**INSTRUCTIONS:**

**Cover Sheet and Instructions**

**AGREEMENT**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| PURPOSE OF DOCUMENT: | Defines the contractual relationship between the Contractor and the Regents, and list the documents that make up contract. | | | | | |
| CROSS-REFERENCES TO FACILITIES MANUAL (FM): | FM4:4.6.1 | | | | | |
| CONTENTS: | Agreement | | | | | |
| FOR USE WITH: *(check if applicable)* |  | Long Form  (LF) |  | Brief Form  (BF) |  | Multiple Prime  (MP) |
|  | Design Build  (DB) |  | CM at Risk  (CM) |  | Job Order Contract  (JOC) |
|  | Mini Form  (MF) |  | Informal Form (IF) | √ | Progressive Design Build (PDB) |
| COMPLETED BY: | √ | Filling In | √ | Adding Text |  | No Data Required |
| ITS USE IS: | √ | Required |  | Optional | | |

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

**Completion Instructions:**

1. Blank spaces in the Agreement are left empty when it is issued as a bidding document. These completion instructions apply when the Agreement is prepared for issuance to the contractor with the notice of Selection as the Lowest Responsible Bidder.
2. Insert project identification information as indicated in the header. Throughout the document, insert project specific information in the shaded areas. This is an example of the format.

**Modifications and Additions:**

**Comments:**

None.

**AGREEMENT**

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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, Campus** |
| whose address for notices is: | **Department**  Name, Title  Address  City, CA XXXXX |
| and Design Builder: |  |
| whose address for notices is:  (Include Name, Title, Phone No.) |  |
| for the Project: | **Project Name**  **Project No. XXXXX**  University of California, Campus  County  City, CA XXXXX |
| University's Responsible Administrator is: | **Name**  **Title** |
| University's Representative is: | **Name**  **Title** |
| whose address for notices is: | University of California, Campus  Department  Address  City, CA XXXXX  (XXX) XXX-XXXX |

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 – Schematic Design and Design Development

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 Phases. The Option for Phase 2 may be exercised not later than 30 days after the expiration of Phase 1, 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, 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 2 or 3 by such calculated date, the Design Builder agrees that a time extension and any actual costs incurred according to the Allowable Cost Procedures in Article 9.2 of the General Conditions 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 2 or 3.

The University’s “OPTIONS” rights under this Article 2 are independent of the “Termination by University for Convenience” rights as set forth in Article 13, Section 13.4 of the General Conditions. As such, if the University opts not to 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 not to 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.** The term “Contract Documents” means, Request for Proposal, Price Proposal Form, Proposal Evaluation Process, Project Directory, Preliminary Schedule, Bid Bond, , Design Build Team Rate Schedule, Design Builder’s Proposal, Notice of Selection, this Agreement, General Conditions, Supplementary Conditions, Detailed Project Program, BIM/CAD Standards, Facility Standards, Standard Contract Forms (Exhibits), Scope of Work, General Requirements (Division 01), Specifications (Divisions 02 – 33), University Furnished Information, Addenda, Notices to Proceed, Change Orders, Contract Amendments, Performance Bonds, Payment Bonds, Notice of Completion, plus all other documents (including those issued by the Design Builder, Design Professionals, Consultants, Design Consultants and Design Build or Design Assist Subcontractors) for construction of the Project, which together form the Contract between the University and Design Builder for the Work (the “Contract”). The Contract shall constitute the complete agreement between University and Design Builder and supersedes any previous agreements or understanding.

Design Builder acknowledges that it has carefully examined and understands this Agreement and the other Contract Documents; has investigated the nature, locality, and site of the Project and the conditions and circumstances under which the Work is to be performed; and enters into this Agreement on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of the University. Additionally, if Design Builder observes that any of the University Furnished Information is at variance with any laws, statutes, codes, or regulations, in any respect, or is internally inconsistent, it will immediately notify the University’s Representative in writing. If Design Builder performs any Work without having adequately reviewed the University Furnished Information; or knowing it to be contrary to any laws, ordinances, rules, or regulations; or knowing it to be internally inconsistent; and without providing written notice to the University’s Representative, Design Builder will assume full responsibility and bear all costs attributable its failure to review the University Furnished Information or performance of Work contrary to any laws, ordinances or regulations.

ARTICLE 4 COMPENSATION

4.1 General

. The University will pay the Design Builder based on Allowable Costs incurred for performance of the Work as defined by Article 9 of the General Conditions plus Design Builder’s Fee (fixed at outset) as applicable, not to exceed the respective Contract Sum for each phase.

.1 **Phase 1:** The University will pay the Design Builder - an amount not to exceed the “Phase 1 Allowable Cost” stipulated in Article 5 below for performance of Phase 1 – Schematic Design and Design Development based on Allowable Costs as defined in the General Conditions. The Allowable Costs will use the fixed hourly rates for project personnel stated in the Design Builder’s Price Proposal. The Design Builder’s Fee Percentage shall not apply to Phase 1 Work.

.2 **Phase 2:** If the University exercises its option for Phase 2 –Construction Documents, the University will pay the Design Builder the amount known as the “Phase 2 Allowable Cost” stipulated in Article 5 below based on Allowable Costs as defined in the General Conditions. The Allowable Costs will use the fixed hourly rates for project personnel stated in the Design Builder’s Price Proposal. The Design Builder’s Fee Percentage shall not apply to Phase 2 Work. However, if the University authorizes early construction Work to be commenced in Phase 2, the Design Builder’s Fee Percentage shall apply to such construction Work and related services.

.3 **Phase 3:** If the University exercises its option for Phase 3 – Construction, the University will pay the Design Builder based on Allowable Costs for all Construction Work required by the Contract Documents for Phase 3 up to the amount stipulated in the GMP as outlined in Article 4.3 and Article 5 below. The Design Builder’s Fee Percentage shall apply to such Construction Work and related services for Phase 3.

* 1. Target Cost
  2. . The Target Cost for this Project is $XX,XXX,XXX. The Target Cost includes all Allowable Costs of Work for Phases 1, 2, and 3 and Design Builder’s fee percentages; and takes into consideration each of the categories of items set forth in Articles 4.3 to 4.6 of this Agreement. By execution of this Agreement, the Design Builder agrees to work collaboratively with the University to deliver the Project for the Target Cost. If the Design Builder demonstrates the Project cannot be achieved for the Target Cost at any time during Phase 1 – Schematic Design and Design Development or Phase 2 – Construction Documents, the University and the Design Builder will evaluate strategies for reconciliation.

4.3 Guaranteed Maximum Price (GMP). Upon completion of the Schematic Design and Design Development documents, the Design Builder will submit its GMP for University approval as required by the Contract Documents. In the case that the GMP exceeds the Target Cost and if there is a mutual agreement and acceptance by the University’s Representative, then the Target Cost may be revised via Change Order to reflect the increase. The GMP may only be adjusted by Change Order subject to the conditions described in Article 7 of the General Conditions.

4.4 General Requirements. The Design Builder will be compensated for the Allowable Costs set forth in Article 9.2 of the General Conditions. There will not be an increase in the GMP for General Requirements unless the Design Builder is eligible for an extension of time and additional compensation under Articles 8.4 and 8.5 of the General Conditions and demonstrates the Actual Cost for the General Requirements will exceed the amount set forth in the GMP.

4.5 Allowances. Allowances, to the extent there are any, will be identified as separate line items in both the Target Cost Breakdown and the GMP. Allowances will be reconciled through either an additive or deductive Change Order per Article 7 of the General Conditions. Unused allowance amounts will accrue 100% to the University.

4.6 Fee. The Design Builder’s Fee for Phase 3, composed of overhead and profit, is **XXX percent (XX%)**. The Design Builder’s Fee as applied to changes, is subject to the terms of Article 7 of the General Conditions. The Design Builder’s Fee shall be full compensation for Design Builder’s overhead, profit and costs as defined in Article 1.1.51 of the General Conditions.

4.7 Schedule of Values Revisions. The Design Builder, with University’s approval, may transfer amounts within specific line items in the Schedule of Values. A report, tracking any revisions and/or transfers within specific line items contained in the Schedule of Values shall be submitted monthly by the Design Builder to the University.

ARTICLE 5 ALLOWABLE COST BY PHASE

Subject to the provisions of the Contract Documents, University shall pay to Design Builder, for the performance of the Work, the Allowable Cost by Phase as outlined below:

The Phase 1 amount will be a not to exceed amount.

Phase 1 Allowable Cost – The Not-to-Exceed amount is $X,XXX,XXX .

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 Allowable Cost – A Not-To-Exceed amount shall be incorporated by Change Order at the conclusion of Phase 1 to establish the Contract Sum for Phase 2.

Phase 3 GMP - Shall be incorporated by Change Order at the conclusion of Phase 2.

ARTICLE 6 CONTRACT TIME

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 each Phase; ii) the Contract Time is reasonable for completion of the Work of all the Phases; and iii) Design Builder will complete the Work within the Contract Time.

The total time scheduled for the Work shall not exceed the durations listed in the approved project schedule, unless agreed in writing by University. The durations listed for University's review periods shall be computed from the date on which University receives a clear, complete submittal.

The contract time is as follows:

|  |  |
| --- | --- |
| **Phase** | **Contract Time** |
| **1** | 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 **XX** calendar days, the “Phase 1 Time.” The Contract Time at contract award is the Phase 1 Time. |
| **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 within **XX** calendar days. If the University exercises its option for Phase 2, the days specified for its performance, plus any days between the completion of Phase 1 and the exercise of the option for Phase 2, will be added to the Contract Time to establish a revised Contract Time for completion of Phases 1 and 2. |
| **3** | The Design Builder shall commence the Work for Phase 3 on the date specified in the Notice to Proceed for Phase 3 and fully complete the Work within **XXX** calendar days. If the University exercises its option for Phase 3, the days specified for its performance, plus any days between the completion of Phase 2 and the exercise of the option for Phase 3, will be added to the Contract Time to establish a revised Contract Time for completion of Phases 1, 2 and 3. |
| Total Contract Time: **XXX** calendar days. It is anticipated that Phase 2 and Phase 3 will overlap and the project will proceed on a fast track basis.  (Total Contract Time includes **XX** days for rain delays, refer to the Supplementary Conditions) | |

ARTICLE 7 LIQUIDATED DAMAGES

If Design Builder fails to complete the Work for Phase 3 and achieve Substantial Completion and Final Completion 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 damages daily rate for Phase 3” for each day after the expiration of the Contract Time for Substantial Completion and for Final Completion that the Work remains incomplete. 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 7 will only apply if the University exercises its Option for Phase 3.

Liquidated damages daily rate for Phase 3 on or before Substantial Completion - **$** **X,XXX**

Liquidated damages daily rate for Phase 3 after Substantial Completion - **$** **X,XXX**

ARTICLE 8 COMPENSABLE DELAY

If Design Builder is entitled to an increase in the Contract Sum or GMP 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 3 – Construction: **$** **X,XXX**

## ARTICLE 9 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, Design Build Subcontractors, Consultants, and if requested by the University, other Design Build Team Members, for work to be performed on Phases 1 and 2.

ARTICLE 10 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 11 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:

11.1 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.

11.2 Design Builder accepts the relationship of trust and confidence with the University established by the Contract Documents. Design Builder will cooperate with University.

11.3 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.

11.4 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.

11.5 Design Builder and its Design Professionals have carefully reviewed the following exhibits to the Progressive Design Build Contract: (1) Scope of Work (including Applicable Codes, Rules and Regulations, Energy Requirements, etc.); (2) the Performance Specifications; (3) Facility Standards ; and (4) Detailed Project Program. 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 incomplete; (2) it will manage, coordinate and fully complete the design; (3) it 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.

11.6 Design Builder and its Design Professionals have reviewed the Preliminary Schedule attached to the Request for Proposal and agree that the design and construction tasks and milestones are reasonable and feasible, except as modified by Design Builder’s Project Schedule, as approved by University. Design Builder also agrees that time is of the essence for the performance of the Work.

11.7 Design Builder agrees that all Construction Documents will be complete, coordinated, and accurate.

11.8 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.

11.9 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.

11.10 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.

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

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| **UNIVERSITY**: |  | **DESIGN BUILDER**: |
|  |  |  |
| THE REGENTS OF THE  UNIVERSITY OF CALIFORNIA |  |  |
|  |  | (Name of Firm) |
|  |  |  |
|  |  | (Type of Organization) |
|  |  |  |
| (Signature) |  | (Signature) |
|  |  |  |
| (Printed Name) |  | (Printed Name) |
|  |  |  |
| (Title) |  | (Title) |
|  |  |  |
|  |  | **Design Builder’s California Contractor License(s):** |
|  |  |  |
|  |  | (Name of Licensee) |
|  |  |  |
|  |  | (Classification and License Number) |
|  |  |  |
|  |  | (Expiration Date) |
|  |  |  |
|  |  | (DIR Number) |
|  |  |  |
|  |  | (Design-Builder’s Employer Identification Number) |

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| --- |
| 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. |