## Agreement

## Cover Sheet and Instructions

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|  | | | 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. | | | | |
|  | | |  | | | | |
| **PURPOSE OF DOCUMENT:** | Defines the contractual relationship between the Design Builder and the Regents, and lists the documents that make up contract. | | | | | | |
| **CROSS-REFERENCE TO FACILITIES MANUAL:** | None | | | | | | |
| **CONTENTS:** | Agreement | | | | | | |
| **FOR USE WITH:** | Energy Savings Brief Form Design Build Contract Documents | | | | | | |
| **COMPLETED BY:** | √ | Filling in | | √ | Adding Text |  | No Data Required |
| **ITS USE IS:** | √ | Required | |  | Optional | | |

**NOTE:** THIS DESIGN BUILD CONTRACT DOCUMENT IS LIMITED TO CONTRACT VALUES LESS THAN $5,000,000. To use the electronic file of this document, you must go to the “File” pull down menu in Microsoft Word, select “Options,” a dialogue box will appear; go to” Display” “in the left pane of the dialogue box 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 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. {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. 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.**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 4, the Contract Time is the durations previously stated in the Request for Proposals.

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**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. ***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.
4. ***Compensable Delay.*** A Compensable Delay article has been added into the Agreement and coincides with revisions in the Brief Design Build General Conditions and the Price Proposal Form.
5. ***Liquidated Damages.*** A Liquidated Damages article has been added into the Agreement.

**Comments:**

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

**END OF COVERSHEET AND INSTRUCTIONS**

#### AGREEMENT

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

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| --- | --- |
|  |  |
| whose address is: | {ADDRESS} |
| and Design Builder: | {DESIGN BUILDER'S NAME} |
| whose address is: | {ADDRESS} |
| for the Project: | {PROJECT'S NAME} |
| University's  Representative is: | {UNIVERSITY REP'S NAME} |
| whose address is: | {ADDRESS} |

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.

###### ARTICLE 2 CONTRACT DOCUMENTS

“Contract Documents” means the Advertisement For Design Builder Prequalification, Request for Proposals, Preliminary Schedule, Bid Bond, Design Builder’s Proposal, this Agreement, General Conditions, Supplementary Conditions, Exhibits, Specifications, Notice to Proceed, Change Orders, Notice of Completion, and all other documents identified in this Agreement that 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 3 CONTRACT SUM

Subject to the provisions of the Contract Documents University shall pay to Design Builder, for the performance of the Work, $, the “Contract Sum.”

Unit prices, if any, are as follows:

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 4 CONTRACT TIME

Design Builder shall commence the Work for on the date specified in the Notice to Proceed and fully complete the work within days, the “Contract Time.”

By signing this Agreement, Design Builder represents to University that the Contract Time is reasonable for completion of the Work and the Design Builder will complete the Work within the Contract Time.

ARTICLE 5 LIQUIDATED DAMAGES

If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to University, as liquidated damages and not as a penalty, the sum of 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 per day. University and 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 Contractor from any amounts otherwise due to Contractor under the Contract Documents. This provision shall not limit any right or remedy of University in the event of any other default of Contractor other than failing to complete the Work within the Contract Time.

ARTICLE 6 COMPENSABLE DELAY

If 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 per day for each day for which such compensation is payable.

ARTICLE 7 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:

7.1 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.

7.2 Design Builder and its Design Professionals have carefully examined the site of the Project and the adjacent areas.

7.3 Design Builder and its Design Professionals have suitably reviewed the energy audit, site survey, record documents, seismic data, preliminary geotechnical and other test reports, environmental documents and any other documentation furnished by University in the Exhibits.

7.4 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; (2) the Performance Specifications; (3) Project Program; and (4) Schematic and any other reference documents.

Design Builder agrees that (1) the Exhibits depict and describe a scope of work or 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 scope of work and 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 be complete, coordinated, and accurate, and will include all information required by the building trades to complete the construction (other than such details customarily developed by others during construction); (4) Design Builder will provide a construction cost estimate to the University, for its review and approval, at the end of the design phase which confirms that the construction can be delivered within the agreed contract sum; (5) Design Builder will manage and timely construct the Project in consideration for the University’s payment of the Contract Sum.

7.5 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.

7.6 Design Builder agrees that upon presentation of the construction cost estimate, at the end of Design Development, the University will have 15 business days to approve the estimate, or to provide comments. The Design Builder will not begin construction documents until the estimate is approved by the University. All Construction Documents will be complete, coordinated, and accurate.

7.7 Design Builder agrees that the Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), 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.

7.8 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.

ARTICLE 8 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.

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) |
| 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.