

# Agreement

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## Cover Sheet and Instructions

APPROVED DOCUMENT – This document is approved by the Office of the President and Office of the General Counsel for use by the Facility and is available on computer diskette.

|  |   |               |                  |
|--|---|---------------|------------------|
| <b>PURPOSE OF DOCUMENT:</b>                  | Defines the contractual relationship between the Design Builder and the Regents, and lists the documents that make up contract. |               |                  |
| <b>CROSS-REFERENCE TO FACILITIES MANUAL:</b> | None  |               |                  |
| <b>CONTENTS:</b>                             | Agreement   |               |                  |
| <b>FOR USE WITH:</b>                         | Design Build Contract Documents   |               |                  |
| <b>COMPLETED BY:</b>                         | √ Filling in  | √ Adding Text | No Data Required |
| <b>ITS USE IS:</b>                           | √ 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. With the exception of completion of blank spaces for Liquidated Damages, blank spaces in the Agreement are left empty when it is issued with the Request For Proposal. These completion instructions apply when the Agreement is prepared for issuance to the best value Proposer.
2. Notes, suggested text, instructions and other information is formatted using the following methods:
  - Hidden text within brackets. Read the material within the brackets and take the appropriate action (usually inserting text or selecting from a choice of texts.) When printing this document, the default print property will not print the hidden text.
  - Coded instruction within brackets. {This is an example of the format.} The instructions and shading will disappear when the required information is typed.
  - Suggested text is shaded in gray without brackets (see Modification and Additions below.)
3. **Determining the Contract Sum.** In Article 4, the initial Contract Sum is the Lump Sum Base Proposal. The Phase 2 and Phase 3 amounts are based on the percentages of the Lump Sum Base Proposal previously stated in the Request for Proposals.

Unit Prices become part of the contract by listing them in the Agreement. Actual quantities of units incorporated in the Work, multiplied by the respective Unit Price(s) shown in the Agreement, will

increase the Contract Sum only upon Completion of Unit Price Work. The increase in the Contract Sum for Unit Price Work is adjusted through Change Order.

4. **Determining the Contract Time.** In Article 5, the Phase 1 Time, Phase 2 Time, and Phase 3 Time are the durations previously stated in the Request for Proposals.
5. **Liquidated Damages.** In Article 6 the amounts to be inserted as liquidated damages are the amounts previously stated in the Request for Proposals.

#### **Modifications and Additions:**

1. Areas shaded in gray, without brackets, represent suggested text that may be modified by the Facility to meet the needs of the Project. **This is an example of the format.** Ensure that any modified or added text is consistent with the Contract Documents.
2. Unless otherwise stated below, areas not highlighted in gray, without brackets, shall not be altered without approval of the Office of the President.
3. **Options.** In Article 2, if desired by Facility, adjust the number of days, after completion of Phase I, that the right to exercise the Option for Phase 2 will remain in effect. Also, insert the number of days, after completion of Phase 2, that the right to exercise the Option for Phase 3 will remain in effect. Normally, periods of 30 days each would be appropriate.
4. **Early Completion Bonus.** Offering an early completion bonus raises multiple issues that require review. Thus, if a Facility desires to offer Design Builder a bonus for early completion (see [I]:5:4:9), consultation with Office of the President and OGC is mandatory.

#### **Comments:**

1. **Alternates.** If use of Alternates is desired, please consult with Office of the President.

## AGREEMENT

THIS AGREEMENT is made as of the { } day of { }, 20{ }, between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (the "University"),

|   |   |
|---|---|
| whose facility is:                      | University of California, {Facility Name}   |
| whose address for notices is:           | {Department}<br>University of California, {Facility Name}<br>{Street Address}<br>{City, State, Zip} |
| and Design Builder:                     | {Name}  |
| whose address for notices is:           | {Street Address}<br>{City, State, Zip}  |
| for the Project:                        | {Project Name}<br>University of California<br>{Facility, County}<br>{City, State, Zip}              |
| University's Responsible Administrator: | {Name & Title }   |
| University's Representative is:         | {Name & Title }   |
| whose address for notices is:           | {Department}<br><br>University of California<br>{Street Address}<br>{City, State, Zip}              |

University and Design Builder hereby agree as follows:

ARTICLE 1 WORK

Design Builder shall provide all work required by the Contract Documents (the "Work"). Design Builder agrees to do additional Work arising from changes ordered by the University pursuant to Article 7 of the General Conditions. The Work will be performed in Phases identified as follows:

Phase 1 – Design Development Documents

Phase 2 – Construction Documents

Phase 3 – Construction

ARTICLE 2 OPTIONS

The University may exercise its option for performance of the Work under Phases 2 and 3 by providing a written Notice to Proceed to the Design Builder for performance under either or both of the Phases. The Option for Phase 2 may be exercised not later than 30 days after the expiration of Phase 1 Time or the acceptance by the University of the Design Development Documents under Phase 1, whichever is later. The Option for Phase 3 may be exercised not later than 30 days after the expiration of Phase 2 Time or the acceptance by the University of the Construction Documents under Phase 2, whichever is later. If Design Builder has complied with all other terms of the Contract and the University fails to exercise its Option for Phase 3 by such calculated date, the Design Builder agrees that a time extension will be its sole and complete remedy for any damage or loss incurred as a result of the delay in exercising said Option for Phase 3.

The University's "OPTIONS" rights under this Article 2 are independent of the "Termination for Convenience" rights as set forth in Article 13, section 13.4 of the General Conditions. As such, if the University opts to not proceed with Phase 2 after the completion of Phase 1, Design Builder's right of recovery is limited to the Contract Sum for Phase 1. If the University opts to not proceed with Phase 3 after the completion of Phases 1 and 2, Design Builder's right of recovery is limited to the Contract Sum for Phases 1 and 2.

The University retains the right to terminate this Contract for convenience at any time in accordance with Article 13 of the General Conditions.

ARTICLE 3 CONTRACT DOCUMENTS

"Contract Documents" means the Advertisement For Design Builder Prequalification, Request for Proposals, Price Proposal Form, Proposal Evaluation Process, Project Directory, Preliminary Schedule, Bid Bond, Design Builder's Proposal, Notice of Selection As Apparent Best Value Proposal, this Agreement, General Conditions, Supplementary Conditions, Exhibits, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion, and all other documents identified in this Agreement of which together form the contract between University and Design Builder for the Work (the "Contract"). The contract constitutes the complete agreement between University and Design Builder and supersedes any previous agreements or understandings.

ARTICLE 4 CONTRACT SUM

Subject to the provisions of the Contract Documents University shall pay to Design Builder, for the performance of the Work, \${AMOUNT IN FIGURES}, the "Contract Sum", for Phase 1. The University shall pay for the performance of the Work for Phases 2 and 3, if the options for said Phases are exercised, the following amounts:

Phase 2 - \${AMOUNT IN FIGURES}

Phase 3 - \${AMOUNT IN FIGURES}

Unit prices, if any, are as follows:

{LIST ITEMS AND UNIT PRICES}

The Contract Sum will be increased by an amount equal to the Unit Price multiplied by the actual number of units of each Unit Price item incorporated in the Work.

#### ARTICLE 5 CONTRACT TIME

Design Builder shall commence the Work for Phase 1 on the date specified in the Notice to Proceed for Phase 1 and fully complete the work within {FIGURE} days, the "Phase 1 Time." The Contract Time at contract award is the Phase 1 Time.

The time allowed for the completion of Phases 2 and 3 shall be as follows:

Phase 2 – The Design Builder shall commence the Work for Phase 2 on the date specified in the Notice to Proceed for Phase 2 and fully complete the Work for Phase 2 within {FIGURE} days, the "Phase 2 Time." If the University exercises its Option for Phase 2, the Phase 2 Time will be added to the then Contract Time plus any days between the completion of Phase 1 and the exercise of the Option for Phase 2 to establish a revised Contract Time for completion of Phases 1 and 2.

Phase 3 – The Design Builder shall commence the Work for Phase 3 on the date specified in the Construction Notice to Proceed for Phase 3 and fully complete the Work for Phase 3 within {FIGURE} days, the "Phase 3 Time." If the University exercises its Option for Phase 3, the Phase 3 Time will be added to the Contract Time for completion of Phases 1 and 2, plus any days between the completion of Phase 2 and the exercise of the Option for Phase 3 to establish a revised Contract Time for completion of all Phases. In the event that the Option for Phase 3 is exercised prior to the completion of Phase 2, the revised Contract Time will be the number of days from the start of Phase 1 to the exercise of the option for Phase 3, plus the number of days specified herein for the completion of Phase 3.

By signing this agreement, Design Builder represents to University that i) the Phase 1 Time, Phase 2 Time, and Phase 3 Time are reasonable for completion of the Work of the respective Phase; ii) the Contract Time (as defined above) is reasonable for completion of the Work of all the Phases; and iii) Design Builder will complete the Work within the Contract Time.

#### ARTICLE 6 LIQUIDATED DAMAGES

If Design Builder fails to complete the Work for Phase 2 within the Contract Time and University has not exercised its option for Phase 3, Design Builder shall pay to University, as liquidated damages and not as a penalty, the amount indicated below as "Liquidated damages daily rate for Phase 2" for each day after expiration of Contract Time that Work for Phase 2 remains incomplete. If University has exercised its option for Phase 3 and Design Builder fails to complete the Work for Phase 3 within the Contract Time, Design Builder shall pay to University, as liquidated damages and not as a penalty, the applicable amount(s) indicated below as "Liquidated damage daily rate for Phase 3" for each day after the expiration of the Contract Time that the Work remains incomplete. After Substantial Completion, the liquidated damages daily rate for Phase 3 shall be reduced to the sum indicated below. University and Design Builder agree that if the Work is not completed within the Contract Time, University's damages would be extremely difficult or impracticable to determine and that said amounts indicated below are reasonable estimates of and reasonable sums for such damages. University may deduct any liquidated damages due from Design Builder from any amounts otherwise due to Design Builder under the Contract Documents. This provision shall not limit any right or remedy of University in the event of any other default of Design Builder other than failing to complete the Work within the Contract Time. This Article 6 will only apply if the University exercises its Option for Phase 2.

Liquidated damages daily rate for Phase 2 - \$ {AMOUNT IN FIGURES}

Liquidated damages daily rate for Phase 3 - \$ {AMOUNT IN FIGURES} (on or before Substantial Completion)

Liquidated damages daily rate for Phase 3 - \$ {AMOUNT IN FIGURES} (after Substantial Completion)

#### ARTICLE 7 COMPENSABLE DELAY

If Design Builder is entitled to an increase in the Contract Sum as a result of a Compensable Delay, determined pursuant to Articles 7 and 8 of the General Conditions, the Contract Sum will be increased by the sum indicated below per day for each day for which such compensation is payable. This Article 7 will apply only if the University exercises its Option for the applicable Phase and only to the extent that Design Builder fulfills requisites proving entitlement to Compensable Delay.

Compensable delay daily rate for Phase 2 - \$ {AMOUNT IN FIGURES}

Compensable delay daily rate for Phase 3 - \$ {AMOUNT IN FIGURES}

#### ARTICLE 8 ASSIGNMENT

If this Agreement is terminated prior to the exercise of the University's Option for Phase 3, the Design Builder shall execute an assignment to the University of all contracts with Design Professionals for work to be performed on Phases 1 and 2.

#### ARTICLE 9 DUE AUTHORIZATION

The person or persons signing this Agreement on behalf of Design Builder hereby represent and warrant to University that this Agreement is duly authorized, signed, and delivered by Design Builder.

#### ARTICLE 10 DESIGN BUILDER'S COVENANTS AND REPRESENTATIONS

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the Design Builder makes the following covenants and representations to University:

- 10.1 Design Builder and all of its Design Professionals and subcontractors are properly certificated, licensed and qualified to perform the Work required by the Contract Documents.
- 10.2 Design Builder accepts the relationship of trust and confidence with the University established by the Contract Documents. Design Builder will cooperate with University.
- 10.3 Design Builder and its Design Professionals have carefully examined the site of the Project and the adjacent areas, have suitably investigated the nature and location of the Construction Work and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to: (1) conditions related to site access and to the transportation, disposal, handling and storage of materials; (2) the availability of labor, water, power and roads; (3) normal weather conditions; (4) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (5) the surface conditions of the ground and (6) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Construction Work.
- 10.4 Design Builder and its Design Professionals have suitably reviewed the site survey, record documents, seismic data, preliminary geotechnical and other test reports, environmental documents and any other documentation furnished by University in the Exhibits.
- 10.5 Design Builder and its Design Professionals have carefully reviewed the following exhibits to the Design Build Contract : (1) Scope of Work (including Applicable Codes, Rules and Regulations, Energy Requirements, etc.); (2) the Performance Specifications; (3) Project Program; and (4) Schematic Drawings. Design Builder acknowledges that these Exhibits establish the scope, level of quality, design intent and the procedures for the development of the design to a state of 100% completion.  
  
Design Builder agrees that (1) the Exhibits depict and describe a design for the Project which is partially complete and may vary in degree of completion from 5% to 95% depending on the particular Project; (2) it will manage, coordinate and fully complete the design; (3) Design Builder will cause its Design Professionals to describe and depict the final design for the Project, as approved by the University, in Construction Documents which will include all information required by the building trades to complete the construction (other than such details customarily developed by others during construction) and (4) it will manage and timely construct the Project in consideration for the University's payment of the Contract Sum.
- 10.6 Design Builder and its Design Professionals have reviewed the Preliminary Schedule attached to the Request for Proposals and agree that the design and construction tasks and milestones are reasonable and feasible, except as modified by Design Builder's Proposed Contract Schedule, approved by University. Design Builder also agrees that time is of the essence for the performance of the Work.
- 10.7 Design Builder agrees that all Construction Documents will be complete, coordinated, and accurate.

- 10.8 Design Builder agrees that all materials, equipment and furnishings incorporated into or used in the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. If required by the University, Design Builder will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.
- 10.9 Design Builder agrees that the Work will be of good quality, free of defects and will conform with the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by the University in advance, may be considered defective.
- 10.10 Design Builder agrees to correct any error(s), omission(s), or deficiencies in the Contract Documents or Construction Documents at no additional cost to University; however, this provision in no way limits the liability of Design Builder.

Project Name: { }

Project No.: { }

THIS AGREEMENT is entered into by University and Design Builder as of the date set forth above.

UNIVERSITY:

DESIGN BUILDER

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Type of Organization)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

Design Builder's California Contractor License(s):

\_\_\_\_\_  
(Name of Licensee)

\_\_\_\_\_  
(Classification and License Number)

\_\_\_\_\_  
(Expiration Date)

Design-Builder's Employer Identification No:

\_\_\_\_\_  
(XX-XXXXXXX)

Attach notary acknowledgment for all signatures of Design Builder. If signed by other than the sole proprietor, a general partner, or corporate officer, attach original notarized Power of Attorney or Corporate Resolution.