

# Agreement

---

## 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 electronic media.

<b>PURPOSE OF DOCUMENT:</b>	Defines the contractual relationship between the CM/Contractor and the Regents, and list the documents that make up contract.		
<b>CROSS-REFERENCE TO FACILITIES MANUAL:</b>	None		
<b>CONTENTS:</b>	Agreement		
<b>FOR USE WITH:</b>	CM/Contractor Contract Documents		
<b>COMPLETED BY:</b>	<input checked="" type="checkbox"/>	Filling in	<input checked="" type="checkbox"/> Adding Text
			<input type="checkbox"/> No Data Required
<b>ITS USE IS:</b>	<input checked="" type="checkbox"/>	Required	<input type="checkbox"/> 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 with the exception of the blank space in Article 2, Option and the Project Name & Project Number in the header. The remaining completion instructions apply when the Agreement is prepared for issuance to the contractor with the notice of Selection as the Lowest Responsible Bidder.
2. Notes, suggested text, instructions and other information is formatted using the following methods:
  - Hidden text within brackets. {This is an example of the format.} 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. **Article 2, Option.** Insert the number of days, after completion of Phase I, that the right to exercise the option will remain in effect. This period should reflect the schedule contemplated by the facility. Normally, a period of 30-60 days would be appropriate.
4. **Article 4, Accepted Alternates and Unit Prices.** Accepted alternates and unit prices become part of the contract by listing them in the Agreement. Alternates accepted at the time of award are listed in the

Agreement when the Agreement is prepared for issuance to the lowest responsible bidder. The alternate price is included in the Contract Sum. Post-award alternates are also listed in the Agreement when the Agreement is prepared for the bidder, but they are not included in the Contract Sum until the alternate is accepted. Fill in the number of days after the date of the Agreement the University may accept reserved Alternates. Once the post-award alternate is accepted, the Contract Sum is adjusted through change order. Actual quantities of units incorporated in the Work, multiplied by the Unit Price shown in the Agreement will increase the Contract Sum upon Completion of Unit Price Work. The increase in the Contract Sum for Unit Price Work is adjusted through Change Order.

5. **Article 6, Liquidated Damages.** The amounts to be inserted as liquidated damages are the amounts previously stated in the Supplementary Instructions to Bidders.

**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. Areas not highlighted in gray, without brackets, shall not be altered without approval of the Office of the President.

**Comments:**

None

**AGREEMENT**

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

whose facility is: University of California  
{Facility Name}

whose address for notices is: {Department}  
University of California  
{Street Address}  
{City, State, Zip}

and CM/Contractor: {Name}

whose address for notices is: {Street Address}  
{City, State, Zip}

for the Project: {Project Name}  
University of California  
{Facility, County}  
{City, State, Zip}

University's Responsible Administrator: {INSERT NAME AND TITLE OF PERSON OR  
HIS/HER DESIGNEE WHO IS AUTHORIZED  
TO SIGN THE AGREEMENT AND OTHER  
APPLICABLE CONTRACT DOCUMENTS (E.G  
. CHANGE ORDERS) ON BEHALF OF THE  
UNIVERSITY }  
{Name & Title}

University's Representative is: {Name & Title}  
{Department}

whose address for notices is: University of California  
{Street Address}  
{City, State, Zip}

Contract Documents for the {Name}  
Work Prepared by: {Street Address}  
{City, State, Zip}

University and CM/Contractor hereby agree as follows:

#### ARTICLE 1 WORK

CM/Contractor shall provide all work required by the Contract Documents (the "Work"). CM/Contractor agrees to do additional Work arising from changes ordered by the University pursuant to Article 7 of the General Conditions or Contract Amendments ordered by the University pursuant to Article 16 of the General Conditions. The Work will be performed in Phases identified as follows:

Phase 1 – Pre-Construction Services

Phase 2 – Construction

#### ARTICLE 2 OPTION

The University may require the performance of the Work under Phase 2 by exercising its option, in writing, directing the CM/Contractor to proceed with performance under Phase 2. The Option for Phase 2 may be exercised at any time after the Notice to Proceed is issued for Phase 1, but no earlier than the Phase 1 duration less the Design/Construction Overlap Duration, nor later than {NUMBER e.g. 60} days after the completion of Phase 1.

#### ARTICLE 3 CONTRACT DOCUMENTS

"Contract Documents" means the Advertisement For Prequalified CM/Contractors, the Announcement to Level 1 Prequalified Bidders, the Announcement to Level 2 Prequalified Bidders, Instructions To Bidders, Supplementary Instructions to Bidders, Bid Form, this Agreement, General Conditions, Supplementary Conditions, Exhibits, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Contract Amendments, Notice of Completion, and all other documents identified in this Agreement together which form the contract between University and CM/Contractor for the Work (the "Contract"). The contract constitutes the complete agreement between University and CM/Contractor and supersedes any previous agreements or understandings.

#### ARTICLE 4 CONTRACT SUM

{Verify AMOUNTS in Article 4 are consistent with Value stated in Supplementary Instructions to Bidders.}

Subject to the provisions of the Contract Documents, University shall pay to CM/Contractor for the performance of the Pre-Construction Services, the sum of {\$AMOUNT}, the Contract Sum. The Contract Sum may be increased by the following Option Sum – Phase 2, if the University exercises its option for Phase 2:

Option Sum - Phase 2 - {\$AMOUNT IN FIGURES}

Unit prices, if any, are as follows:

{LIST ITEMS AND UNIT PRICES}

If the University exercises its option for Phase 2, {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. The Anticipated Contract Value for the Work hereunder is {\$AMOUNT}. The Maximum Anticipated Contract Value for the Work hereunder is {\$AMOUNT}. The University does not represent that either the Anticipated Contract

Value or the Maximum Anticipated Contract Value will be reached and the CM/Contractor's right of recovery shall be limited to the Contract Sum as increased, if at all, pursuant to the provisions of this Agreement.

~~{Delete the following if not applicable.}~~

The Option Sum – Phase 2 includes the following Alternate accepted by University:

~~{Insert information identifying Alternate}~~

#### ARTICLE 5 CONTRACT TIME

~~{Verify NUMBER OF DAYS in Article 5 are consistent with the numbers stated in Supplementary Instructions to Bidders.}~~

Phase 1 - CM/Contractor 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 {NUMBER} days, the "Phase 1 Time". The Contract Time on the date of contract award is the Phase 1 Time.

Phase 2 – The CM/Contractor 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 {NUMBER} days, the "Phase 2 Time". Upon issuance of the Notice to Proceed for Phase 2, the Contract Time will be revised to be number of days calculated from the date specified on the Phase 1 Notice to Proceed, as modified by Change Order, to the date of the Notice to Proceed for Phase 2 plus the Phase 2 Time.

By signing this agreement, CM/Contractor represents to University that the contract time for each Phase is reasonable for completion of the work for that Phase and that CM/Contractor will complete the Work within the Contract Time.

#### ARTICLE 6 LIQUIDATED DAMAGES

If CM/Contractor fails to complete the Work within the Contract Time, CM/Contractor shall pay to University, as liquidated damages and not as a penalty, the sum of {\$AMOUNT IN FIGURES} for each day after the expiration of the Contract Time that the Work remains incomplete. After Substantial Completion, the rate for liquidated damages shall be reduced to the sum of {\$AMOUNT IN FIGURES} per day. University and CM/Contractor 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 the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. University may deduct any liquidated damages due from CM/Contractor from any amounts otherwise due to CM/Contractor under the Contract Documents. This provision shall not limit any right or remedy of University in the event of any other default of CM/Contractor 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.

#### ARTICLE 7 COMPENSABLE DELAY

If CM/Contractor 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 of \$ {AMOUNT IN FIGURES} per day for each day for which such compensation is payable.

This Article 7 will only apply if the University exercises its Option for Phase 2, and only to the extent that CM/Contractor fulfills requisites proving entitlement to Compensable Delay damages.

## ARTICLE 8 DUE AUTHORIZATION

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

## ARTICLE 9 PHASE 1 TERMINATION

University may terminate the Phase 1 Work for convenience any time upon 5 days written notice. In the event of such termination of the Phase 1 Work for convenience, the University shall pay CM/Contractor the reasonable value of CM/Contractor's Work up to the effective date of termination, not to exceed the Contract Sum for Phase 1.

Article 13.4 of the General Conditions shall not apply to any termination of the Phase 1 Work for convenience; Article 13.4 only shall apply to termination for convenience of the Phase 2 Work.

## ARTICLE 10 CM/CONTRACTOR'S 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 CM/Contractor makes the following representations to University:

- a. CM/Contractor accepts the relationship of trust and confidence with the University established by the Contract Documents. CM/Contractor will cooperate with University.
- b. CM/Contractor has carefully examined the site of the Project, to the extent available, and the adjacent areas, has suitably investigated the nature and location of the Work and has satisfied itself as to the general and local conditions which will be applicable, including but not limited to: (a) conditions related to site access and to the transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (e) the surface conditions of the ground and (f) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Work.
- c. CM/Contractor has suitably reviewed documentation furnished by University in the Information Available to Bidders.
- d. All labor, services, 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, CM/Contractor will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.
- e. 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.
- f. All Project Construction Cost Estimates provided by the CM/Contractor for the Work, based on 50% complete (or greater percentage of completion), Drawing and Specification submittals, produced by the University's Design Professional, will be complete and accurate; will incorporate the cost for the means and methods required to complete the Work; and will incorporate the cost for all schedule constraints shown in the Contract Schedule necessary to complete the work within Contract Time.

Project Name: { }

Project No.: { }

THIS AGREEMENT is entered into by University and CM/Contractor as of the date set forth above.

CM/CONTRACTOR:

UNIVERSITY:  
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

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

\_\_\_\_\_

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

{DEPARTMENT}  
{FACILITY}

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

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

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

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

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

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

California Contractor's License(s):

\_\_\_\_\_  
(Name of License)

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

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

\_\_\_\_\_  
(Employer Identification Number)

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