

VOLUME 3 PART 1

CHAPTER 3

DESIGN PROFESSIONAL AND CONSULTANT AGREEMENT REQUIREMENTS

INTRODUCTION

The University uses three standard types of design professional and consultant agreements for design, consulting, and construction management services: the Executive Design Professional Agreement, the Construction Management Agreement, and the Professional Services Agreement. Approved document models for each type of agreement are located in [Part II](#).

The following conditions must be met before agreements are executed:

1. The design professional has been selected in accordance with the policies and guidelines described in this volume (see [FM3II:2](#)), and the final selection has been approved.
2. Funds are budgeted and available for the portion of the contractual commitment that becomes effective upon the execution of the agreement.

3.1 PREAPPROVED AGREEMENTS

The Office of the General Counsel approves all contracts, agreements, and other legal documents relating to the business of the University as the "Corporation." The Office of the President have issued the following pre-approved agreements for use by the Facilities:

1. Executive Design Professional Agreement between The Regents of the University of California and the Executive Design Professional (Executive Design Professional Agreement and Blanket Executive Design Professional Agreement)
2. Master Architect Agreement
3. Construction Management Agreement between The Regents of the University of California and the Construction Manager (Construction Management Agreement)
4. Professional Services Agreement between The Regents of the University of California and the Consultant (Professional Services Agreement)

Approved documents models for each type of agreement are located in [Part II](#).

3.2 MODIFYING PRE-APPROVED AGREEMENTS

If project conditions require a pre-approved agreement to be modified, use the modification instructions in this chapter, and the Cover Sheet and Instructions (see 3.3 below) and the instructions in the body of the agreements for guidance (see [Part II](#)). When a Facility proposes to use another agreement or to make any substantial changes to a pre-approved agreement, the proposed changes must be reviewed and approved by the Office of the President and the Office of the General Counsel. Substantial changes are changes to "core" clauses such as definitions, arbitration, indemnification and insurance, limitations to liability, exclusions, and site observations or inspections. A Facility may modify clauses such as scope of work and additional services.

Facilities should send one copy of the proposed revisions (or a newly proposed agreement) to the Office of the President and one copy to General Counsel. Changes should be submitted in redline/~~strikeout~~ format. Allow approximately three weeks for the review and approval of Facility proposals.

3.3 COVER SHEETS AND INSTRUCTIONS

While this chapter provides some information on preparing the individual design professional documents, the Cover Sheets and Instructions in [Part II](#) provide more detailed, step-by-step instructions on completing and modifying the documents.

Each document model in [Part II](#) is preceded by its own Cover Sheet and Instructions. Each Cover Sheet begins with a table indicating the following:

- The purpose of the document.
- Cross-references to the *Facilities Manual*.
- A description of the document's contents.
- The information required for document completion.

Below the table are one, two, or three sections, as applicable: “Completion Instructions,” “Modifications and Additions,” and “Comments.”

3.4 GENERAL PREPARATION INSTRUCTIONS

Most individual documents contain self-explanatory text. Additional text within parentheses may provide completion information or indicate specific words or figures that are to be inserted. Delete informational text from the documents before they are issued.

3.5 EXECUTIVE DESIGN PROFESSIONAL AGREEMENT

The Executive Design Professional Agreement (or an approved version) is used to contract with executive architects, executive landscape architects, and executive and consulting engineers (structural, civil, mechanical, and electrical). The executive design professional is required to be licensed in the state of California.

3.5.1 Terms in the Executive Design Professional Agreement

The following terms are used for the principal entities in the Executive Design Professional Agreement (including Blanket and CM at Risk):

- University
- University's Representative
- University's Designated Administrator
- Executive design professional
- Project architect or engineer (project manager)

University. The term “University” means The Regents of the University of California. The University initiates the project; secures funding for the planning, design, and construction; selects and contracts with the design professional, consultant, contractor, and other professionals, as applicable; and operates and maintains the completed project.

University's Representative. The term “University's Representative” shall mean the person or entity administering the construction contract for the University. The University must always have a University's Representative, who may be the design professional, a University employee, or another entity designated by the University.

University's Designated Administrator. The term “University Designated Administrator” means the administrator who acts on behalf of the University with respect to the agreement.

Executive Architect (or Engineer). When the term “executive” is applied to design professionals, the term refers to the primary design professional on the project, licensed in the state of California, who is both liable and accountable for the overall project design. There may be other design professionals on the project, but they are not responsible for the overall design.

Project Architect (or Engineer). The term “project architect” or “project engineer” means the specific University-approved design professional named in the agreement as the design professional's designated principal or staff member in charge of providing all services required in the agreement.

3.6 CONSTRUCTION MANAGEMENT AGREEMENT

The Construction Management Agreement (or an approved version) is used to contract with a licensed architect, registered engineer, or licensed general contractor for some or all of the services similar to the following:

- construction oversight,
- project design review and evaluation,
- construction mobilization and supervision,
- bid evaluation,
- project scheduling,
- cost-benefit analysis,
- claims review and negotiation, and/or
- general management and administration of a construction project.

The University uses two methods for contracting with a construction manager; when using the standard Construction Management Agreement, the construction manager does no construction work on the project and either performs services in support of the University's Representative, or acts as the University's Representative. When the Construction Management Agreement is used for a CM/Multiple Prime Trade delivery method the Construction Manager acts as the University's Representative. Do not use either agreement when the consultant is required to perform any construction work on the project. That contract must be competitively bid using the CM at Risk format.

3.7 PROFESSIONAL SERVICES AGREEMENT

When all other consultant services are required for planning, design, and construction projects, the Professional Services Agreement is used. Examples of this type of work include:

- Land surveys (including boundaries, topography, and utilities);

- Site and foundation investigation based on soils, geology, and hydrology for proposed facilities;
- Seismic studies for existing structures or special analysis of proposed structures;
- Soil samples testing (moisture content, soils type, expansion, bearing capacity);
- Scheduling;
- Planning;
- Programming;
- Model making, independent design review, and rendering;
- Environmental services;
- Construction site inspection of construction materials and laboratory testing of construction materials;
- Cost estimating; and
- Peer review.

The Professional Services Agreement is used as a “blanket agreement” to contract with a consultant for a specific period of time. When the Facility is ready to use the consultant's services, Exhibit A of the agreement, an Authorization to Perform Services is executed. Exhibit A specifies the services to be performed, the compensation, and the time frame in which the services will be performed.

Other than making approved modifications, a Facility may not modify the Professional Services Agreement unless the Office of the General Counsel and the Office of the President have approved a Facility's proposed modifications to the agreement (see 3.2 above).

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