## **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 electronic media. | | | | |
|  | | |  | | | | |
| **PURPOSE OF DOCUMENT:** | Defines the contractual relationship between the Contractor and the Regents, and list the documents that make up contract. | | | | | | |
| **CROSS-REFERENCE TO FACILITIES MANUAL:** | FM4:4.6.1 | | | | | | |
| **CONTENTS:** | Agreement | | | | | | |
| **FOR USE WITH:** | ✓ | Job Order Contract (JOC) | | | | | |
| **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. 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.)

1. **Numeric Fields.** Fill-in ALL numeric fields prior to bidding EXCEPT for the Adjustment Factors which are left blank until the time of award. Below are specific instructions for each numeric field.
2. **Determining the Maximum Job Order Contract Amount/Maximum Individual Job Order Amount**. The Maximum Job Order Contract (MJOC) amount is established in the Advertisement for Bids and the number in the Agreement should match that in the Advertisement for Bids. When establishing the MJOC, the Facility should ensure that it reflects a reasonable estimate of anticipated needs. In no event may the MJOC amount exceed $5,000,000.00nor be less than $25,000.00. When establishing the Maximum *Individual* Job Order Amount, the Facility should ensure that it reflects a reasonable estimate of anticipated needs. In no event may the Maximum Individual Job Order Amount exceed $1,000,000.00.
3. *Liquidated Damages.* The sums to be inserted in Article 5 as liquidated damages shall be determined individually for each size category of Job Order in anticipation of the jobs anticipated to be covered in the JOC (see **FM5:15.6**). The sums specified should not be arbitrary but should represent an estimate of the cost the Facility will incur. Relevant factors to be considered in making an estimate of potential damages that would be sustained by the Facility in the event of non-completion are as follows:

* For residence halls, parking facilities, and similar projects: the per diem loss of revenue.
* For classrooms, administrative buildings, laboratories, and similar projects: the per diem cost of comparable facilities that must be rented if the work is not completed on time.
* For cafeterias or a catering contract, laboratory or research facilities, and similar projects: any actual damages, including loss of grants, that will be sustained by the Facility because of commitments that depend upon the availability of the facilities affected by the work.
* The per diem cost of interest on the construction financing.
* The per diem cost of premiums for builder’s risk insurance.
* Any other costs that will be sustained if the work is not completed on time such as increases in payroll costs, utility expenses, moving expenses, storage costs, and similar costs.
* Per diem cost of project administration such as inspection, contract administration, etc.

6. **Adjustment Factors**. Leave the fields blank during bidding and complete at the time of award with the successful bidder’s numbers.

**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. *Articles 2 and 3*

***Replace “***Construction Task Catalog with “Unit Price Book”. Generic term for use with multiple service providers

1. ***Article 3 – Adjustment Factors***

Refer to Adjustment factors as defined in Bid Documents, on the Bid Form***.*** Use those as your adjustment factors for the Agreement. Adjustment factors should be discussed with your JOC service Provider and Campus Construction Counsel prior to issuance of Bid Documents.

**Comments:**

Article 1 Work has been modified to delete the description of the work and to reference the description of the work in the Advertisement for Bids.

# END OF COVERSHEET AND INSTRUCTIONS

# 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, |
| whose address for notices is: | University of California, |
| and Contractor: |  |
| whose address for notices is: |  |
| for the Project: | Job Order Contract # \_\_\_\_\_\_  University of California |
| 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 }** |
| University's Representative is: |  |
| whose address for notices is: | University of California |
| Contract Documents for the  Work Prepared by: |  |

University and Contractor hereby agree as follows:

**ARTICLE 1 WORK**

Contractor shall provide all work required by the Contract Documents (the "Work"). Contractor shall (1) pay all sales, consumer and other taxes and (2) obtain and pay for any governmental licenses and permits necessary for the work, other than building and utility permits.

University hereby awards this Job Order Contract (JOC) for the performance of multiple individual construction jobs at facilities owned, leased or managed by the University of California, {FACILITY}. The JOC will have a Base Term of 1 year with University holding an option to renew for up to two additional 1-year periods ("Option Terms"). The specific scope of each construction job will be defined in a separate Job Order and shall be performed as specified in Article 3 below. Contractor may be requested to perform several Job Orders concurrently. Individual Job Orders will not exceed a Maximum Individual Job Order Value of ${NUMBER, up to $1,000,000}. The total combined cost for all Job Orders issued will not exceed the Maximum Contract Value of ${NUMBER, up to $5,000,000} during the 1-year Base Term, and ${NUMBER, up to $5,000,000} during each 1-year Option Term, if exercised by University. The minimum value of work to be purchased under this Contract will be ${NUMBER, at least $25,000}. The Maximum Contract Value is not guaranteed. During the Base Term and any extended term of the JOC, Contractor shall perform the work described in the Advertisement for Bids, ranging in cost (exclusive of changes) from ${ENTER MINIMUM GUARANTEE AMOUNT} to ${ENTER COMBINED MAXIMUM CONTRACT VALUE FOR ALL 3 TERMS} (not to exceed a maximum combined cost of $5,000,000 for any term) on the [Location of Campus] campus.

Any work required under this Contract shall be authorized by issuance of formal, written Job Orders.

**ARTICLE 2 CONTRACT DOCUMENTS**

"Contract Documents" means the Advertisement for Bids, Instructions to Bidders, Supplementary Instructions to Bidders, Bid Form, this Agreement, General Conditions, Supplementary Conditions, Exhibits, Specifications, the Unit Price Book, Drawings, Addenda, Notices to Proceed, Job Order Schedule of Values, Detailed Scope of Work, Job Order Authorizations, Change Orders, Notices of Completion, and all other documents identified in this Agreement that together form the contract between University and Contractor for the Work (the "Contract"). The Contract constitutes the complete agreement between University and Contractor and supersedes any previous agreements or understandings.

**ARTICLE 3 JOB ORDER SUM**

Subject to the provisions of the Contract Documents, University will pay to Contractor for the performance of Job Order Work, the total dollar amount specified in each Job Order ("Job Order Sum"), which will be determined by applying Adjustment Factors to Pre-priced Items (items that have Unit Prices in the Unit Price Book). A Job Order will not be authorized for any Job where, at the time the Job Order is issued, the value of Non Pre-priced Items exceeds the lesser of the following: (a) 10% of the value of the work to be performed under the Job Order or (b) $100,000. Adjustment Factors used to determine the Job Order Sum for the base term and option term(s) shall be as follows:

ADJUSTMENT FACTORS (Refer to bid form; remember to discuss options for adjustment factor parameters with your JOC provider and Campus construction counsel Prior to issuing Bid Documents)

|  |  |
| --- | --- |
| (INCLUDE DEFINITIONS FOR ADJUSTMENT FACTORS AS SPELLED OUT ON BID FORM) | (INSERT NUMERICAL ADJUSTMENT FACTOR HERE) |
| (INCLUDE DEFINITIONS FOR ANY ADDITIONAL ADJUSTMENT FACTORS AS SPELLED OUT ON BID FORM) | INSERT NUMERICAL ADJUSTMENT FACTOR HERE) |

When a Job Order specifies work to be performed during Non-Business Hours (weekdays from 5:00pm to 7:00am, all hours on weekends, and on holidays), the Adjustment Factor shall be increased by 35%.

**ARTICLE 4 TERM FOR ISSUANCE AND IMPLEMENTATION**

**OF JOB ORDERS AND JOB ORDER TIME**

Base Term: The Base Term of this Job Order Contract commences on the effective date of the Notice to Proceed for the Contract. The term of this Contract is either for one year or when Job Orders totaling the Maximum Contract Value have been completed, whichever comes first. All Job Orders must be issued during the term of the Contract but all Job Order Work must not necessarily be completed during the term of the Contract. A Job Order is issued when the University submits a written Job Order Authorization to the Contractor to perform the Work of the Job Order.

Option Term(s):

1) University may, at its sole discretion extend its right to issue and/or implement Job Orders to Contractor for up to two additional 1-year periods, provided University gives Contractor written notice of such extension at least 30 days prior to the expiration of the Base Term and, if exercised, the first Option Term. Election of the Option Term(s), if made, will be accomplished by Unilateral Change Order.

2) The Adjustment Factors will be modified according to General Conditions Article 4.5.3. at the same time Option Term(s) are exercised.

Job Order Time: The individual Job Order Authorization will specify a reasonable time limit for completion of the Job Order Work.

**ARTICLE 5 LIQUIDATED DAMAGES**

If Contractor fails to complete any Job Order Work within the applicable Job Order Time, Contractor shall pay to University, as liquidated damages and not as a penalty, the applicable below-listed sum for each day after the expiration of the Job Order Time that the Job Order Work remains incomplete. University and Contractor agree that if the Job Order Work is not completed within the applicable Job Order Time, University's damages would be extremely difficult or impracticable to determine and that the below stated 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 Job Order Work within the applicable Job Order Time. Liquidated Damages will be assessed on a Job Order by Job Order basis.

1. ${LIQUIDATED DAMAGES AMOUNT IN FIGURES} per day for Job Orders with a Job Order Sum of $100,000.00 or less.

2. ${LIQUIDATED DAMAGES AMOUNT IN FIGURES} per day for Job Orders with a Job Order Sum between $100,000 and $250,000.00.

3. ${LIQUIDATED DAMAGES AMOUNT IN FIGURES} per day for Job Orders with a Job Order Sum greater than $250,000.00.

**OR**

1. Job Orders of $50,000 or more:

|  |  |
| --- | --- |
| ***Typical Locations*** | ***Liquidated Damage Amount ($/day)*** |
| Classrooms; Student Housing & Research Laboratories | {e.g., $500 per day} |
| Administrative Offices & All other Locations | {e.g., $250 per day} |

1. Job Orders less than $50,000:

|  |  |
| --- | --- |
| ***Typical Locations*** | ***Liquidated Damage Amount ($/day)*** |
| All Locations | {e.g., $150 per day} |

**ARTICLE 6 DUE AUTHORIZATION**

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

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

CONTRACTOR: UNIVERSITY:

THE REGENTS OF THE

(Name of Firm) UNIVERSITY OF CALIFORNIA

a UNIVERSITY OF CALIFORNIA, \_\_\_\_\_\_\_\_\_\_\_

(Type of Organization)

By: By:

(Signature) (Signature)

(Printed Name) (Printed Name)

(Title) (Title)

California Contractor’s License(s):

(Name of Licensee)

(Classification and License Number)

(Expiration Date)

(Employer Identification Number)

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