

**AGREEMENT**

 CSU Vendor ID No. <insert #> Contract No. <insert #>

 THIS AGREEMENT, made on December 4, 2019, by and between the State of California, acting through the Board of Trustees of the California State University, on behalf of {insert full Campus Name}, hereinafter designated the Trustees, and Contractor

Address

City, ST Zip

Phone No.; Fax; E-Mail

hereinafter designated the Construction Manager at Risk (CM).

**WITNESSETH**

1. That the CM, in consideration of the covenants and agreements herein contained on the part of the Trustees, covenants, promises and agrees with the Trustees, at his, her, its or their own proper cost and expense, to furnish all labor, materials, and equipment, and to perform all Work necessary to construct and complete in a good workmanlike and substantial manner, and to the satisfaction of the Trustees, the

<Insert Project Name and Project Number>, at

<Insert full Campus Name>

in accordance with the Contract Documents (as defined in the Contract General Conditions, Article 1, Definitions) as approved by and on file with the Trustees and are made a part of this agreement by this reference.

The CM agrees:

1. that the total Actual Direct Construction Cost for this Project is: $
2. that the following fees are included in the Guaranteed Maximum Price (GMP):

Lump Sum proposed for Construction Phase Services – Site Management Fee =$ (1)

 2 % of the Actual Direct Construction Cost for CM’s Contingency =$ (2)

 % of the Actual Direct Construction Cost for CM’s Overhead & Profit =$ (3)

1. to receive and accept total GMP Not-to-Exceed Contract Amount: $

as full compensation therefor, and also, unless expressly excepted in the Contract Documents, as full compensation for the following: all loss or damage, arising out of the nature of the Work, or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the Work until its acceptance by the Trustees and for all risks of every description connected with the Work, and for all expenses incurred by or in consequence of the suspension or discontinuance of Work, and for well and faithful completion of the Work in the manner and according to the Contract Documents and the requirements of the Trustees under them. The Trustees will make payment in accordance with the Contract General Conditions, Article 8, Payment and Completion.

2. That the CM, in accordance with its Bid Proposal documents, agrees to subcontract <insert %> of the above Contract amount (including all alternatives, allowances and change orders) to Disabled Veteran Business Enterprises (DVBE).

3. That the Trustees hereby promise and agree with the CM to employ, and do hereby employ, the CM to provide the materials and do the Work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby agree to pay the same at the time, in the manner and upon the conditions set forth herein, and the said parties for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

4. That the Trustees will fix the starting date of the Contract and issue a Notice to Proceed after the date of approval of the Contract by the Office of General Counsel, California State University. The CM shall fully complete all the Work of the Contract, in first class working order and ready for acceptance by the Trustees, on or before the expiration of <insert #> calendar days from the starting time so fixed. The CM will pay to the Trustees the sum of Five Thousand Dollars ($5,000) for each day completion is delayed beyond the time prescribed, in accordance with the Contract General Conditions, Article 7.02, Delay in Completion—Liquidated Damages.

(1) Lump Sum Amount as proposed.

(2) Proposed percentage of Actual Direct Construction Cost, not to exceed the proposed lump sum based on proposed percentage of Budgeted Direct Construction Cost.

(3) Proposed percentage of the Budget Direct Construction Cost, as amended. If the Actual Direct Construction Cost is lower than the Budgeted Direct Construction Cost by four percent or more, the OH&P shall be the proposed percentage of the Actual Direct Construction Cost.

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 Contract No. <insert #> Project No. <insert #>

5. That should there be any conflict between the terms of the Proposal Form and the other Contract Documents, the other Contract Documents shall control, and nothing contained herein shall be considered as an acceptance of any terms of the Proposal Form in conflict herewith.

6. a. That contractors are required by law to be licensed and regulated by the Contractor’s State License Board. Any questions concerning a contractor may be referred to the registrar of the Board.

 b. That contractors and subcontractors of all tiers, by law, are required to register with the Department of Industrial Relations to bid and contract for public works projects

7. That any notice to the Trustees may be served effectually upon the Trustees by mailing or delivering it in writing, addressed to the Trustees of the California State University, attention of the official executing this Agreement for the Trustees, at <insert full campus name and full address>.

8. That this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by electronic mail in “portable document format” (“.pdf”) form or by any other electronic means shall constitute effective execution and delivery of this Agreement and shall have the same effect as copies executed and delivered with original signatures.

9. That the Guaranteed Maximum Price Breakdown, Clarifications (or insert name of CM’s document—if no clarifications or exclusions, delete this item) are listed in Exhibit A, consisting of <insert #> pages, attached hereto and by this reference, made a part hereof, and includes, in part, the actual Direct Construction Cost plus the lump sum proposed for Construction Phase Services Site Management Fee and the percentages of the Actual Direct Construction Cost for CM’s Contingency and CM’s Overhead and Profit).

IN WITNESS WHEREOF, the parties to these presents have hereto set their hands the year and date first above written.

**CONSTRUCTION MANAGER AT RISK**

*(State full legal name of business entity; check appropriate box below.)*

 Sole Proprietorship Partnership Corporation Limited Liability Co. Other (specify)

 *CM’s License No. CM’s DIR Public Works Registration No.*

*By:*

  *Name, Title*

|  |  |
| --- | --- |
| **TRUSTEES** | *Approved as to Scope:* |
|  |  |
|  |  |
| *By:*  | *By:*  |
|  *Name, Title Date* |  *Name, University Facility Planner Date* |
|  *Department* |  |
|  |  |
|  | *By:*  |
|  |  *Name, Title Date* |
| UNIVERSITY ACCOUNTING FUNDING CERTIFICATION | *I hereby certify that I have examined the written contract and*  |
|  | *find the same to be in accordance with the requirements of the* |
| *Approved as to Funds:* | *California State University Contract Law.* |
| Appropriation/Fund/Item: <insert> |  |
| PS Chart Field String: <insert> | G. ANDREW JONES |
| Amount of Agreement: $<copy amount from p. 1, item 1-c > | GENERAL COUNSEL |
|  |  |
|  |  |
| *By:*  | *By:*  |
|  *Name, University Budget Officer Date* |  *Name, University Counsel Date* |

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PAYMENT BOND

 Contract No. <insert #>

Know All Persons by These Presents:

THAT WHEREAS, the State of California acting by and through the Trustees of the California State University, hereinafter called the Trustees, has awarded to CM

Address

City, ST Zip

as Principal, hereinafter designated as the “Construction Manager at Risk (CM),” a Contract for the Work described as Project Number: <insert Project Number>

 Project Name: < insert Project Name>

 Campus: < insert full Campus Name>

AND WHEREAS, the CM is required to furnish a bond in connection with said Contract, to secure the payment of claims of laborers, mechanics, and other persons, as provided by law:

NOW, THEREFORE, we the undersigned CM and Surety are held and firmly bound unto the State of California through the said Trustees in the amount required by law, in the sum of:

<copy amount in Item 1-c from p.1 of Agreement>

for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such,

That if the CM, his, her, or its heirs, executors, administrators, successors or assigns, or subcontractors shall fail to pay any of the persons referred to in Civil Code section 9100 or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, that the Surety or Sureties herein will pay for the same, in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought on this bond, the said Surety will pay a reasonable attorney’s fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons referred to in Civil Code section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond. Any such right of action shall be subject to the provisions of Civil Code sections 8608 and 9566.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this day of , 20

 CM CM Name:

 AS

####  PRINCIPAL CM Address: (SEAL)

 By:

 SURETY Surety Name:

 Surety Address: (SEAL)

 By:

Signatures executed in behalf of the Surety must be properly acknowledged.

*Construction Mgmt.*

*702.09 • 12/19*



PERFORMANCE BOND

 Contract No. <insert #>

Know All Persons by These Presents:

THAT WHEREAS, the State of California acting by and through the Trustees of the California State University, hereinafter called the Trustees, has awarded to CM

Address

City, ST Zip

as Principal, hereinafter designated as the “Construction Manager at Risk (CM),” a Contract for the Work described as Project Number: <insert Project Number>

 Project Name: < insert Project Name>

 Campus: < insert full Campus Name>

AND WHEREAS, the CM is required to furnish a bond in connection with said Contract, guaranteeing the faithful performance thereof:

NOW, THEREFORE, we the undersigned CM and Surety are held and firmly bound unto the State of California through the said Trustees in the sum of:

<copy amount in Item 1-c from p.1 of Agreement>

to be paid to the said Trustees, State or its certain attorney, its successors and assigns: for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such,

That if the above bounden CM, his, her, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided, on his, her, its or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the State of California, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this day of , 20

 CM CM Name:

 AS

####  PRINCIPAL CM Address: (SEAL)

 By:

 SURETY Surety Name:

 Surety Address: (SEAL)

 By:

Signatures executed in behalf of the Surety must be properly acknowledged.

*Construction Mgmt.*

*702.15 • 12/19*



#### **CERTIFICATION**

 Contract No. <insert #>

 Project No. <insert #>

*Instructions:*

**ALL BIDS AND CONTRACTS MUST BE SIGNED BY AN OFFICER OR EMPLOYEE HAVING THE AUTHORITY TO BIND THE COMPANY OR FIRM.**

*Provide the information requested below, including the type of organization for your firm, such as partnership, limited partnership, corporation, limited liability company, etc., and attach to this form a true and accurate copy of the firm’s official record adopted by the firm’s executives/board that authorizes certain of the firm’s officers or employees to bind the firm. An example of such official record would be a corporate resolution duly adopted by a Board of Directors for a Corporation.*

This is to certify that

1. I am
 Name and Title of Authorized Signatory (such as John Smith, President)

2) of ; and

 Name of Firm

1. the attached official record, which lists only the officers or employees of our firm who are authorized to bind the firm, is a true and accurate copy as duly adopted by the Executives/Board of the firm on .

 Date

 Signature Date

 Firm’s Type of Organization *(see instructions above)*

### IMPORTANT NOTE

(If your firm is a sole proprietorship, you need not complete this form. For all other types of firms, be sure to attach to this certification a copy of firm’s official record authorizing officers or employees of the firm to execute Contract Documents or to execute a bid submittal. If attaching more than one document, modify the form to reflect that fact.)

*Construction Mgmt.*

*702.03 • 12/19*