

PROJECT ARCHITECT/ENGINEER AGREEMENT (2-9-18)

For use on Design-Bid-Award projects

This AGREEMENT is made and entered into pursuant to the Public Contract Code 10700 et seq., by and between the Trustees of the California State University on behalf of

Campus	Agreement Number:	Project Number	
hereafter referred to as Trustees, and	Federal I. D. Number		
hereafter referred to as Architect/Engineer:	License or Registration Number:	Insurance Co.	Policy No.

WITNESSETH: That the Architect/Engineer in consideration of the statements and conditions herein contained, agrees to furnish labor, materials, and equipment and to perform work necessary to complete, in a professional manner, services related and incidental to the design and construction of the Public Works Project **[Insert Project Name and Reference Number]** located at **[Insert Campus Name]**.

The Architect/Engineer shall provide such services as more fully described in the following Rider and Exhibits, which by this reference are incorporated herein and made part of this Agreement:

- Rider A Agreement General Provisions, (1/14/14 edition) consisting of twenty (20) pages;
- Exhibit A Scope of Work, consisting of **[Insert Number of Pages]** pages;
- Exhibit B Schedule of Lump Sum Fees for Design-Bid-Award Projects, consisting of one (1) page;
- Exhibit C Project Design Schedule, consisting of one (1) page;
- Exhibit D CSU Procedure Guide for Capital Projects (12/2/11 edition), consisting of thirty-eight (38) pages;
- Exhibit E Architect/Engineer Hourly Rate Schedule applicable to this project.

The term shall begin upon receipt of a fully executed Agreement from the Trustees. The term shall end upon the later of acceptance of the Record Documents by the Trustees or public filing of the Notice of Completion.

The Architect/Engineer shall not perform services in excess of the Agreement without prior written authorization to proceed from the Trustees.

Architect/Engineer shall report to: **[Insert Campus and Project Administrator’s Name]**

The basic services amount to be expended under this Agreement shall not exceed **[Insert Total A/E Fee from Exhibit B]**. Payment shall be made in accordance with Rider A and Exhibits A, B, C, D, and E.

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

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY							ARCHITECT/ENGINEER						
Campus							Firm Name						
By (Trustees’ Authorized Signature)							By (Authorized Signature)						
Printed Name and Title of Person Signing							Printed Name and Title of Person Signing						
Address of Project Administrator							Address of Vendor						
SCO Account Data:	Fund	Sub Fund	Agency	Yr	Ref/Item	Category	Program	Element	Component	Chapter	Fiscal Yr	Legal Reference	
Amount Encumbered	Fund Name						Sub Ledger No.			SL Sub Code			
	I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.												
	Signature of Accounting Officer										Date		
	I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of California State University Contract Law. G. ANDREW JONES, General Counsel												
By Attorney											Date		

Rider A – Agreement General Provisions

Project Architect/Engineer Agreement for Design-Bid-Award Projects

WHEREAS, Education Code Section 66606 gives the Trustees of the California State University full power and responsibility in the construction and development of any state university campus, and

WHEREAS, The principals of the Architect/Engineer, identified in the Agreement, are licensed by the laws of the state of California to practice architecture or engineering as appropriate to the project and desire to perform such services, and

WHEREAS, The Trustees intend to construct [Insert project name] hereinafter referred to as the project, at [Insert Campus Name] hereinafter referred to as the Campus, at a Budgeted Direct Cost of Construction [Insert Budgeted Direct Cost of Construction], adjusted to a reference value ENR California Construction Cost Index of [Insert ENR CCCI value];

NOW, THEREFORE, In consideration of the statements and conditions herein, the Trustees do hereby engage the Architect/Engineer to perform the services related and incidental to the design and construction of the project and the Architect/Engineer does hereby agree to perform such services described herein. Trustees and Architect/Engineer agree as follows:

1.0 DEFINITIONS

The following terms as used in this Agreement are defined as follows:

- 1.1 **Adjusted Project Construction Budget:** The Project Construction Budget at the time of bid to be realized, as adjusted at any particular time to conform to the current ENR CCCI. The Adjusted Project Budget is the Initial Project Budget multiplied by the fractional value of the current CCCI ENR divided by the reference CCCI ENR.
- 1.2 **Agreement:** The Trustees of the California State University Project Architect/Engineer Agreement.
- 1.3 **Architect/Engineer:** The individual or design firm identified in the signature box of the Agreement
- 1.4 **Architect/Engineer's Design-to Budget:** The targeted cost for the Base Design with a value equal to ninety-five percent (95%) of the Budgeted Direct Construction Cost.
- 1.5 **As Built Drawings:** The contractor's annotated set of 'Construction Documents' that have been contemporaneously revised by the Contractor during the course of the project's construction to identify changes to the project subsequent to the issue of the bidding documents so as to record the actual physical constructed condition.
- 1.6 **Authorities Having Jurisdiction:** Private, municipal, county, state, regional or federal authority which may require information or the filing of drawings, specifications, applications, etc., including, but not limited to: the State Fire Marshal, Division of the State Architect, or other organization charged with enforcing regulatory compliance in connection with the project.
- 1.7 **Base Design:** The design arising out of the provision of the Architect/Engineer's Basic Services that meets project scope and budget absent additive or deductive bid alternates
- 1.8 **BIM:** Building Information Modeling: The development of a computer-based parametric model of a project and from this model then extracting information to convey a project (a construction document package). This differs from a CAD-based approach wherein individual drawings are created to collectively convey a project. Colloquially, BIM is taken to mean Autodesk's Revit or similar software by others.

- 1.9 **Budgeted Direct Construction Cost:** The Trustee's budgeted cost to construct the project. It includes the Major Categories of the Work, including total Building and Sitework, and escalation. It excludes Contractor site management fees, Contractor-held contingency, and Contractor overhead and profit.
- 1.10 **Campus Consulting Architect (Equivalent: Campus Consulting Master Plan Architect):** An architect appointed by the Trustees to advise on the physical development of a Campus.
- 1.11 **Construction Documents:** The design drawings, specifications, general conditions, supplementary general conditions, special conditions, addenda, and change orders developed to convey in detail the design, function and construction of the project. These documents will be used as the basis for estimating the cost of the project, securing bids for constructing the project, and directing a contractor in construction of the project. As required per California Public Contract Code, Section 10720: 'These Construction Documents shall be full, complete, and accurate, giving such directions as will enable any competent mechanic or other builder to carry them out'.
- 1.12 **Construction Documents Phase:** The portion of the work during which the Construction Documents are created.
- 1.13 **Contract Documents:** The Trustees-Contractor Agreement, Construction Documents, Bid Proposal Form, Notice to Contractors, bonds, and insurance certificates relative to the project.
- 1.14 **Contractor:** The entity providing construction services for the project.
- 1.15 **ENR CCCI:** The California Construction Cost Index (CCCI) average of Los Angeles and San Francisco values, as published in the *Engineering News Record* by the McGraw-Hill Publishing Company of New York, New York or successor.
- 1.16 **Estimated Project Construction Cost [Schematic Design Phase, Preliminary Design Phase, Construction Document Phase as appropriate]:** The estimate, including the "Major Categories of Work," adjusted to reflect the agreement ENR CCCI of the projected cost of the construction work represented by the drawings and specifications prepared by or under the direction of the Architect/Engineer with respect to each phase of document development.
- 1.17 **Extra Service (Authorization):** (A written authorization for) additional work beyond that required to be provided by Section 2.0, Architect/Engineer's Basic Services.
- 1.18 **Initial Project Construction Budget:** The Trustees' initial estimate of the cost to construct the project.
- 1.19 **Major Categories of (the) Work:** Key components, systems and sub-assemblies of a project. These categories include, but are not limited to: demolition, site preparation, foundations, exterior enclosure, interiors construction, mechanical, electrical, plumbing systems, built-in casework and equipment, site improvements and landscape. Specific categories and sub-categories are defined within the UniFormat construction component classification system.
- 1.20 **Normal Consulting and Engineering Services:** Professional services provided by architect, civil engineer, landscape architect, structural, electrical, and mechanical engineers and cost estimators, which are necessary and appropriate to develop the project's design and define the project's construction.
- 1.21 **Preliminary Design Documents:** Design drawings, outline specifications and cost estimates developed from the Schematic Design Documents prepared to more comprehensively define the size, character and quality of the project and to further confirm compliance of the design with the project scope and budget.

- 1.22 **Preliminary Design Phase:** The portion of the work during which the Preliminary Design Documents are created.
- 1.23 **Principal(s):** Individual(s) of the architecture/engineering firm authorized on behalf of the firm to act as signatories to agreements for this project.
- 1.24 **Project Administrator:** A representative of the Trustees designated to act on behalf of the Trustees with respect to the project.
- 1.25 **Project Construction Budget:** The project construction cost allowance specifically stated in writing as the ‘revised’ or ‘current’ ‘Project Construction Budget’ by the Trustees at each applicable phase of plan development.
- 1.26 **Project Construction Cost:** The actual amount paid by the Trustees for constructing the project.
- 1.27 **Project Inspector of Record (IOR):** Representative(s) of the Trustees tasked to impartially inspect and report on the compliance of construction of the project relative to its approved Construction Documents.
- 1.28 **Project Manager (PM):** Representative(s) of the Trustees, reporting to the Project Administrator, tasked to act in an on-site capacity to provide project management of the project during construction.
- 1.29 **Project Program:** Capital Outlay Budget Change Proposal (COBCP), project narrative, room specification requirements, and Initial Project Construction Budget.
- 1.30 **Record Documents:** An archive reference edition of the Construction Documents prepared by the Architect/Engineer incorporating changes from the original Construction Documents indicated in the As Built Drawings.
- 1.31 **Schematic Design Documents:** Drawings, outline specifications, room summary schedule and cost estimates developed in sufficient detail to convey an initial indication of the design of the project, functional relationships of interior areas, the relationship of the project to the site, other buildings and the campus, the materials to be used in construction, the types of mechanical, electrical and structural systems to be utilized, and the estimate of the cost for Major Categories of the Work.
- 1.32 **Schematic Design Phase:** The portion of the work during which the Schematic Design Documents are created.
- 1.33 **Specialty Design Consultants:** Consultants other than those listed in Section 1.20, Normal Consulting and Engineering Services; such as Laboratory Designer, Acoustical Engineer, Theater Designer, Food Service Designer, Specialty Lighting Design, LEED compliance documentation, etc. which, in the opinion of the Trustees, are desirable and appropriate to augment the Normal Consulting Design Services of the Architect/Engineer to develop the project’s design and direct the project’s construction.
- 1.34 **Trustees:** The Board of Trustees of the California State University.
- 1.35 **UniFormat:** A construction classification system published by the Construction Specifications Institute (CSI) of Alexandria, VA, or successor, for organizing construction information into a standardized order and sequence to facilitate project budget analysis. UniFormat divides construction work into various categories and subcategories referred to as levels. The higher the level, the more detailed the division of the work becomes.

2.0 ARCHITECT/ENGINEER'S BASIC SERVICES

The Architect/Engineer shall provide design and construction administrative services necessary to complete in a timely and professional manner the specified public works project. These services are more fully described in this Section, and in Exhibit A, Scope of Work. The basic services of the Architect/Engineer include providing Normal Consulting and Engineering Services, Estimated Project Construction Costs, responses to Trustee directions with respect to the project, assisting the Trustees in obtaining required approvals for the construction of the project and preparing project Record Documents.

2.1 GOVERNING LAW

The terms of this Agreement and all work performed hereunder shall be governed by California law. Without preference this includes California Public Contract Code, including the prohibition against proprietary specifications (*Section 3400*), California State University Contract Law (*Section 10700 et seq.*), and the California Education Code relating to the Trustees (*Sections 66000 et seq and 89000 et seq.*)

2.2 BIM and CAD METHODOLOGY

For projects with a construction cost of three million dollars (\$3,000,000) or greater the architectural, structural, and MEP document sets shall be developed as an integrated 3D BIM model. Use of BIM for other design team members (I.e., civil, engineers) is encouraged, but not required. Projects under the specified cost threshold may be developed by the architect via either BIM or CAD. When BIM is used, the Architectural set shall be BIM-based by 75% Schematic phase. Structural and MEP engineering shall be BIM-based by 50% Preliminary phase.

2.3 DOCUMENT COORDINATION

At the onset of the project the Architect/Engineer shall review document organization and coordination with the Project Administrator. Based on this review the Architect/Engineer shall issue a letter to the Project Administrator describing measures to be employed by the design team to ensure interdisciplinary document coordination on the project. Where BIM is employed, the letter shall address the elements (level of detail) to be modeled, a summary of elements that will not be relational to the BIM database, file and document format, and the intended methodology for coordination of BIM and non-BIM elements.

2.4 STANDARD FORMS

Standard forms and documents will be provided by the Trustees and shall be used in performing services required by this Agreement. Such forms may include, but are not limited to: Facilities Planning forms: 1-3, 2-6, 2-6.5, 2-7.5, 2-8, 2-8.5, 2-9, 3-1; Construction Management forms: construction change proposals, request for information submittals and responses; A/E forms: Extra Service Authorization with countersignature block, and CSU professional services invoice templates.

2.5 CONSULTANTS

Prior to the start of work Architect/Engineer shall submit for approval by the Trustees the names of the consultant firms and key individuals proposed for the project design team. The Trustees shall have the discretion to accept or reject for cause any consultant or individual proposed. If a consultant is rejected, the Architect/Engineer shall propose an alternate consultant acceptable to the Trustees. Nothing in this Agreement shall create any contractual relation between the Trustees and any consultant retained by the Architect/Engineer.

2.6 DESIGN-BUILD WITHIN DESIGN-BID-AWARD

To help ensure that Public Contract Code 10720 and its requirement that plans be complete and accurate is met, written concurrence by the Trustees is required to incorporate design- build elements in this Design-Bid-Award project.

The Architect/Engineer at each phase of the design shall identify and review with the Trustees where it may be appropriate or necessary to incorporate design-build elements into the project. Where written concurrence by the Trustees is given, the Architect/Engineer may incorporate individual design-build components into the project design. Where design-build elements are specified the Architect/Engineer shall establish written and graphic performance criteria to incorporate each into the project.

The Architect/Engineer shall be responsible to coordinate design-build elements into the overall project design. As a part of this coordination the Architect/Engineer shall secure design-build elements review and concurrence by CSU Seismic and Mechanical Peer Review at each design phase.

2.7 *CONSTRUCTION MANAGER AT RISK PROJECT DELIVERY*

Not applicable to this project.

2.8 *THE ARCHITECT/ENGINEER'S DESIGN-TO BUDGET*

2.8.1 (100%) The Budgeted Direct Construction Cost is [Insert value]

2.8.2 (95%) The Architect/Engineer's Design-to Budget is: [Insert value]

2.8.3 The Architect/Engineer is directed to provide a Base Design targeted to ninety-five percent (95%) of the Budgeted Direct Construction Cost. The Architect/Engineer shall not rely upon or assume the application of the full Budgeted Direct Construction Cost for the work.

2.8.4 (5%) The Architect/Engineer shall provide as a part of the work, but supplemental to the Base Design, approximately five percent (5) of additive bid alternate design enhancements for the project. The design shall not require an additive alternate to be implemented to meet Base Design program or scope requirements.

2.8.5 The Base Design when taken with five percent (5%) proposed additive bid alternate design enhancements shall together represent the value of the Budgeted Direct Construction Cost.

2.8.6 (95%) The Architect/Engineer shall reconcile their estimate at each milestone cost estimate point with their Design-to Budget. During the design effort the Architect/Engineer shall incorporate prudent estimating contingencies within each of the Major Categories of the Work. These estimating contingencies shall reduce to zero by the end of the Construction Document Phase.

2.9 *SCHEMATIC DESIGN PHASE*

2.9.1 Upon the receipt of a fully executed Agreement from the Trustees, the Architect/Engineer shall prepare Schematic Design Documents in accordance with the Project Program furnished by the Trustees.

2.9.2 The Schematic Design Documents shall convey an initial indication of the design of the project, functional relationships of interior areas, the relationship of the project to the site, other buildings and the campus, the materials to be used in construction, the types of mechanical, electrical and structural systems to be utilized and the estimate of the cost of each portion of the work. The Schematic Design Documents shall be prepared in accordance with Exhibit D, CSU Procedure Manual for CSU Capital Projects.

2.9.3 **(Schematic) Physical deliverables.** Physical prints and electronic copies of documents shall be provided as listed in Exhibit D, CSU Procedure Manual for Capital Projects. Deliverable quantities may be modified in Exhibit A, Scope of Work. Absent specific exclusion no less than the following minimums shall be provided:

Three (3) print copies of completed phase work
One (1) electronic copy of above on CD
Provide copy of the integrated 3D BIM model and PDF of sheet documents

2.9.4 **(Schematic) Project meetings and site visits.** Project meetings/site visits shall be provided as listed in Exhibit D, CSU Procedure Manual for Capital Projects. Meeting and visit requirements may be modified in Exhibit A, Scope of Work. Absent specific exclusion no less than the following minimums shall be provided:

One (1) Phase start meeting
One (1) Project review meeting at each phase milestone (i.e., 50% 75%)
One (1) Phase completion meeting

2.9.5 The Architect/Engineer shall complete work and services required under the Schematic Design Phase of this Agreement, and submit such work to the Trustees for their approval in accordance with Exhibit C, Project Design Schedule. The Architect/Engineer shall keep the Trustees informed as to the progress of the work and document to the Trustees in writing if the Project Design Schedule needs to be revised.

2.10 **PRELIMINARY DESIGN PHASE**

2.10.1 The Architect/Engineer shall solicit and obtain written authorization from the Trustees to proceed with the Preliminary Design Phase work. Upon receipt of written authorization, the Architect/Engineer, using the approved Schematic Design Documents, shall prepare the Preliminary Design Documents. The development of the Preliminary Design Documents shall be responsive to the comments received from the Trustees during the Schematic phase.

2.10.2 The Preliminary Design Documents shall continue from the Schematic Design Documents to develop the design of the project in greater detail confirming or adjusting as required all aspects of the Schematic Design Documents to fix and illustrate the size, character, and quality of the project. The Preliminary Design Documents shall be prepared in accordance with Exhibit D, CSU Procedure Manual for Capital Projects.

2.10.3 **(Preliminary) Physical deliverables.** Physical prints and electronic copies of documents shall be provided as listed in Exhibit D, CSU Procedure Manual for Capital Projects. Deliverable quantities may be modified in Exhibit A, Scope of Work. Absent specific exclusion no less than the following minimums shall be provided:

Three (3) print copies of completed phase work
One (1) electronic copy of above on CD
Provide copy of the integrated 3D BIM model and PDF of sheet documents

2.10.4 **(Preliminary) Project meetings and site visits.** Project meetings/site visits shall be provided as listed in Exhibit D, CSU Procedure Manual for Capital Projects. Meeting and visit requirements may be modified in Exhibit C, Scope of Work. Absent specific exclusion no less than the following minimums shall be provided:

One (1) Phase start meeting
One (1) Project progress review meeting at each phase milestone
One (1) Phase completion meeting

2.10.5 The Architect/Engineer shall complete work and services required under the Preliminary Design Phase of this Agreement, and submit such work to the Trustees for their approval in accordance with Exhibit C, Project Schedule. The Architect/Engineer shall keep the Trustees informed as to the progress of the work and advise the Trustees in writing if the Project Design Schedule needs to be revised.

2.11 CONSTRUCTION DOCUMENT PHASE

2.11.1 The Architect/Engineer shall solicit and obtain written authorization from the Trustees to proceed with the Construction Document Phase work. Upon receipt of written authorization, the Architect/Engineer using the approved Preliminary Phase Design Documents shall prepare the project Construction Documents. The Construction Documents shall be prepared in accordance with Exhibit D, *CSU Procedure Manual for Capital Projects*. The development of the Construction Documents shall be responsive to Trustee Preliminary Phase comments.

The Construction Documents shall set forth in detail aspects of design, function and construction to be used for the project. They shall be appropriate and sufficiently descriptive to estimate costs, secure bids for constructing the project, and to direct the Contractor in the construction of the project.

2.11.2 Public Contract Code Section 10720 requires, and the Architect/Engineer agrees, that the plans and specifications it produces shall be *'full, complete and accurate, giving such directions that will enable any competent mechanic or other builder to carry them out'*.

2.11.3 Bid alternates shall be developed as an integral part of the Construction Documents from the start of the Construction Document Phase. Bid alternates shall be clearly delineated in the documents and shall be appropriately detailed to describe the nature of the completed project if the bid alternate is or is not exercised.

2.11.4 The Architect/Engineer shall submit construction documents for required plan review and shall revise documents as necessary to resolve plan check comments and secure approvals from Authorities Having Jurisdiction.

2.11.5 The Architect/Engineer shall coordinate with the Trustees and Authorities Having Jurisdiction as necessary to provide two (2), Construction Document sets stamped and signed by the Architect/Engineer and prominently marked 'FOR BID' containing all required approval stampings. Electronic signatures and stamping where allowed by law are acceptable.

2.11.6 **(Construction Document) Physical deliverables.** Physical prints and electronic copies of documents shall be provided as listed in Exhibit D, *CSU Procedure Manual for Capital Projects*. Deliverable quantities may be modified in Exhibit A, Scope of Work. Absent specific exclusion no less than the following minimums shall be provided:

Three (3) print copies of completed phase work

One (1) electronic copy of above on CD

Provide file copy of the integrated 3D BIM model and PDF of sheet documents

Two (2) Construction Document sets stamped and signed by the architect/engineer and prominently marked 'FOR BID' containing all required approval stampings by Authorities Having Jurisdiction.

2.11.7 **(Construction Document) Project meetings and site visits.** During the development of the Construction Documents, project meetings/site visits shall be provided as listed in Exhibit D, *CSU Procedure Manual for Capital Projects*. Meeting and visit requirements may be modified in Exhibit A, Scope of Work. Absent specific exclusion no less than the following minimums shall be provided:

One (1) Phase start meeting

One (1) Project review meeting at each phase milestone

One (1) Phase completion meeting

2.11.8 The Architect/Engineer shall complete work and services required under the Construction Document Phase of this Agreement, and submit such work to the Trustees for their approval in accordance with Exhibit C, Project Design Schedule. The Architect/Engineer shall keep the

Trustees informed as to the progress of the work and advise the Trustees in writing if the Project Design Schedule needs to be revised.

2.12 *BIDDING PHASE*

2.12.1 The Architect/Engineer shall solicit and obtain written authorization from the Trustees to proceed with the bidding phase work. Upon receipt of written authorization and using the fully plan checked construction document plans and specifications, the Architect/Engineer shall assemble the Contract Documents. The bid phase is considered complete upon award of the Construction Contract, or notice by the Trustees that the project is being suspended or abandoned.

2.12.2 The Architect/Engineer shall consult with and provide to the Trustees a written opinion of an appropriate construction duration period for the project.

2.12.3 If requested by the Trustees, the Architect/Engineer shall reproduce the Construction Document bid set in the number requested by the Trustees. Expense incurred by Architect/Engineer for printing as requested under this section is reimbursable. (See Section 4.3.e, Reprographics for Bidding.)

2.12.4 During the bidding phase, the Architect/Engineer shall interpret the Bid Construction Documents, respond to RFI's, prepare addenda and clarification documents, and provide evaluations of proposed alternates-equals.

2.12.5 During this phase the Architect/Engineer shall not amend the Contract Documents or issue orders to the Contractor that might commit the Trustees to extra expense, without first obtaining written approval by the Trustees.

2.12.6 If the lowest responsible bid, as determined by the Trustees, for the construction of the project exceeds the Architect/Engineer's Design-to Budget by less than ten percent (<10%), the Trustees may, at their discretion:

- [1] Accept the over-budget bid (no additional fees will be due to the Architect/Engineer from such an increase made at this time);
- [2] Authorize re-bidding the project within a reasonable time;
- [3] Direct the Architect/Engineer as an Extra Service to revise the Construction Documents.

2.12.7 If the lowest responsible bid, as determined by the Trustees, for the construction of the project exceeds the Architect/Engineer Design-to Budget by ten percent ($\geq 10\%$) or greater, the Trustees may, at their discretion:

- [1] Accept the over-budget bid (no additional fees will be due to the Architect/Engineer from such an increase made at this time);
- [2] Authorize re-bidding the project within a reasonable time;
- [3] Direct the Architect/Engineer to revise the Construction Documents without additional charge as necessary to bring a revised Estimated Project Construction Cost back within the Adjusted Project Construction Budget.

If the Trustees direct the Architect/Engineer to revise the Construction Documents [3], the Architect/Engineer, shall without additional charge, while maintaining the project program and scope identified by the Trustees, modify the drawings and specifications as necessary to bring the revised Estimated Project Construction Cost/Construction Document Phase within the Architect/Engineer's Design-To Budget. Upon approval of the revised documents by the Trustees, the Architect/Engineer shall assist in a second bidding process as for the first bidding.

If in a subsequent rebid effort the lowest responsible bid exceeds the Architect/Engineer Design-to Budget for Construction the Trustees may, at their discretion, do any of the acts described in [1], [2], or [3] of this subdivision (2.12.7). In the case where the Trustees do [3], the Architect/Engineer's responsibility with respect to revisions shall be the same as above. Upon revising the documents for the second time and second rebid effort, the service described in this paragraph shall be the limit of the Architect/Engineer's obligation with respect to bids exceeding the Architect/Engineer's Design-To Budget.

2.13 CONSTRUCTION ADMINISTRATION PHASE

2.13.1 The construction administration phase shall commence with the award of the contract for construction and shall end upon receipt by the Architect/Engineer of the Contractor's As Built Drawings

2.13.2 The construction duration, jointly estimated by the Architect/Engineer and Trustees during the bidding phase, plus granted weather days, plus 30 additional calendar days, shall for the purposes of this Agreement be the base duration for the Construction Administration phase. Work required beyond this period due to contractor or owner delay shall be compensable to the Architect/Engineer as an Extra Service.

2.13.3 During the course of the construction administration phase the Architect/Engineer shall:

- a.) Attend regularly scheduled construction meetings (consistent with 2.13.8 or as otherwise authorized)
- b.) Conduct and make written reports of such meetings with the Contractor and Trustees
- c.) Keep the Trustees informed of the observed progress of construction
- d.) Report in writing to the Trustees observed deficiencies in the work of construction
- e.) Evaluate schedules, shop drawings, materials, equipment, and laboratory reports for compliance with design
- f.) Prepare documentation for change proposals (with cost estimates) and change orders for written approval of Trustees
- g.) Examine Contractor's applications for payment; recommend by signature partial payments to Contractor in accordance with the Contract Documents.

2.13.4 The Architect/Engineer shall advise and consult with the Trustees, in all matters identified in the Contract Documents. The Architect/Engineer shall provide technical advice to the Project Manager/Inspector of Record and as requested prepare written responses and instructions to the Contractor relative to the construction of the project. In general, in matters of substance, the Architect/Engineer shall advise the Trustees' Project Manager/IOR who acts as the Trustees' primary conduit of formal correspondence and direction to the contractor.

2.13.5 The Architect/Engineer shall provide timely response to Contractor submittals and requests for information (RFI's) to the Trustee's designated Project Manager.

2.13.6 In the event of an error or omission in the Construction Documents due to the Architect/Engineer, the Architect/Engineer shall prepare revised documents to correct the error or address the omission without additional cost to the Trustees.

2.13.7 The Architect/Engineer shall review and by signature recommend approval or rejection of the Contractor's payment requests to the Trustees. As a prerequisite to a recommendation of approval, the Architect/Engineer shall evaluate the Contractor's As Built Drawings to generally ascertain that such documents have been annotated by the Contractor to describe the project as actually constructed, reviewing to generally confirm that the Contractor has indicated changes (if any) to dimensioned location, size and depth of utility infrastructure. The architect is not

required to validate the accuracy of the contractor's As Built Documents beyond a general observation of conformance with observed project conditions.

- 2.13.8 The Architect/Engineer (and its consultants as necessary) shall make **one (1) visit each one (1) week period** to the project to ascertain that the work is being executed in conformity with the Construction Documents. The Architect/Engineer shall conduct and make written reports of such meetings with the Contractor and Trustees. The Trustees may during the course of the project reduce the frequency of meetings as conditions warrant. Such reduction in meetings will not be cause to reduce the fee due to the Architect/Engineer unless the project is suspended or terminated.
- 2.13.9 The Architect/Engineer shall, when requested by Trustees, be present at meetings or inspections called or conducted by Authorities Having Jurisdiction.
- 2.13.10 The Architect/Engineer shall impartially advise the Trustees as to the true interpretation of the Construction Documents in the construction of the project and on questions and claims relating to the execution and progress of the work.
- 2.13.11 The Architect/Engineer shall promptly inform the Trustees whenever, in the Architect/Engineer's opinion, it may be necessary to reject the work or its component parts.
- 2.13.12 During this phase, the Architect/Engineer shall not amend the Contract Documents or issue orders to the Contractor that might commit the Trustees to extra expense, without first obtaining the written approval of the Trustees.
- 2.13.13 As a part of the close out of the Construction Administration Phase of the project, the Architect/Engineer shall:
- a.) Make final examinations of the project and report findings to the Trustees by compiling one (1) preliminary and one (1) final punch list;
 - b.) Assemble and deliver to the Trustees written guarantees, instruction books, operational manuals, and balance reports required of Contractor;
 - c.) Determine the date of completion of the project in consultation with the Trustees;
 - d.) Recommend approval by signature of the final certificate for payment to the Contractor.

2.14 **RECORD DOCUMENTS PHASE**

At the conclusion of the construction administration phase the Architect/Engineer shall obtain the completed As Built Drawings from the Contractor. The Architect/Engineer shall be responsible for appending markings and attachments from the Contractor's As Built Drawings, including delineations of RFI responses and change order drawings, into a Record Document set based upon the project's Construction Documents. Hand drafted annotations and photocopied annotations of the RFI response are unacceptable as a final product. The document files and individual document sheets shall be prominently labeled Record Documents and dated.

The Architect/Engineer shall submit a draft print set of Record Documents for Trustee review. Upon acceptance by the Trustees, the Architect/Engineer shall at a minimum furnish the Trustees with the following:

One (1) print copy of completed Record Documents

One (1) electronic file copy on CD-ROM of:

- Integrated 3-D BIM model
- .PDF of design documents
- .PDF of text documents

2.14

POST CONSTRUCTION PHASE

In the event a contractor's claims review board is convened involving this project, the Architect/Engineer shall assist the Trustees in producing its rebuttal and attend the claim board hearing. Based on claims review board findings the Trustees at their discretion may authorize payment consistent with 3.0g to Architect/Engineer for reasonable efforts expended in this regard.

The Post Construction Phase shall end upon the public filing of the Notice of Completion.

3.0

EXTRA SERVICES

During the course of the project the Trustees may elect to seek additional work beyond that required to be provided by Section 2.0, Architect/Engineer's Basic Services. Such work shall be considered Extra Services.

Extra Services require pre-authorization in writing by the Trustees and countersignature acceptance by the Architect/Engineer. When Extra Services are authorized and accepted, they shall be provided by the Architect/Engineer and shall be paid for by the Trustees as provided in Section 4.2, Compensation, Extra Services.

The following services are not covered by Section 2, Architect/Engineer's Basic Services, of this Agreement and are considered extra services:

- a.) Providing feasibility and or programming studies necessary to define scope for a Schematic Design.
- b.) Providing civil surveys, site evaluations, or comparative studies of prospective sites.
- c.) Making measured drawings of existing construction, as required for planning renovation work, if adequate Record Drawings are not available. As a part of basic services, the Architect/Engineer shall confirm the accuracy of available information and shall make themselves familiar with readily observable site and existing building conditions.
- d.) Revising previously approved work. There shall be no extra services for changes by the Architect/Engineer, required by code, or as a result of Architect/Engineer's errors or omissions.
- e.) Providing additional design assessments and remedial documentation for the replacement of work during construction damaged by fire or other causes not the fault of the Architect/Engineer.
- f.) Providing additional professional services made necessary through no fault of the Architect/Engineer, but by the fault of the contractor or Trustees in the performance of the construction contract, including failure to complete the project on time. No extra services will be authorized in connection with change order preparation arising out of Architect/Engineer's misinterpretations, errors or omissions.
- g.) Providing additional professional services made necessary to affect a material change of Project Program requested by the Trustees.
- h.) Providing consulting and engineering services additional to Normal Consulting and Engineering Services (See Section 1.20, Definitions).
- i.) Providing special delineations or renderings, other than that required in Section 2.0. Architect/Engineer's Basic Services.

- j.) Providing professional services to select, design, and/or incorporate Group II furnishings, fixtures or equipment not incorporated in the Project Construction Budget. Coordination with interior design information supplied in a timely manner by the Trustees shall be provided a part of basic services.

4.0 COMPENSATION

The Trustees shall compensate the Architect/Engineer, in accordance with the terms and conditions of this Agreement as follows:

4.1 COMPENSATION, BASIC SERVICES

Compensation for the Architect/Engineer's basic services shall be as indicated in the Schedule of Architect/Engineer's Lump Sum Fees for Design-Bid-Award Projects (Exhibit B). The Trustees may adjust the interim payment frequency for good cause.

- 4.1.1 The Architect/Engineer fee basis shall be derived using the full Budgeted Direct Construction Cost Value.

4.2 COMPENSATION, EXTRA SERVICES

- 4.2.1 Fee proposals by the Architect/Engineer shall be reflective of actual effort necessary to design and document the condition identified in the extra service.

- 4.2.2 For Architect/Engineer's extra services, as described in Section 3.0, the compensation to be paid will be identified as a part of the extra service. The basis of payment, either lump sum or hourly on a not to exceed basis, will also be identified.

4.3 COMPENSATION, REIMBURSABLE EXPENSES

In addition to the fees for basic and extra services, the Trustees will reimburse certain project-related expenditures (i.e., reprographics). The Trustees will issue an Extra Service Authorization at the onset of the project for the Architect/Engineer to invoice against for reimbursable charges. If necessary, the Trustees will issue additional authorizations should the initial amount be exhausted.

Claims for reimbursable expenses shall reflect actual expenditures made by the Architect/Engineer or their consultants working on the project and be documented by appropriate billing and supporting receipts. Compensation for reimbursable expenses shall be limited to actual expense, without markup. The Architect/Engineer warrants that reimbursable expenses submitted are reasonable and generally competitive to the region incurred.

- a.) **Travel and Mileage:**

- Trips from the Architect/Engineer's office to the campus project site or to the Chancellor's Office are not reimbursable unless pre-authorized by the Trustees.

- Travel reimbursement shall be limited to the amounts as would be authorized for employees of the California State University at the time of travel as specified in the California State University Internal Procedures/Regulations Governing Reimbursement for Travel Expenses and Allowances.

- b.) **Office Supplies and Telecommunication Charges:**

- Charges for miscellaneous office supplies, office operations and telecommunication charges are not reimbursable.

- c.) **Reprographic Services during Design:**

- Reproduction and delivery of project deliverables provided to the Trustees shall be reimbursable.

Reproduction and delivery of documents for internal use and coordination by the Architect/Engineer and the Architect/Engineer's consultants is not reimbursable.

- d.) **Reprographics for Plan Check Review:**
Reproduction and delivery of documents for submittals to review agencies shall be reimbursable.
- e.) **Reprographics for Bidding:**
Reproduction and delivery of approved Bid documents as requested by the Trustees shall be reimbursable.
- f.) **Reprographics during Construction Administration:**
Reproduction and delivery of shop drawings, clarifications to Contractor inquiries, and similar actions to facilitate timely responses during the construction phase shall be reimbursable.
- g.) **Reprographics of Record Documents:**
Reproduction and delivery of Record Documents to the trustees shall be reimbursable. When requested by campus reasonable charges for time expended to convert a project BIM file to .DWG files shall be reimbursable.

4.4 *COMPENSATION, TIMES OF PAYMENT*

Payments under this Agreement shall be made in arrears of work increment completed to the satisfaction of the Trustees and upon submittal of an invoice in CSU invoice format. If not otherwise specified, payment for services rendered will be processed monthly upon presentation of invoice.

4.5 *COMPENSATION, DEDUCTIONS*

- 4.5.1 No deductions shall be made from the Architect/Engineer's compensation for construction administration due to acceptance of a favorable bid. Conversely, no additional amounts shall be paid should the Trustee's elect to accept a bid that exceeds the Project Construction Budget.

4.6 *COMPENSATION, FINAL INVOICE AND FINAL PAYMENT*

At the conclusion of work on the project the Architect/Engineer shall submit a final invoice for any remaining amounts due. This invoice shall be prominently identified as 'FINAL INVOICE'. The Architect/Engineer shall respond to a request by the Trustees for a final invoice within seven (7) days.

5.0 **TRUSTEES' RESPONSIBILITIES**

5.1 *TRUSTEES, RESOURCES TO BE SUPPLIED*

The following resources, surveys and reports will be made available to the Architect/Engineer as required, at Trustees' expense:

- a.) **Project Program:**
A description of the project and key requirements.
- b.) **Project Administrator:**
A representative of the Trustees designated to act on behalf of the Trustees with respect to the project.
- c.) **Site Survey:**
A land survey of the site indicating lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions,

boundaries, grades and contours of the site; locations, dimensions and data pertaining to known utilities, existing structures, landscaping and trees, and other improvements.

d.) **Soil and Foundation Data:**

A geotechnical report, test borings, test pit information, soil bearing values, and other geotechnical assessments appropriate to define sub-surface conditions.

e.) **Inspections and Reports:**

Structural, mechanical, chemical, and other laboratory tests, inspections and reports as required during the construction phase of the project.

f.) **Official Forms and General Conditions:**

Bid forms, contract forms, bond forms, general conditions, supplemental conditions of the contract and advertisements for bids.

g.) **Project Manager/Inspector of Record:**

Representative(s) of the Trustees, reporting to the Project Administrator, tasked to act in an on-site capacity to provide project management and/or conduct field inspections of the project during construction.

5.2 *TRUSTEES, TIMELY REVIEW*

The Trustees will examine documents submitted by the Architect/Engineer and render timely decisions pertaining thereto to avoid unreasonable delay in the progress of the Architect/Engineer's work.

5.3 *TRUSTEES, FAILURE TO ACT*

Nothing in this Agreement or act or failure to act on the part of the Trustees shall be construed as a waiver of claim by the Trustees for defects or deficiencies in the documents prepared by or services required of the Architect/Engineer.

6.0 OWNERSHIP AND USE OF DOCUMENTS

6.1 *OWNERSHIP OF DOCUMENTS*

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

The Architect/Engineer agrees that the Trustees shall have access at reasonable times to inspect and obtain copies of notes, designs, drawings, specifications, electronic files, calculations and other technical data pertaining to the work performed under this Agreement.

6.2 *USE OF DOCUMENTS*

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

6.3 *REUSE OF DOCUMENTS*

Trustee reuse of documents in whole or in part on another project relieves the Architect/Engineer of liability resulting from such use.

7.0 TERMINATION

7.1 AGREEMENT CANCELLATION

The Trustees may terminate this Agreement or suspend or abandon the project upon written notice to the Architect/Engineer. The Architect/Engineer may terminate this Agreement only if the Trustees substantially fail to perform in accordance with Section 5.0 (Trustees' Responsibilities) of this Agreement. Notice of termination must be given in writing to the Trustees.

7.2 TERMINATION PAYMENT

In the event the Trustees terminate this Agreement, suspend the project for more than 180 days, abandon the project, or the Architect/Engineer terminates this Agreement, in accordance with Section 7.1 Agreement Cancellation, the Trustees shall pay to the Architect/Engineer as full payment for services performed and expenses incurred under this Agreement as follows: the sum due under Section 4.0 Compensation as shall have become payable under Section 4.4 Compensation, Times of Payment because of progress in the work plus a pro-rata portion of the next succeeding and uncompleted step, if any, for services actually rendered by the Architect/Engineer, plus any pro-rata sums due the Architect/Engineer for extra services. In ascertaining the services actually rendered up to the date of termination of this Agreement, suspension or abandonment of the project, consideration will be given to completed work and work in process including incomplete drawings and other documents whether delivered to the Trustees or in the possession of the Architect/Engineer.

8.0 INSURANCE and RISK MANAGEMENT

8.1 INDEPENDENT FROM STATE

The parties agree that the Architect/Engineer its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State of California.

8.2 INDEMNIFICATION

The Architect/Engineer agrees to hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, and the officers, agents, and employees of each of them from any and all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, resulting from or in any manner arising out of or in connection with any negligent act or omission or willful misconduct on the part of the Architect/Engineer, its officers, agents, and employees, in the performance of this Agreement. This provision shall survive the expiration or termination of this Agreement.

8.3 ARCHITECT/ENGINEER'S INSURANCE

The Architect/Engineer shall not commence work until the Trustees have received evidence of the insurance required in this section and approved it.

Policies, Coverage and Amounts:

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

a.) Comprehensive or Commercial Form General Liability Insurance:

This insurance shall on an occurrence basis, cover work done or to be done by or on behalf of the Architect/Engineer and shall provide insurance coverage for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work.

Limits of Liability:

\$2,000,000.00	General Aggregate
\$1,000,000.00	Each Claim - combined single limit for bodily injury and property damage.

b.) Business Automobile Liability Insurance:

This insurance shall on an occurrence basis, cover owned, scheduled, hired, and non-owned automobiles used by or on behalf of the Architect/Engineer and shall provide insurance coverage for bodily injury, property damage, and contractual liability.

Limits of Liability:

\$1,000,000.00 Each Accident - combined single limit for bodily injury and property damage.

c.) Workers' Compensation Insurance:

This insurance shall include Employers Liability limits of \$1,000,000.00 and other limits required under California law.

d.) Professional Liability Insurance:

Professional liability (errors and omissions) insurance on an occurrence basis is preferred, covering work done or to be done by or on behalf of the Architect/Engineer and providing insurance for professional liability in the amount of \$1,000,000.00 each occurrence. At a minimum the Architect/Engineer shall obtain and maintain professional liability insurance on a claims-made basis for no less than \$1,000,000.00 each claim and \$2,000,000.00 annual aggregate, and certification of coverage shall be submitted to the Trustees upon signing of this Agreement. If the total contract amount exceeds \$1,000,000 the Architect/Engineer shall renew and keep such insurance in effect for at least ten (10) years after the recordation of the notice of completion.

8.4 *ACCEPTABILITY OF INSURERS*

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

8.5 *VERIFICATION OF COVERAGE*

8.5.1 The Architect/Engineer shall submit to the Trustees certificates of insurance and endorsements to the policies of insurance required by the Agreement as evidence of the insurance coverage.

8.5.2 The scope of coverage and deductible shall be shown on the certificate of insurance.

8.5.3 The certificates of insurance and endorsements shall provide for no cancellation of coverage without thirty (30) days written notice to the Trustees, ten (10) days notice for non-payment of premium.

8.5.4 Renewal certifications shall be timely filed by the Architect/Engineer for coverage until the work is accepted as complete.

8.5.5 The Architect/Engineer shall notify the Trustees in writing of any material change in insurance coverage.

8.6 *INSURANCE PROVISIONS*

Insurance policies shall contain, or be endorsed to contain, the following provisions:

a.) For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be covered as additional insureds.

b.) For claims related to the work, the Architect/Engineer's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and

agents. Insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Architect/Engineer's insurance and shall not contribute with it.

- c.) Each insurance policy required by this section shall state that coverage shall not be canceled, except after thirty (30) days prior written notice by mail, return receipt requested, has been given to the Trustees, ten (10) days notice for non-payment of premium.
- d.) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

8.7

ADDITIONAL INSURANCE CONDITIONS

- a.) Any deductible under any policy of insurance required in this section shall be the Architect/Engineer's liability.
- b.) Acceptance of certificates of insurance by the Trustees shall not limit the Architect/Engineer's liability under the Agreement.
- c.) In the event the Architect/Engineer does not comply with these insurance requirements, the Trustees may, at their option, provide insurance coverage to protect the Trustees. The Architect/Engineer shall pay the cost of the insurance and, if the insurance carrier does not receive prompt payment from the Architect/Engineer, the Trustees may pay for the insurance from Agreement sums otherwise due the Architect/Engineer.
- d.) If the Trustees are damaged by the failure of Architect/Engineer to provide or maintain the required insurance, the Architect/Engineer shall pay the Trustees for such damages.
- e.) The Architect/Engineer's obligations to obtain and maintain required insurance are non-delegable duties under this Agreement.

8.8

EXPECTED STANDARD OF CARE

A determination of 'standard of care' is a judgment call that is dependent upon individual project circumstances. For the purposes of this agreement the Trustees will consider incurred costs due to errors and omissions by the Architect/Engineer of up to two percent (2%) of the total project construction award amount as being within what the Trustees will consider to be an acceptable 'standard of care'. The Trustees reserve the right to pursue actions to recover incurred costs above this range.

In evaluating incurred costs the Trustees will calculate 'omissions' at a rate of 20% of the respective change order amount to provide the missing element whereas 'errors' will be calculated at 100% of the change order amount to correct the condition.

The Trustees may elect to seek reimbursement if a higher rate of Errors and Omissions is experienced by calling for a negotiated settlement with the Architect/Engineer. The Architect/Engineer shall respond in good faith in such an event. The decision to seek recovery or a portion thereof is elective to the Trustees and will vary depending upon individual project circumstances.

The application of the 2% and the 20% by the Trustees is not intended by the Architect/Engineer to be an admission of design errors or omissions nor is it meant to increase or to decrease the Architect/Engineer's duty of care which is based upon performing services within the usual and customary professional care and in accordance with generally accepted practices in effect at the time the services are rendered.

9.0 ADDITIONAL PROVISIONS

9.1 WARRANTY

The Architect/Engineer warrants that it has not paid or agreed to pay any person compensation, contingent or otherwise, to solicit or procure this Agreement.

The Architect/Engineer warrants that no officer or employee of the State of California shall receive compensation from the Architect/Engineer or consultants for work performed in the execution of this Agreement, or for any architectural or engineering services, public or private, performed for the Architect/Engineer or of its consultants.

Breach of any provision of this warranty shall give the Trustees the right to terminate this Agreement without any compensation or payment to the Architect/Engineer or, in its discretion, to deduct from the payment due the Architect/Engineer under this Agreement, the amount of sums the Architect/Engineer has paid or has agreed to pay in violation of this Article.

9.2 SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement shall be binding upon the Trustees and its successors and upon the Architect/Engineer and its successors, executors, and administrators. Neither this Agreement, nor any part, nor any monies to become due may be assigned nor responsibilities delegated by the Architect/Engineer without the written consent of the Trustees.

9.3 NOTICES

Notice for either party may be served by delivering it in writing via United States Mail with first class postage thereon fully prepaid to the respective party and address as shown within the information block of the Agreement page.

Nothing herein shall preclude the giving of written notice by personal service.

9.4 COMPLIANCE WITH NLRB

By signing this Agreement, Architect/Engineer swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Architect/Engineer within the immediately preceding two-year period because of the Architect/Engineer's failure to comply with an order of a federal court which orders the Architect/Engineer to comply with an order of the National Labor Relations Board. The Trustees may rescind this Agreement if the Architect/Engineer falsely swears to this statement [*Public Contract Code, Section 10296*].

9.5 COMPLIANCE WITH PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

If the Architect/Engineer is a natural person, the Architect/Engineer certifies by signing this Agreement that s/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).

9.6 NONDISCRIMINATION

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

- 9.6.2 Architect/Engineer shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135-11139.5).
- 9.6.3 Architect/Engineer shall permit access by representatives of the California Department of Fair Employment and Housing and the Trustees upon reasonable notice at times during normal business hours with at least 24 hour notice, to its books, records, accounts, other sources of information, and its facilities as the Department or Trustees shall require to ascertain compliance with this Agreement.
- 9.6.4 Architect/Engineer and its consultants/subcontractors shall give written notice of their obligations under this Agreement to labor organizations with which they have a collective bargaining or other agreement.
- 9.6.5 Architect/Engineer shall include the nondiscrimination and compliance provisions of this Agreement in subcontracts to perform work under the Agreement (Government Code Sections 12990, 11135, et seq., Title 2, California Code of Regulations, Section 8107).
- 9.7 *DRUG FREE WORKPLACE CERTIFICATION*
Architect/Engineer hereby certifies compliance with Government Code Sections 8355, 8356 and 8357 in matters relating to providing a drug-free workplace. Architect/Engineer shall:
- a.) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
 - b.) Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(b), to inform employees about the following:
 - i. Available counseling, rehabilitation, and employee assistance programs, and
 - ii. Penalties that may be imposed upon employees for drug abuse violations.
 - c.) Provide, as required by Government Code Section 8355(c), that every employee who works on the Agreement:
 - i. Will receive a copy of the firm's drug-free policy statement, and
 - ii. Will agree to abide by the terms of the statement as a condition of employment on the Agreement.
- 9.8 *EXAMINATION, AUDIT and REPORTING*
- 9.8.1 Records of the Architect/Engineer's direct personnel, consultants, extra and reimbursable expenses pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Trustees or authorized representative at mutually convenient times.
- 9.8.2 If the Agreement exceeds \$10,000 the contracting parties shall be subject to the examination and audit of the State Auditor of the State of California and the California State University Auditor for a period of three years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement (Government Code Section 8546.7).
- 9.8.3 Architect/Engineer performance is evaluated on a per-project basis. Evaluations are shared systemwide and are considered in the award of future commissions and in the renewal of CSU systemwide project architect prequalification.

10.0 ENTIRE AGREEMENT AND AMENDMENTS

This Agreement is the entire agreement between the parties. Oral representations, understandings or writings not expressly incorporated in the Agreement are void.

10.1.1 **Changes prior to execution of the Agreement:** Unless identified within Exhibit A, Scope of Work under a separate sub-heading entitled 'Modifications to Agreement' it is the intent of the Trustees to use the standard published form of this Agreement and Rider A without modification. The Agreement and Rider A shall not be modified without review and concurrence by CSU Office of General Counsel.

10.1.2 **Changes after execution of the Agreement:** This Agreement may be amended by mutual consent of the parties hereto in writing.

End of Rider A