors and, if available, surety bonds. Prime Trade Contractor further agrees to indemnify University, University Representative, their officers, agents, employees, consultants, or subcontractors for any damage or loss by a Separate Contractor allegedly caused by with the work of the Prime Trade Contractor or Separate Contractor except as provided in Article 6.1.3.2 above.

**6.2 MUTUAL RESPONSIBILITY**

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

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

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

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

**ARTICLE 7**

**CHANGES IN THE WORK**

**7.1 CHANGES**

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

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

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

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

**7.2 DEFINITIONS**

7.2.1 A Change Order is a Contract Document (as shown in the Exhibits) which has been signed by both University and Prime Trade Contractor, and states their agreement upon all of the following:

.1 A change in the Work, if any.

.2 The amount of an adjustment of the Contract Sum, if any.

.3 The amount of an adjustment of the Contract Time, if any.

.4 A modification to any other Contract term or condition.

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

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

**7.3 CHANGE ORDER PROCEDURES**

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

.1 The obligation of Prime Trade Contractor to provide Cost Proposals is not Extra Work, and shall not entitle the Prime Trade Contractor to an adjustment of the Contract Sum or Contract Time.

.2 The failure of Prime Trade Contractor to timely provide a Cost Proposal pursuant to Article 4.2 and this Article 7.3.1 is a material breach of the Contract. Prime Trade Contractor shall be responsible for any delay in implementing a change for which Prime Trade Contractor failed to timely provide a Cost Proposal consistent with the requirements of Article 4.2 and this Article 7.3.1.

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

.1 Straight-time wages or salaries for employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

.2 Fringe Benefits and Payroll Taxes for employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

.3 Overtime wages or salaries, specifically authorized in writing by University's Representative, for employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

.4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by University's Representative, for employees employed at the Project Site, or at fabrication sites off the Project Site, in the direct performance of the Extra Work.

.5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by University's Representative. Such costs shall be charged at the lowest price available to the Prime Trade Contractor but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project Site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to University and Prime Trade Contractor shall make provisions so that they may be obtained.

.6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.

.7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by University's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current Equipment Rental Rates published by the California Department of Transportation for the area in which the work is performed. Such rental rates are found at [*http://www.dot.ca.gov/hq/construc/equipmnt.html*](http://www.dot.ca.gov/hq/construc/equipmnt.html). Prime Trade Contractor shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

.8 Additional costs of royalties and permits due to the performance of the Extra Work.

.9 The cost for Insurance and Bonds shall not exceed 0.75% of items .1 through .8 above.

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

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

.1 Supervision

.2 Superintendent(s)

.3 Assistant Superintendent(s)

.4 Project Engineer(s)

.5 Project Manager(s)

.6 Scheduler(s)

.7 Estimator(s)

.8 Drafting or Detailing

.9 Small tools (Replacement value does not exceed $300)

.10 Office expenses including staff, materials and supplies

.11 On-site or off-site trailer and storage rental and expenses

.12 Site fencing

.13 Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment

.14 Data processing personnel and equipment

.15 Federal, state, or local business income and franchise taxes

.16 Overhead and Profit

.17 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2 above

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

7.3.4.1 For Work added by Change order, the Contractor Fee shall be computed as follows.

1 Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the prime Prime Trade Contractor with its own forces.

.2 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the prime Prime Trade Contractor. Total combined Prime Trade Contractor and Subcontractor fee shall not exceed 20%.

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

7.3.4.2 For Work deleted by Change Order, the Contractor Fee shall be computed as follows:

.1 Five (5%) of the cost of that portion of the Deleted Work to be performed by the prime contractor with its own forces.

.2 Five (5%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the prime contractor. Total combined Contractor and Subcontractor fee shall not exceed 10%.

.3 Five (5%) of the cost of that portion of the Work to be performed by a sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus 5% for the Subcontractor, plus 5% for the prime contractor. Total combined Contractor, Subcontractor and all sub-subcontractor fee shall not exceed 15%.

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

.1 Where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of the Unit prices stated in the Contract Documents to the quantities of the items involved.

.2 Where Unit Prices are not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to 7.3.1.

.3 Where Prime Trade Contractor and University cannot agree upon a lump sum, by Cost of Extra Work plus Prime Trade Contractor Fee applicable to such Extra Work.

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

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

.1 Unit Prices stated in the Contract Documents.

.2 Where Unit Prices are not applicable, a lump sum agreed upon by University and Prime Trade Contractor, based upon the actual costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Articles 7.3.2 and 7.3.3 above plus Contractor Fee as defined in 7.3.4.2 and, supported by a Cost Proposal pursuant to Article 7.3.1 above.

7.3.8 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a Prime Trade Contractor fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Prime Trade Contractor Fee will be allowed only on the difference between the two amounts.

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

.1 Condition Number One: The delay results in an extension of the Contract Time pursuant to Article 8.4.1 of the General Conditions.

.2 Condition Number Two: The delay is caused solely by one or more of the following:

.1 An error or omission in the Contract Documents; or

.2 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or

.3 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or

.4 The failure of the University or the University's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Prime Trade Contractor; or

.5 A materially differing site condition pursuant to Article 3.17 of the General Conditions.

.3 Condition Number Three: The delay is not concurrent with a delay that is:

.1 Critical under Article 8.4.1.2 of the General Conditions; and

.2 Caused by an event not listed in Article 7.3.9.2 above.

.4 Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Article 7.3.9.2 above.

.5 Condition Number Five: The delay is not caused, in whole or in part, by the default or misconduct of a Separate Contractor.

7.3.10 For each day of delay that meets all five conditions prescribed in above 7.3.9 the Contract Sum will be adjusted by the daily rate included in the Agreement and specifically identified as the rate to be paid to Prime Trade Contractor for Compensable Delays. Pursuant to Article 9.7.4 of the General Conditions, said daily rate shall not apply to delays occurring after Substantial Completion.

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

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

**7.4 FIELD ORDERS**

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

.1 A Field Order may state that it does or does not constitute a change in the Work.

.2 If the Field Order states that it does not constitute a change in the Work and the Prime Trade Contractor asserts that the Field Order constitutes a change in the Work, in order to obtain an adjustment of the Contract Sum or Contract Time for the Work encompassed by the Field Order, Prime Trade Contractor must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of Prime Trade Contractor's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum  or Contract Time arising from performance of the Work described in the Field Order.

.3 If the Field Order states that it does constitute a change in the Work, the Work described in the Field Order shall be considered Extra Work and the Prime Trade Contractor shall be entitled to an adjustment of the Contract Sum and Contract Time, calculated under and subject to Prime Trade Contractor's compliance with the procedures for verifying and substantiating costs and delays in Articles 7 and 8 of the General Conditions.

.4 In addition, if the Field Order states that it does constitute a change in the Work, the Field Order may or may not contain University's estimate of adjustment of Contract Sum and/or Contract Time.   If the Field Order contains an estimate of adjustment of Contract Sum or Contract Time, the Field Order is subject to the following:

.1 The Prime Trade Contractor shall not exceed the University's estimate of adjustment to Contract Sum or Contract Time without written authorization by University's Representative.

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

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

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

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

**7.6 WAIVER**

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

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

**ARTICLE 8**

**CONTRACT TIME**

**8.1 COMMENCEMENT OF THE WORK**

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

**8.2 PROGRESS AND COMPLETION**

8.2.1 By signing the Agreement:

.1 Prime Trade Contractor represents to University that the Contract Time is reasonable for performing the Work and that Prime Trade Contractor is able to perform the Work within the Contract Time.

.2 Prime Trade Contractor represents to the University that the time for completion of the Project as shown in the Preliminary Master Project Schedule is reasonable.

.3 Prime Trade Contractor agrees that University is purchasing the right to have the Prime Trade Contractor fully mobilized on the site from the earliest date for commencement of the Work shown on the Preliminary Master Project Schedule to the date shown for full completion of the Project as shown in the bidding documents.

.4 Prime Trade Contractor agrees that the University is purchasing the right to have Prime Trade Contractor work on the Project Site shared by the Prime Trade Contractor and Separate Contractors. Prime Trade Contractor recognizes that as a result of working at a shared Project Site there will be a loss of productivity and disruption commensurate with a project of the type, size and complexity of the Project. Prime Trade Contractor agrees that the Contract Sum includes full compensation for such loss of productivity and disruption.

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

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

**8.3 DELAY**

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

.1 To bear the risk of delays to the Work; and

.2 That Prime Trade Contractor's bid for the Contract was made with full knowledge of this risk.

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

**8.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY**

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

.1 Condition Number One: At the time that the event causing the delay commences, the Prime Trade Contractor has complied with all Contract requirements for maintaining, submitting, and updating schedule information as required by the Contract Documents.

.2 Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying completion of the entire Project beyond the Contract Time. Under this Article 8.4.1.2, if the Master Project Schedule shows completion of the entire Project before expiration of the Contract Time, a delay is critical if and only to the extent the delay pushes completion of the entire Project to a date that is beyond the Contract Time.

.3 Condition Number Three: The delay is supported by the Master Project Schedule current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Master Project Schedule corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to in Article 8.4.1.2 above. The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Prime Trade Contractor Schedule, provided that the absence of an approved Prime Trade Contractor Schedule is not due to the Prime Trade Contractor's failure to timely submit an acceptable Prime Trade Contractor Schedule.

.4 Condition Number Four: Within 7 days of the date the Prime Trade Contractor discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Prime Trade Contractor has not been delayed when the Prime Trade Contractor discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Prime Trade Contractor submits both a timely and complete Change Order Request that meets the requirements of Article 4.2 of the General Conditions.

.5 Condition Number Five: The delay is not caused by:

.1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.17 of the General Conditions; or

.2 The financial inability, misconduct or default of the Prime Trade Contractor, a Subcontractor or supplier; or

.3 The unavailability of materials or parts.

.6 Condition Number Six: The delay is caused by:

.1 Fire; or

.2 Strikes, boycotts, or like obstructive actions by labor organizations; or

.3 Acts of God (As used herein, “Acts of God” shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or

.4 A materially differing site condition pursuant to Article 3.17 of the General Conditions; or

.5 An error or omission in the Contract Documents; or

.6 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or

.7 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or

.8 The failure of the University or the University's representative to timely perform any Contract obligation unless such failure is due to Prime Trade Contractor's default or misconduct; or

.9 The failure of a Separate Contractor to adhere to the Master Project Schedule; or

.10 The failure of a Separate Contractor to timely perform any contract obligation due to its default or misconduct or

.11 “Rainy weather,“ but only for such days of rain that are in excess of the number of days specified in the Supplementary Conditions. In order for a day to be considered a day of rainy weather for the purpose of determining whether Prime Trade Contractor is entitled to an adjustment in Contract Time, both of the following conditions must be met:

.1 The day must be a day in which, as a result of rain, no critical path work is performed by Prime Trade Contractor or a Separate Contractor; and

.2 The day must be identified in the Master Project Schedule as a scheduled work day.

.7 Condition Number Seven: Prime Trade Contractor has taken all reasonable measures to avoid and minimize the delay and, notwithstanding such measures, the delay occurred.

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

.1 When two or more delays (each of which meet all seven conditions prescribed in Article 8.4.1) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to this Article 8.4.2, such concurrent critical delays shall be treated as a single delay for each such day.

.2 Prime Trade Contractor shall be entitled to a time extension for a day of delay that meets all seven requirements of Article 8.4.1 if the delay is concurrent with a delay that does not meet all seven conditions of Article 8.4.1.

8.5 COMPENSATION FOR DELAY

8.5.1 To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in Article 7 of the General Conditions.

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

.1 To order changes in the Work, regardless of the extent and number of changes, including without limitation:

.1 Changes to correct errors or omissions, if any, in the Contract Documents.

.2 Changes resulting from the University's decision to change the scope of the Work subsequent to execution of the Contract.

.3 Changes due to unforeseen conditions.

.2 To suspend the Work or any part thereof.

.3 To delay the work, including without limitation, delays resulting from the failure of the University or the University's Representative to timely perform any Contract obligation and delays for University's convenience.

8.6 WAIVER

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

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

**ARTICLE 9**

**PAYMENTS AND COMPLETION**

**9.1 COST BREAKDOWN**

9.1.1 Within 10 days after receipt of the Notice of Selection as the apparent lowest responsible Bidder, and with the Agreement, Prime Trade Contractor shall submit to University's Representative a Cost Breakdown of the Contract Sum in the form contained in the Exhibits. The Cost Breakdown shall itemize as separate line items the cost of each Work Activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the University's Representative, shall become the basis for determining the cost of Work performed for Prime Trade Contractor's Applications for Payment.

**9.2 PROGRESS PAYMENT**

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

.1 Cost of the Work in permanent place as of the date of the Prime Trade Contractor’s Application for Payment

.2 Plus cost of materials not yet incorporated in the Work, subject to Article 9.3.5 below.

.3 Less amounts previously paid.

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

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

**9.3 APPLICATION FOR PAYMENT**

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

The Application for Payment shall be prepared as follows:

.1 Use the form contained in the Exhibits.

.2 Itemize in accordance with the Cost Breakdown.

.3 Include such data substantiating Prime Trade Contractor's right to payment as University's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Article 9.5 below, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application for Payment.

.4 Itemize retention.

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

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

9.3.4 Prime Trade Contractor warrants that, upon submittal of an Application for Payment, all Work, for which Certificates For Payment have been previously issued and payment has been received from University, shall be free and clear of all claims, stop payment notices, security interests, and encumbrances in favor of Prime Trade Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

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

**9.4 CERTIFICATE FOR PAYMENT**

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

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

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

.1 Defective Work not remedied

.2 Third-party claims against Prime Trade Contractor or University arising from the acts or omissions of Prime Trade Contractor or Subcontractors

.3 Stop payment notices

.4 Failure of Prime Trade Contractor to make timely payments due Subcontractors for material or labor

.5 A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid

.6 Damage to University or Separate Contractor for which Prime Trade Contractor is responsible

.7 Reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance of the Contract Sum would not be adequate to cover University's damages for the anticipated delay

.8 Failure of Prime Trade Contractor to maintain and update as-built documents

.9 Failure of Prime Trade Contractor to submit schedules or their updates as required by the Contract Documents

.10 Failure to provide conditional or unconditional releases from an Subcontractor or supplier, if such waiver(s) have been requested by University’s Representative

.11 Performance of Work by Prime Trade Contractor without properly processed Shop Drawings

.12 Anticipated liquidated damages commensurate with the number of days the Prime Trade Contractor fails to complete a critical activity by the date shown on the Master Project Schedule

.13 Anticipated costs for acceleration under Article 2.6.3 of the General Conditions

.14 Liquidated damages assessed in accordance with Article 5 of the Agreement

,15 Failure to provide updated Reports of Subcontractor Information and Confirmation of Certifications, as applicable.

.16 Failure to provide a Final Distribution of Contract Dollars with final Application for Payment

.17 Failure of Prime Trade Contractor, any of its Subcontractors, or any person or entity under Prime Trade Contractor, to provide any required insurance information (including submitting completed forms identified in the Insurance Manual)

.18 Any other failure of Prime Trade Contractor to perform its obligations under the Contract Documents

9.4.4 Subject to the withholding provisions of Article 9.4.3 above, University will pay Prime Trade Contractor the amount set forth in the Certificate For Payment no later than 10 days after the issuance of the Certificate For Payment.

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

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

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

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

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

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

**9.6 BENEFICIAL OCCUPANCY**

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

.1 University's Representative will make an inspection of the portion of the Project to be beneficially occupied and prepare a list of items to be completed or corrected prior to Final Completion. Prior to Beneficial Occupancy, University will issue a *Certificate of Beneficial Occupancy* on University's form.

.2 Beneficial Occupancy by University shall not be construed by Prime Trade Contractor as an acceptance by University of that portion of the Work which is to be occupied.

.3 Beneficial Occupancy by University shall not constitute a waiver of existing claims of University or Prime Trade Contractor against each other.

.4 Prime Trade Contractor shall provide, in the areas beneficially occupied and on a 24 hour and 7 day week basis as required, utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with Prime Trade Contractor while the equipment is so operated. Prime Trade Contractor shall submit to University an itemized list of each piece of equipment so operated with the date operation commences.

.5 The Guarantee to Repair Periods, as defined in Article 12.2 of the General Conditions, will commence upon the first dates of actual occupancy or use of portions of the Work actually occupied and equipment or systems fully utilized. Equipment or systems shall not be considered fully utilized until all parts of the Project served by the equipment or systems are actually occupied and used.

.6 University will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

.7 University will pay all utility costs which arise out of the Beneficial Occupancy.

.8 Prime Trade Contractor shall not be responsible for providing security in areas beneficially occupied.

.9 University will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Prime Trade Contractor's remaining Work.

.10 Prime Trade Contractor shall not be required to repair damage caused by University in its Beneficial Occupancy.

.11 Except as provided in this Article 9.6, there shall be no added cost to University due to Beneficial Occupancy.

.12 Prime Trade Contractor shall continue to maintain all insurance required by the Contract in full force and effect and University shall maintain the Builder’s Risk Policy on the entire Project through Final Completion unless otherwise specified in writing on the Certificate of Occupancy.

**9.7 SUBSTANTIAL COMPLETION**

9.7.1 “Substantial Completion” means the stage in the progress of the Work, as determined by University's Representative, when the Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair University's ability to occupy and fully utilize the Work for its intended purpose and a Certificate of Occupancy has been issued by the University. Substantial Completion shall not terminate the Builder’s Risk policy for the Project unless otherwise identified on the Certificate of Substantial Completion.

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

9.7.3 When University's Representative determines that the Work is substantially complete, University’s Representative will prepare a Certificate of Substantial Completion for the Work on University's form as contained in the Exhibits, which, when signed by University, shall establish the date of Substantial Completion.

9.7.4 When University's Representative determines that all work of the Project is substantially complete, University's Representative will arrange for inspection by University’s Building Official and other officials, as appropriate, for the purpose of issuing a Certificate of Occupancy. After a Certificate of Occupancy has been issued by the University, the University’s Representative will prepare a Certificate of Substantial Completion for the Project on University's form as contained in the Exhibits, which, when signed by University, shall establish the date of Project Substantial Completion and the responsibilities of University and Prime Trade Contractor for security, maintenance, utilities, insurance, and damage to the Work.

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

.1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the University has neither Beneficially Occupied nor accepted as Substantially Complete); or

.2 Are not accepted by the University.

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

9.7.6 The daily rate included in the Agreement and specifically identified as the rate to be paid to Prime Trade Contractor for Compensable Delays shall not apply to any delays occurring after Substantial Completion.

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

9.8.1 Upon receipt of notice from Prime Trade Contractor that the Work is ready for final inspection, University's Representative will make such inspection. Final Completion shall be when University's Representative determines that the Work is fully completed and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy has been issued by the University. University will file a Notice of Completion within 15 days after Final Completion. After receipt of the final Application For Payment, if University's Representative determines that Final Completion has occurred, University's Representative will issue the final Certificate For Payment.

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

.1 Prime Trade Contractor submits the final Application For Payment and all submittals required in accordance with Article 9.3;

.2 Prime Trade Contractor submits all guarantees and warranties procured by Prime Trade Contractor from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents;

.3 Prime Trade Contractor submits the Final Distribution of Contract Dollars in the form contained in the Exhibits; and

.4 University's Representative issues the final Certificate For Payment.

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

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

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

**ARTICLE 10**

**PROTECTION OF PERSONS AND PROPERTY**

**10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

**10.2 SAFETY OF PERSONS AND PROPERTY**

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

.1 Employees involved in the Work and other persons who may be affected thereby.

.2 The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of Prime Trade Contractor or Subcontractors.

.3 Other property at the Project Site and adjoining property.

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

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

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

10.2.5 Prime Trade Contractor shall not load or permit any part of the Work or the Project Site to be loaded so as to endanger the safety of persons or property.

**10.3 EMERGENCIES**

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

**ARTICLE 11**

**INSURANCE AND BONDS**

**11.1 UNIVERSITY CONTROLLED INSURANCE PROGRAM**

11.1.1 Overview. Except as limited by the provisions of this Article 11.1, the University shall pay for, obtain and maintain a University Controlled Insurance Program (“UCIP”) providing Workers’ Compensation and Employer’s Liability Insurance coverage, Commercial General Liability Insurance coverage, and Excess Liability Insurance coverage, to persons and entities enrolled in the UCIP, for Work performed on or at the Project Site and summarized as follows:

**For Lump Sum and Multiple Prime Trade Contracts**: UCIP only applies once a Notice to Proceed has been issued for Work in the applicable Phase as shown above on or at the Project Site

Persons and entities eligible for such coverage (see Article 11.1.2), including Prime Trade Contractor and all Subcontractors, unless excluded under Article 11.1.5, will be required to enroll in the UCIP. Once enrolled, the UCIP will provide coverage as defined herein until the earliest of the following: the date on which University makes final payment to Prime Trade Contractor, the date a Notice of Cessation is filed for the Contract, or the date the Contract is terminated pursuant to Article 13. Additionally, all enrolled eligible Contractors and Subcontractors, will be required to obtain their own Commercial Automobile Liability Insurance for all Work (on and off the Project Site), as well as their own commercial general liability coverage and Workers’ Compensation and Employer’s Liability Insurance for their Work not covered by the UCIP (see Article 11.1.10); Excluded Parties and Eligible Parties who are not enrolled must also obtain Commercial Automobile Liability Insurance, Workers’ Compensation and Employer’s Liability Insurance, and Commercial General Liability Insurance for all Work (on and off the Project Site) (see Article 11.1.10). The UCIP shall be administered by the UCIP Administrator identified in the Supplementary Conditions. Pursuant to Article 4.1.4, all communications concerning the UCIP shall be through the University Representative except that written communications between the UCIP Administrator, Prime Trade Contractor, Subcontractors, eligible, enrolled and excluded parties are authorized as follows:

.1 For the purpose of obtaining copies of any UCIP insurance policies, the *UCIP Insurance Manual* and the *UCIP Safety Standards Manual*.

.2 For the purpose of obtaining any certificates of insurance required by this Article 11.

.3 For the purpose of verifying that Prime Trade Contractor, Subcontractors, eligible parties, enrolled parties and excluded parties have obtained and maintained any insurance required by this Article 11.

.4 For the purpose of enrolling any party in the UCIP.

11.1.2 Eligible Parties and Enrolled Parties: Except as provided in Article 11.1.5, each of the following, who will perform any labor at the Project Site, are an “Eligible Party:” Prime Trade Contractor, all Subcontractors of all tiers, and such other persons or entities as University may designate, in its sole discretion. Upon receipt of written acknowledgement of enrollment from the UCIP Administrator, an Eligible Party becomes an “Enrolled Party.”

11.1.3 Except as provided in Article 11.1.1, Enrolled Parties shall not obtain or maintain Workers’ Compensation and Employer’s Liability Insurance, Commercial General Liability Insurance, or Excess Liability Insurance for their Work performed at the Project Site. Notwithstanding the preceding sentence, Enrolled Parties may obtain, at their own cost, exclusive of any and all bids for the Work, change order requests, claims, or any other request or demand for payment or compensation for Work:

.1 Excess Liability Insurance over and above the UCIP Coverages; and

.2 Insurance to Cover Prime Trade Contractor’s obligations set forth in Article 11.1.9.8

.3 Any additional coverage purchased at the Prime Trade Contractor’s or Subcontractor’s option and sole expense pursuant to the obligations set forth in Article 11.1.9.5

11.1.4 Eligible Parties (unless excluded under Article 11.1.5) shall not include in their bids for any Work to be performed at the Project Site any projected or actual cost to provide the Workers’ Compensation and Employer’s Liability Insurance, Commercial General Liability Insurance, and Excess Liability Insurance that is being provided under the UCIP. Further, Enrolled Parties (unless excluded under Article 11.1.5) shall not include in any change order request, claim or other request or demand for payment or compensation for Work to be performed, or that was performed, at the Project Site any projected or actual cost to provide Workers’ Compensation and Employer’s Liability Insurance, Commercial General Liability Insurance, and Excess Liability Insurance that is being provided under the UCIP. The University may reduce the Contract Sum by an amount commensurate with any projected or actual costs included contrary to the requirements of this Article 11.1.4

* + 1. Excluded Parties and Their Insurance Obligations. The UCIP Coverages do not cover the following “Excluded Parties:”

.1 Contractor and Subcontractors whose Work includes demolition by means of blasting techniques or wrecking ball;

.2 Contractor and Subcontractors whose Work includes hazardous materials remediation, removal and/or transport companies and their consultants;

.3 Architects, surveyors, engineers, and soil testing engineers, and their consultants (except for architects, surveyors, engineers and soil testing engineers that are employees of Prime Trade Contractor or Subcontractor);

.4 Vendors, suppliers, material dealers, manufacturing representatives, truckers, haulers, drivers, common carriers, equipment rental companies who perform equipment maintenance (does not apply to those who erect or install such rented equipment at the jobsite, or provide operators) and others who do not perform Work at or on the Project Site or who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons to or from the Project Site;

Project Site.5 Persons or Entities who are not an Eligible Party who are enrolled in the UCIP; and

.6 Any other person or entity that the University, acting in its sole discretion, elects to exclude, even if otherwise eligible.

Excluded Parties and Eligible Parties that are not enrolled in the UCIP shall obtain and maintain the insurance coverage specified in Article 11.1.10.

11.1.6 UCIP Insurance Policies Establish the UCIP Coverages. University will provide its standard UCIP insurance coverages, subject to the deductibles, terms and conditions, exclusions, and limitations contained in the provisions of the standard UCIP policies. The UCIP Administrator shall make copies of the UCIP insurance policies available to any Eligible Party or Enrolled Party requesting to review such copies in writing. Pursuant to Civil Code section 2782.96, any Eligible Party or Enrolled Party receiving copies of the policies shall not disclose the policies to third parties other than to the Eligible Party’s or Enrolled Party’s insurance broker or attorney unless required to do so by law; the Eligible Party’s or Enrolled Party’s insurance broker or attorney may not disclose the policies to any third party unless required to do so by law. The summary descriptions of the UCIP Coverages in this Article 11, or elsewhere, are not intended to be complete or to alter or amend any provision of the actual UCIP Coverages. In the event that any provision of this Article, the Contract Documents, or elsewhere, conflicts with the UCIP insurance policies, the provisions of the actual UCIP insurance policies shall govern. The University’s provision of its standard UCIP insurance policies meets the University’s obligation to provide UCIP insurance under the Contract and, in the event of a conflict between the provisions of the policies and any summary or description of the provisions contained herein or otherwise, the provisions of the policy shall control and shall be conclusively presumed to fulfill the University’s obligation to provide UCIP insurance.

11.1.7 Summary of UCIP Coverages. UCIP Coverages shall apply only to the Work of each Enrolled Party performed on or at the Project Site, and only to Enrolled Parties that are eligible for the UCIP. UCIP coverages shall not apply to ineligible parties, even if they are erroneously enrolled in the UCIP. An Enrolled Party’s Work away from the Project Site, including product manufacturing, assembly, off-site fabrication, or otherwise, will not be covered by the UCIP. The UCIP shall provide only the following insurance to eligible and Enrolled Parties (this is only a summary):

.1 Workers’ Compensation Insurance: Statutory Limit

This insurance is primary for all covered occurrences performed at University designated locations in California.

.2 Employer’s Liability Insurance:

Bodily Injury by Accident, each accident $1,000,000

Bodily Injury by Disease, each employee $1,000,000

Bodily Injury by Disease, policy limit $1,000,000

This insurance is primary for all occurrences at the Project Site.

.3 Commercial General Liability Insurance

ISO CG 0001 Occurrence Form, or its equivalent:

Each Occurrence Limit $3,000,000

General Annual Aggregate Limit $6,000,000

Completed Operations Aggregate $6,000,000

Subject to the terms of the policy, coverage for Completed Operations shall be included for a period of 10 years or the applicable Statute of Repose, whichever is less.

This insurance is primary for all occurrences at the Project Site. Aggregate limits specified are shared by all Enrolled Parties for all projects insured for the campus and any associated medical center.

.4 Excess Liability Insurance

(Over Employer’s Liability & General Liability):

Each Occurrence Limit $200,000,000

General Annual Aggregate Limit for all Enrolled Parties $200,000,000

Products & Completed Operations Aggregate $200,000,000

Subject to the terms of the policy, coverage for Completed Operations shall be included for a period of 10 years or the applicable Statute of Repose, whichever is less.

Aggregate limits specified are shared by all Enrolled Parties for all projects insured for the campus and any associated medical center.

Exhibit 1A, entitled *UCIP Coverage Summary*, contains a summary of the policy limits, the term of the policy, and any known exclusions to the coverages described in this Article 11.1.7. Prime Trade Contractor, in the event of a loss, shall be responsible for the amounts set forth in Article 11.1.9 herein.

* + 1. University’s Insurance Obligations.

.1 University shall pay the costs of premiums for the UCIP coverages.

.2 University will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. Prime Trade Contractor hereby assigns to University the right to receive all such adjustments, and shall require each of its Subcontractors of every tier to assign to University the right to receive all such adjustments.

.3 The University’s obligation to obtain insurance under the UCIP shall not relieve or limit, or be construed to relieve or limit, Prime Trade Contractor or any of its Subcontractors of any tier of any responsibility, liability, or obligation imposed by the Contract Documents, the UCIP insurance policies, or by law, including, without limitation, any indemnification obligations which Prime Trade Contractor or any of its Subcontractors have to University.

.4 University reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that provided at the time of enrollment.

* + 1. Prime Trade Contractor’s UCIP Obligations.

.1 Prime Trade Contractor shall require that the terms of this Article 11 be incorporated into all Subcontractor agreements.

.2 Prime Trade Contractor shall enroll in the UCIP within five (5) days of execution of the Contract (and prior to its commencement of Work on or at the Project Site) and maintain enrollment in the UCIP until the coverage terminates pursuant to Article 11.1.1.

.3 Prime Trade Contractor shall assure that each of Prime Trade Contractor’s eligible Subcontractors of every tier enroll in the UCIP within five (5) days of subcontracting (and prior to the Subcontractor’s commencement of Work on or at the Project Site), and maintain enrollment in the UCIP until the coverage terminates pursuant to Article 11.1.1.

.4 Prime Trade Contractor shall comply with all of the administrative, safety, insurance, and other requirements outlined in this Article, the UCIP Insurance Manual, the UCIP Safety Standards Manual, or elsewhere in the Contract Documents.

.5 Prime Trade Contractor agrees that the University and the UCIP Administrator are not agents, partners or guarantors of the insurance companies (hereinafter “UCIP Insurer”) providing coverage under the UCIP, that neither University nor the UCIP Administrator are responsible for any claims or disputes between or among Prime Trade Contractor, its Subcontractors of any tier, and any UCIP Insurer(s), and that neither University nor UCIP Administrator guarantees the solvency or the availability of limits of any UCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the UCIP Coverages that Prime Trade Contractor or its Subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, shall be Prime Trade Contractor’s or its Subcontractors’ sole responsibility and expense.

.6 Prime Trade Contractor shall cooperate fully with the UCIP Administrator and the UCIP Insurers, as applicable, in its or their administration of the UCIP.

.7 Prime Trade Contractor shall comply, and require all of its Subcontractors to comply, with UCIP Administrator’s instructions for electronically enrolling in the UCIP and for electronically reporting payroll.

.8 In the event of a Commercial General Liability loss covered by the UCIP, Prime Trade Contractor shall pay to the University an amount as set forth below. Payment pursuant to the preceding sentence shall not in any way limit the liability of Prime Trade Contractor to University or otherwise. The amount to be paid, which is based on the Contract Sum of the Prime Trade Contractor’s Contract, at the time of loss, is as follows:

Contract Sum at the Time of Loss Amount to be Paid (Per Occurrence)

$ 2,500,000 or Less $ 10,000

$ 2,500,001 to $10,000,000 $ 15,000

$10,000,001 and Over $ 25,000

11.1.10 Additional Insurance Required from Prime Trade Contractor and each of the Subcontractors, Enrolled Parties, Eligible Parties that are not enrolled, and Excluded Parties (for this Article 11.1.10, hereinafter referred as Prime Trade Contractor and each Subcontractor) as specified in this Article 11.1.10. Unless otherwise specified herein, additional insurance policies and coverages are required during the course of construction. Such additional insurance policies and coverages shall be purchased at the expense of Prime Trade Contractor and each Subcontractor, and maintained through the duration of the contract, defined herein as until the earliest of the following occurs: the Project attains final completion as defined in Article 9.8.1, the date a Notice of Cessation is filed for the Contract, or the date the Contract is terminated pursuant to Article 13.

.1 Policies and coverages:

.1 CommercialGeneral Liability Insurance, subject to terms no less broad than the Insurance Services Office’s (ISO) form CG 0001 (2004 or later edition), or a substitute form providing coverage at least as broad as the ISO form specified, with available coverage for all Work done by or on behalf of Prime Trade Contractor and each Subcontractor, and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability. There shall be no limitations or exclusions of coverage beyond those contained in the standard ISO form CG 0001 (2004 or later edition). Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work of Prime Trade Contractor and each Subcontractor. Commercial General Liability Insurance for Enrolled Parties is required only for Work performed off the Project Site that has not been disclosed to the UCIP Administrator and scheduled on the UCIP policies. Commercial General Liability Insurance for Eligible Parties that are not enrolled, and for Excluded Parties, shall apply to all Work (both on and off the Project Site). The minimum limits required for the Commercial General Liability Insurance may be satisfied by combination of primary and umbrella/excess policies and shall not be less than the following:

Excluded Party/

Eligible Party

Enrolled Party Not Enrolled

Each Occurrence $1,000,000 $2,000,000

General Aggregate $2,000,000 $4,000,000

Products/Completed Operations Aggregate $2,000,000 $4,000,000

Personal/Advertising Injury Aggregate $1,000,000 $2,000,000

To the extent that umbrella/excess policies are used to satisfy the required minimum limits, coverage shall be at least as broad as the coverage provided under the ISO form CG 0001 (2004 or later edition).

In addition to procuring and maintaining Commercial General Liability Insurance or a combination of primary and umbrella/excess policies as required in this Article 11.1.10.1.1, Prime Trade Contractor and each Subcontractor shall continue to maintain Products/Completed Operations liability insurance coverage for a minimum completed operations period of 10 year(s) or the applicable Statute of Repose as provided by the law of the jurisdiction where the project is located as shown in the policy(ies), whichever is less. All terms and conditions of such coverage shall be maintained during this completed operations period, including the required minimum coverage limits and the requirement to provide the University with coverage as an additional insured for completed operations as specified under this Article 11.1.10.1.1.

Additional Insured Requirements. To the maximum extent permitted by law, the Commercial General Liability Insurance shall, by endorsement to the policies, include the following:

The Regents of the University of California and each of their Representatives, consultants, officers, agents, employees, and each of their Representative's consultants, regardless of whether or not identified in the Contract Documents or to the Prime Trade Contractor in writing, shall be included as additional insureds on the primary and umbrella/excess Commercial General Liability Insurance policies of the Prime Trade Contractor and each Subcontractor for and relating to the ongoing and completed Work performed by the Prime Trade Contractor and each Subcontractor.

Such Commercial General Liability additional insured provision(s) or endorsement(s) shall be at least as broad as the Insurance Services Office’s (ISO) forms CG 2010 04 13in combination with the CG 2037 04 13(or earlier versions of CG 2010 and CG 20 37 or Form B – CG 20 10 11 85 by itself), as published by ISO or equivalent and shall be included with the Certificates of Insurance. The Prime Trade Contractor and each Subcontractor shall provide the University with coverage as an additional insured during the course of construction and for a minimum completed operations period of 10 year(s) or the applicable Statute of Repose as provided by the law of the jurisdiction where the project is located as shown in the policy(ies), whichever is less.

The Prime Trade Contractor and each Subcontractor agree that the amount of insurance available to the University or the additional insured shall be for the full amount of the loss up to the available policy limits and shall not be limited to any minimum requirements stated in the Contract Documents.

It is expressly agreed and understood that all additional insured coverage afforded by Prime Trade Contractor and Subcontractors shall be primary and non-contributing with respect to any other insurance or self-insurance purchased directly by the University and additional insureds. Any other insurance or self-insurance purchased directly by the University shall be excess of, and non-contributory with, the additional insured coverage afforded by Prime Trade Contractor and Subcontractor policies, if any. Further, to the extent that umbrella/excess policies are used to satisfy the required minimum limits, the "other insurance" provision of such policies shall be amended to provide additional insured coverage on a primary non-contributory basis once the underlying coverage is exhausted.

Such additional insured provision(s) or endorsement(s) shall be attached to and stated on the Certificates of Insurance.

.2 Commercial Automobile Liability Insurance, subject to terms no less broad than the Insurance Services Office’s (ISO) form CA 0001 (1990 or later edition), or a substitute form providing coverage at least as broad as the ISO form specified, covering owned, hired, leased, and non-owned automobiles used by or on behalf of Insured, shall provide liability insurance for bodily injury and property damage arising from the use or operation of such auto(s) with a minimum combined single limit of not less than $1,000,000 per accident. The minimum limits required may be satisfied by combination of primary and umbrella/excess policies. The Commercial Automobile Liability Insurance shall be provided by Prime Trade Contractor and each Subcontractor for all Work (both on and off the Project Site).

Additional Insured Requirements. To the maximum extent permitted by law, the CommercialAutomobile Liability Insurance shall, by endorsement to the policy, include the following:

The Regents of the University of California and each of their Representatives, consultants, officers, agents, employees, and each of their Representative's consultants, regardless of whether or not identified in the Contract Documents or to the Prime Trade Contractor in writing, will be included as additional insureds on the policy of the Prime Trade Contractor and each Subcontractor for and relating to Work performed by the Prime Trade Contractor and each Subcontractor.

The Prime Trade Contractor shall provide status as an additional insured during the course of construction, until the earliest of the following occurs: the Project attains final completion as defined in Article 9.8.1, the date a Notice of Cessation is filed for the Contract, or the date the Contract is terminated pursuant to Article 13. Such additional insured provision(s) or endorsement(s) shall be attached to and stated on the Certificates of Insurance.

To the extent that umbrella/excess policies are used to satisfy the required limits, the "other insurance" provision of such policies shall be amended to provide additional insured coverage on a primary non-contributory basis once the underlying coverage is exhausted.

.3 Workers’ Compensation and Employer’s Liability Insurance required by this Section 11.1.10.1.3 shall be provided by Prime Trade Contractor and Enrolled Parties only for Work performed off the Project Site that has not been disclosed to the UCIP Administrator and scheduled on the UCIP policies. Workers’ Compensation and Employer’s Liability Insurance required by this Section 11.1.10.1.3 shall be provided by Eligible Parties that are not enrolled, and Excluded Parties for all on site and off site Work. The limits required shall not be less than the following:

Workers’ Compensation Insurance: Statutory Limits as required by Federal and applicable state law.

Employer’s Liability Insurance:

Bodily Injury by Accident, each accident $1,000,000

Bodily Injury by Disease, each employee $1,000,000

Bodily Injury by Disease, policy limit $1,000,000

The minimum Employer’s Liability Insurance limits required may be satisfied by combination of primary and umbrella/excess policies. To the extent that umbrella/excess policies are used to satisfy the required limits, the "other insurance" provision of such policies shall be amended to provide additional insured coverage on a primary non-contributory basis once the underlying coverage is exhausted.

.4 Any additional insurance required by the Supplementary General Conditions.

.2 Any coverages required under this Article 11.1.10 shall not in any way limit the liability of Prime Trade Contractor and each Subcontractor.

The insurance requirements set forth in minimum amounts shall not be construed to relieve Prime Trade Contractor for liability in excess of such coverage, nor shall it preclude University from taking such other actions as is available to it under any other provision of the Contract Documents.

.3 Certificates of Insurance, executed by a duly authorized representative of each broker of record or each insurer, as evidence of their compliance with the insurance required by these Contract Documents and on the form contained in the Exhibits, and endorsements required by 11.1.10.6 shall be submitted prior to the commencement of work by the Prime Trade Contractor, and Subcontractor, to the UCIP Administrator. The Certificates of Insurance shall provide for no cancellation or modification of coverage without prior written notice to UCIP Administrator, in accordance with policy provisions. Renewal certificates are to be provided to UCIP Administrator prior to the expiration of the required insurance policies.

.4 Failure of Prime Trade Contractor and each Subcontractor to comply with and maintain the required insurance shall constitute a default under this Contract and, at University’s option, shall allow University to terminate this Contract for cause, withhold payment and/or purchase the required insurance, and the cost of such insurance shall be paid by Prime Trade Contractor and may be deducted from the Contract Sum.

.5 University, University's consultants, University's Representative, and University's Representative's consultants will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance. Further, the funding of deductibles and self-insured retentions maintained by Prime Trade Contractor and Subcontractor shall be the sole responsibility of Prime Trade Contractor and Subcontractor, including any amounts applicable to deductibles or self-insured retentions applicable to claims involving the University as an additional insured as specified in Article 11.1.10.1.

.6 Insurance as required by Article 11.1.10, shall, by endorsement to the policies, also include the following:

.1 As to all liability insurance policies, each shall include a waiver of subrogation endorsement evidencing that the Contractor waives all rights of recovery by subrogation against University, University’s Representative, University’s Representative’s consultants, their respective officers, agents, or employees.

.2 Except with respect to the limits of insurance, Prime Trade Contractor and Subcontractor required insurance shall apply separately to each insured or additional insured.

Such provision(s) or endorsement(s) shall be attached to and stated on the Certificates of Insurance.

.7 The form and substance of all insurance policies required to be obtained under this Article 11.1.10 shall be subject to approval by University. All policies required by this Article 11.1.10 shall be issued by companies with ratings and financial classifications as specified in the Supplementary Conditions.

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

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

.10 If any insurance company refuses to use the Certificate of Insurance form as contained in the Exhibits, it must provide a Certificate of Insurance evidencing compliance with this Article, including those provisions noted under DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES section of the Certificate of Insurance Exhibit by including an endorsement to its Certificate of Insurance form covering those noted provisions exactly as they appear on the Certificate of Insurance Exhibit.

.11 At the request of University, Prime Trade Contractor shall submit to University copies of the policies obtained by Prime Trade Contractor and each Subcontractor.

.12 If coverage under the UCIP has terminated for any reason, Contractor and each Subcontractor shall not perform Work on or at the Project Site (including corrective, repair or warranty work) unless and until the insurance policies and coverages specified in this Article 11.1.10 are in effect.

.13 All Subcontractors and sub-subcontractors, are subject to the same insurance requirements as Prime Trade Contractor.

* + 1. Prime Trade Contractor’s Representations and Warranties to University. Prime Trade Contractor represents and warrants to University, and will require each of its Subcontractors of every tier to represent and warrant to University that:

.1 All information they submit to University, or to the UCIP Administrator, shall be current, accurate and complete.

.2 They have read the UCIP coverage summaries and have had the opportunity to read and analyze copies of the UCIP insurance policies made available by University, and they understand the UCIP Coverages. Any reference or summary in the Agreement, this Article, the Contract Documents, or elsewhere as to amount, nature, type or extent of UCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Prime Trade Contractor and its Subcontractors of all tiers have not relied upon said references or summaries, but solely upon their own independent review and analysis of the UCIP Coverages in formulating any understanding and/or belief as to amount, nature, type or extent of any UCIP Coverages and/or its potential applicability to any potential claim or loss.

.3 The Costs of UCIP Coverages were not included in Prime Trade Contractor’s bid or proposal, the Contract Price/Contract Sum, and will not be included in any change order request, claim, change order or any request for payment for the Work or extra work, where UCIP applies.

.4 Prime Trade Contractor acknowledges that University shall not pay or compensate Prime Trade Contractor or any Subcontractor of any tier, in any manner, for the Costs of UCIP Coverages.

11.1.12 University’s Election to Modify or Discontinue the UCIP. University may, for any reason, modify the UCIP Coverages, discontinue the UCIP, or request that Prime Trade Contractor or any of its Subcontractors of any tier withdraw from the UCIP upon thirty (30) days written notice. Upon such notice Prime Trade Contractor and/or one or more of its Subcontractors, as specified by University in such notice, shall obtain and thereafter maintain during the performance of the Work, all (or a portion thereof as specified by University) of the UCIP Coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to University’s approval. The University shall pay Prime Trade Contractor for the reasonable cost of replacement coverage required by this Article 11.1.12.

11.1.13 Waiver of Subrogation. As to the UCIP and to the extent permitted by law, Prime Trade Contractor and the University mutually waives all rights of recovery by subrogation arising out of deductibles which are the responsibility of the Contractor under the UCIP and for claims that are covered by the UCIP insurance policies or any other reason against each other, the University’s Representative, University’s Representative’s consultants, and their officers, agents, or employees, and any other enrolled contractor or enrolled Subcontractor performing Work or rendering services on behalf of University in connection with the planning, development and construction of the Project. As to other insurance as identified under Article 12.1.10, to the extent permitted by law, Prime Trade Contractor waives all rights of recovery by subrogation, as respects loss, damage, claims, suits or demands arising out of the Work, or any other reason against University, University’s Representative, University’s Representative’s consultants, and their respective officers, agents, or employees, performing Work or rendering services on behalf of University in connection with the planning, development and construction of the Project. University and Prime Trade Contractor shall also each require that all insurance policies as required hereunder Article 11.1.10.1.1, .2, .3 and .4 (other than professional liability insurance policies) related to the Work, include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against each other where applicable and together with the same parties referenced immediately above in this Section 11.1.13. Subcontractor agrees to hold harmless and indemnify University for any loss or expense incurred as a result of Prime Trade Contractor’s failure to obtain such waivers of subrogation from the insurers. Where permitted by law, Prime Trade Contractor shall require similar written express waivers and insurance clauses from each of its Subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

11.1.14 Duty of Care. Nothing contained in this Article, the Contract Documents, or elsewhere shall relieve the Prime Trade Contractor or any of its Subcontractors of any tier of their respective obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract Documents.

11.1.15 Conflicts. In the event of a conflict between the Contract and the provisions of the UCIP insurance policies, the insurance policies shall govern.

11.1.16 Safety. Prime Trade Contractor shall be solely responsible for safety on the project. Prime Trade Contractor shall establish a safety program that, at a minimum, complies with all local, state and Federal safety standards, and any safety standards established by University for the Project.

**11.2 BUILDER'S RISK PROPERTY INSURANCE**

11.2.1 If and only if the Contract Sum for the construction phase exceeds $300,000 at the time of award, University will provide its standard builder's risk property insurance, subject to the deductibles, terms and conditions, exclusions, and limitations as contained in the provisions of the policy. A copy of the University's standard builder's risk property insurance policy is available at the University's Facility office. In addition, a summary of the provisions of the policy is included as an Exhibit to the Contract. Prime Trade Contractor agrees that the University’s provision of its standard builder’s risk property insurance policy meets the University’s obligation to provide builder’s risk property insurance under the Contract and, in the event of a conflict between the provisions of the policy and any summary or description of the provisions contained herein or otherwise, the provisions of the policy shall control and shall be conclusively presumed to fulfill the University’s obligation to provide such insurance. The proceeds under such insurance policies taken out by University insuring the Work (at or on the Project Site) and materials will be payable to University and Prime Trade Contractor as their respective interests, from time to time, may appear. Prime Trade Contractor shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Article 11.2 shall be construed to relieve Prime Trade Contractor of full responsibility for loss of or damage to materials not incorporated in the Work, and for Prime Trade Contractor's tools and equipment used to perform the Work, whether on the Project Site or elsewhere, or to relieve Prime Trade Contractor of its responsibilities referred to under this Article 11. Materials incorporated in the Work, as used in this Article 11.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Project Site.

11.2.2 Insurance policies referred to under this Article 11.2 shall:

.1 Include a provision that the policies are primary and do not participate with nor are excess over any other valid collectible insurance carried by Prime Trade Contractor.

.2 Include a waiver of subrogation against Prime Trade Contractor, its agents, employees.

3 Include Additional Insured status for Prime Trade Contractors, Construction Managers and subcontractors of every tier. As respects architects, engineers, manufacturers and suppliers, the foregoing is limited to their site activities only.

* + 1. Builder’s risk insurance coverage under this Article 11.2 will expire on the date of Final Completion recited in a Notice of Completion filed pursuant to Article 9.8.1. Should a Notice of Completion be filed more than 10 days after the date of Final Completion, the date of Final Completion recited in the Notice of Completion will govern.

**11.3 PERFORMANCE BOND AND PAYMENT BOND**

11.3.1 Prime Trade Contractor shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in Exhibits 3 and 2.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Contract Sum.

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

11.3.4 Prime Trade Contractor shall promptly furnish such additional security as may be required by University to protect its interests and those interests of persons or firms supplying labor or materials to the Work. Prime Trade Contractor shall furnish supplemental Payment and Performance Bonds each in the amount of the current Contract Sum at the request of the University.

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

11.3.6 The premiums for the Payment Bond and Performance Bond shall be paid by Prime Trade Contractor.

**ARTICLE 12**

**UNCOVERING AND CORRECTION OF WORK**

**12.1 UNCOVERING OF WORK**

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

12.1.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which University's Representative has not specifically requested to observe prior to its being covered, University's Representative may request to see such Work and it shall be uncovered and replaced by Prime Trade Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, Prime Trade Contractor shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

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

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

.1 For any work of the Project not described as incomplete in the Certificate of Substantial Completion for the Project, on the date of Project Substantial Completion.

.2 For space beneficially occupied or for separate systems fully utilized prior to Project Substantial Completion pursuant to Article 9.6 of the General Conditions, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

.3 For all work of the Project other than .1 or .2 above, from the date of Final Completion.

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

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

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

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

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

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

**ARTICLE 13**

**TERMINATION OR SUSPENSION OF THE CONTRACT**

**13.1 TERMINATION BY PRIME TRADE CONTRACTOR**

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

.1 Provided that University has not commenced reasonable action to remove any order of a court within the 90 day period, the Work is stopped for 90 consecutive days, through no act or fault of Prime Trade Contractor, any Subcontractor, or any employee or agent of Prime Trade Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

.2 University fails to perform any material obligation under the Contract Documents and fails to cure such default within 30 days or University has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Prime Trade Contractor stating the nature of such default.

.3 Repeated suspensions by University, other than such suspensions as are agreed to by Prime Trade Contractor under Article 13.3 below, which constitute in the aggregate more than 20% of the Contract Time.

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

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

**13.2 TERMINATION BY UNIVERSITY FOR CAUSE**

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

.1 Prime Trade Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.

.2 Prime Trade Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

.3 A receiver is appointed to take charge of Prime Trade Contractor's property.

.4 The commencement or completion of any Work activity is 14 days or more behind the date set forth in the Master Project Schedule for such Work activity, and which results in an Unexcusable Delay.

.5 Prime Trade Contractor abandons the Work.

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

.1 Prime Trade Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.

.2 Prime Trade Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from University.

.3 Prime Trade Contractor disregards Applicable Code Requirements.

.4 Prime Trade Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.

.5 Prime Trade Contractor is in default of any other material obligation under the Contract Documents.

.6 Prime Trade Contractor persistently or materially fails to comply with applicable safety requirements.

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

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

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

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

**13.3 SUSPENSION BY UNIVERSITY FOR CONVENIENCE**

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

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

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

**13.4 TERMINATION BY UNIVERSITY FOR CONVENIENCE**

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

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

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

.2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.

.3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.

.4 Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project Site or in transit thereto.

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

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

.1 The amount of the Contract Sum allocable to the portion of the Work properly performed by Prime Trade Contractor as of the date of termination, less sums previously paid to Prime Trade Contractor.

.2 Plus an amount equal to the lesser of $50,000 or 5% of the difference between the Contract Sum and the amount of the Contract Sum allocable to the portion of the Work properly performed by Prime Trade Contractor as of the date of termination.

.3 Plus previously unpaid costs of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work.

.4 Plus any proven Losses with respect to materials and equipment directly resulting from such termination.

.5 Plus reasonable demobilization costs.

.6 Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

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

**ARTICLE 14**

**STATUTORY AND OTHER REQUIREMENTS**

14.1 **PATIENT HEALTH INFORMATION**

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

**14.2 NONDISCRIMINATION**

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

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

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

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

.2 Prime Trade Contractor and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by University or any appropriate agency of the State of California designated by University for the purposes of investigation to ascertain compliance with this Article 14.2. The outcome of the investigation may result in the following:

.1 A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by University as (1) a basis for determining that Prime Trade Contractor is not a “responsible bidder” as to future contracts for which such Prime Trade Contractor may submit bids or (2) a basis for refusing to accept or consider the bids of Prime Trade Contractor for future contracts.

.2 University may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that Prime Trade Contractor has violated the Fair Employment Practices Act and (2) issued an order under the State of California Government Code Section 12970 or obtained an injunction under Government Code Section 12973.

.3 Upon receipt of such written notice from the Fair Employment Practices Commission, University may notify Prime Trade Contractor that, unless it demonstrates to the satisfaction of University within a stated period that the violation has been corrected, Prime Trade Contractor's bids on future projects will not be considered.

.4 Prime Trade Contractor agrees that, should University determine that Prime Trade Contractor has not complied with this Article 14.2, Prime Trade Contractor shall forfeit to University, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in Article 14.3 below for violation of prevailing wage rates. Such penalty amounts may be recovered from Prime Trade Contractor; and University may deduct any such penalty amounts from the Contract Sum.

.5 Nothing contained in this Article 14.2 shall be construed in any manner so as to prevent University from pursuing any other remedies that may be available at law.

.6 Prime Trade Contractor shall meet the following standards for compliance and provide University with satisfactory evidence of such compliance upon University's request, which shall be evaluated in each case by University:

.1 Prime Trade Contractor shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.

.2 Prime Trade Contractor shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).

.3 Prime Trade Contractor or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.

.4 Prime Trade Contractor shall notify University of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.

7 Prime Trade Contractor shall include the provisions of the foregoing Articles 14.2.3.1 through 14.2.3.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

**14.3 PREVAILING WAGE RATES**

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

14.3.2 Prime Trade Contractor shall comply and shall ensure that all Subcontractors comply with prevailing wage law pursunt to the State of California Labor Code, including but not limited to Section 1720 et seq. of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations.

14.3.3 The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. Prime Trade Contractor shall post a copy of the general prevailing per diem wage rates as well as job site notices as prescribed by regulation at the job site. By this reference, such schedule is made part of the Contract Documents. Prime Trade Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Prime Trade Contractor in the execution of the Work, including the hauling of material on or off site, as defined by California Labor Code Section 1720.3. Prime Trade Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. Prime Trade Contractor shall forfeit to University, as a penalty, not more than $200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Prime Trade Contractor or any Subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Prime Trade Contractor shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 1742 of the California Labor Code.

**14.4 PAYROLL RECORDS**

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

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

.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

.2 A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

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

14.4.3 Prime Trade Contractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Prime Trade Contractor shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Prime Trade Contractor shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.4 or with the State of California Labor Code Section 1776, Prime Trade Contractor shall have 10 days in which to comply following receipt of notice specifying in what respects Prime Trade Contractor must comply. Should noncompliance still be evident after the 10 day period, Prime Trade Contractor shall forfeit to University, as a penalty, $100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

**14.5 APPRENTICES**

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

14.5.2 Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Prime Trade Contractor and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Contractor bears responsibility for the compliance with the section for all apprenticeable occupations.

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

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

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

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

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

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

**14.6 WORK DAY**

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

**14.7 BUY CLEAN CALIFORNIA ACT**

14.7.1 The Buy Clean California Act (BCCA) requires the Department of General Services (DGS) to establish and publish the maximum acceptable Global Warming Potential (GWP) on “eligible materials”, as described in Public Contract Code 3500 et seq.. As of July 1, 2022, the Prime Trade Contractor shall not install any eligible materials on the project until the Prime Trade Contractor submits a facility-specific Environmental Product Declaration for that material that meets the published GWP requirements.

**14.8 CALIFORNIA AIR RESOURCES BOARD (CARB) IN-USE OF OFF-ROAD DIESEL-FUELED FLEETS REGULATION**

* + 1. For a project involving the use of vehicles subject to this regulation, the Contractor must obtain and provide to the University, copies of the valid Certificates of Reported Compliance, for the fleet selected for the contract and listed subcontractors prior to entering a new or renewed contract.
    2. The contractor and its subcontractors shall not enter a new or renewed contract with a fleet for use on the project without a valid Certificate of Reported Compliance for the fleet and its listed subcontractors.
    3. The Certificates of Reported Compliance must be retained by the Contractor for three years after that Project’s completion. Upon request by CARB, these records must be provided to CARB within five business days of the request.

14.8.4 Contracting for projects that are considered emergency operations, as defined in title 13 California Code of Regulations section 2449(c)(18), are exempt from the requirements above. However the exempted vehicles must only be operated in the emergency situation and Contractor must retain records of the exempted vehicles including a description of the emergency including location, dates of emergency, and an attestation that the vehicles were only operated in the emergency situation.

**ARTICLE 15**

**MISCELLANEOUS PROVISIONS**

**15.1 GOVERNING LAW**

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

**15.2 SUCCESSORS AND ASSIGNS**

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

**15.3 RIGHTS AND REMEDIES**

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

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

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

**15.4 SURVIVAL**

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

**15.5 COMPLETE AGREEMENT**

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

**15.6 SEVERABILITY OF PROVISIONS**

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

**15.7 UNIVERSITY'S RIGHT TO AUDIT**

15.7.1 University and entities and agencies designated by University will have access to and the right to audit and the right to copy at University's cost all of Prime Trade Contractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work.

15.7.2 University and entities and agencies designated by University (including the UCIP Administrator and any UCIP insurer) will have access to, and the right to audit and the right to copy at University's cost, Prime Trade Contractor’s and all of its Subcontractors’ payroll records, books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work.

15.7.3 Without limiting the University’s rights as set forth in Article 15.7.2, the right to audit and copy shall apply to insurance coverages, insurance cost information, bid estimates, pricing for any cost in the Contract Sum or any subcontracted work, or any information that Prime Trade Contractor or any Subcontractor provides to University, the UCIP Administrator, or the UCIP insurers as part of the UCIP, for the purpose of confirming the accuracy of such information as it relates to insurance and for the purpose of ensuring that the UCIP coverage provided by the University is not duplicated by any contractor provided coverage with such costs being included in any bid, change order, claim or payment applications for the Work (hereinafter "UCIP Coverage Audit."). Any document produced by a Prime Trade Contractor or Subcontractor as part of a UCIP Coverage Audit that Prime Trade Contractor or Subcontractor believes to be a "trade secret" shall be identified as such by marking the document with a "trade secret" notation or stamp on each page of the document, and by submitting the document(s) to the UCIP Administrator in a sealed envelope marked “trade secret.” The University will treat any document marked “trade secret” that was obtained for the limited purpose of a UCIP Coverage Audit as confidential and will not disclose it to any third party (other than in connection with conducting and evaluating the UCIP Coverage Audit), except as required by the California Public Records Act. If a request for a document marked “trade secret” obtained through the UCIP Coverage Audit is made pursuant to the California Public Records Act, the University will give notice to the Prime Trade Contractor so that the Prime Trade Contractor or its Subcontractor may, at such entity’s own expense, seek to obtain a court order to prevent public disclosure of the UCIP Coverage Audit information.

15.7.4 Prime Trade Contractor and all Subcontractors shall preserve all documents referred to, and all documents containing information referred to, in this Article 15.7 during the performance of the Contract and for a period of at least 3 years after final completion. Prime Trade Contractor shall require its Subcontractors to comply with this Article 15.7.

15.8        METHODS OF DELIVERY FOR SPECIFIED DOCUMENTS

15.8.1   The following documents must be delivered in a manner specified in Article 15.8.2:

.1 Contractor Notices of election to litigate or arbitrate;

.2 Written demand for an informal conference to meet and confer pursuant to Article 4.5;

.3 University’s written statement identifying remaining disputes following informal conference pursuant to Article 4.6;

.4 Written demand for non-binding mediation pursuant to Article 4.6;

.5 Contractor claims pursuant to Article 4.3;

.6 Contractor notices of conditions pursuant to Articles 3.17, 3.18, or 3.19;

.7 University’s notices of Contractor’s failure to perform and/or correct defective work pursuant to Articles 4.1.6, 12.2 and 13.2.3;

             .8 University’s notice to stop work pursuant to Article 2.3.1:

             .9 Notices of termination or suspension pursuant to Article 13.

15.8.2  Delivery methods for documents specified in Article 15.8.1:

.1 By personal delivery.

.2 Sent by facsimile copy where receipt is confirmed.

.3 Sent by Express Mail, or another method of delivery providing for overnight delivery where receipt is confirmed.

.4 Sent by registered or certified mail, postage prepaid, return receipt requested.

15.8.3     The documents identified in Article 15.8.1 shall only be effective if delivered in the manner specified in Article 15.8.2.   Subject to the forgoing, such documents shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Delivery of the specified documents shall be made at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 15.8.

**15.9 TIME OF THE ESSENCE**

* + 1. Time limits stated in the Contract Documents are of the essence of the Contract.

**15.10 MUTUAL DUTY TO MITIGATE**

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

**15.11 UC FAIR WAGE**

Contractor shall pay all persons providing construction services and/or any labor on site, including any University location, no less than the UC Fair Wage (defined as $15 per hour) and shall comply with all applicable federal, state and local working condition requirements.

**15,12 EXECUTION OF AGREEMENT**

15.12.1 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed via a digital signature process and shall have the same force and effect as the use of a manual signature.  The University reserves the right to reject any digital signature unless it is unique to the person using it, capable of verification, created by public key cryptography or signature dynamics, and meets all requirements of California Government Code § 16.5 and California Code of Regulations 22000 through 22005.

[End]