

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY
Design-Builder AGREEMENT for Design Phase

(for use on Collaborative Design-Build projects)

☐ DESIGN-BUILDER
☐ TRUSTEES

This AGREEMENT is made and entered into this [Day] day of [November], [Year] pursuant to Public Contract Code section 10700 et seq., by and between the State of California, acting through the Board of Trustees of the California State University on behalf of

Campus, hereafter referred to as Trustees, and California State University Lorem Ipsum	Amendment No.: 123456	Agreement No.: 123456	Project No.: 123456
Design-Builder, hereafter referred to as Design-Builder. Ipsum Lorem Service Provider, Inc.	CSU Vendor ID No.: 123456	CA CSLB License No.: 123456	CA DIR No.: 123456

WITNESSETH: That the Design-Builder in consideration of the statements and conditions herein contained, agrees to furnish labor, materials, and equipment, and to perform work necessary to complete, in a skillful and professional manner, design services and services related and incidental to the design and construction of the {name of Project} , a Public Works Project, located at **the above-named Campus**.

The Design-Builder shall provide such services as more fully described in the Contract Documents and the following Rider and Exhibits, which by this reference are incorporated herein and made part of this Agreement:

- Rider A Agreement General Provisions, consisting of fifteen (15) pages, hereafter referred to as Rider A;
- Exhibit A Scope of Work, consisting of five (5) pages, hereafter referred to as Exhibit A;
- Exhibit B Schedule of Lump Sum Fees for Collaborative Design-Build Projects, consisting of one (1) page, hereafter referred to as Exhibit B;
- Exhibit C Project Design Schedule, consisting of one (1) page, hereafter referred to as Exhibit C;
- Exhibit D CSU Procedure Manual for Capital Projects, by reference and hereafter referred to as Exhibit D.

The term shall begin upon receipt of a fully executed Agreement from the Trustees. The term shall end as of {insert date}. Work elements started during the term shall continue to their completion and acceptance by the Trustees. The Design-Builder shall not perform services in excess of the Agreement without prior written authorization to proceed from the Trustees.

Whereas this is a design agreement entered into with a general contractor who assumes responsibility for design, and construction under separate contract, the work designated herein as that of the Design-Builder is the work of the Design-Builder. Where professional licenses or other matters particular to a design professional are specified they shall remain the responsibility of the design professional of record. The Design-Builder has agreed to contract with {insert name of Architectural Firm and License No.} to serve as architect of record for the Project. Design-Builder shall report to **DESIGN ADMINISTRATOR, {insert name and title of DESIGN ADMINISTRATOR}**.

The basic services amount to be expended under this Agreement shall not exceed {insert Contract Value in words (\$X,XXX,XXX)}. Payment shall be made in accordance with Rider A and Exhibits A, B, and C.

Trustees of the California State University							Service Provider						
Campus California State University Lorem Ipsum							Firm Name Ipsum Lorem Service Provider, Inc.						
By (Trustees' Authorized Signature)							By (Authorized Signature)						
Printed Name and Title of Person Signing John Smith, Campus Representative							Printed Name and Title of Person Signing Jack Smith, Service Provider Authorized						
Address of Campus Project Administrator 99999 Lorem Ipsum Drive, Ipsum, CA 99999							Address of Service Provider 11111 Ipsum Lorem Drive, Lorem CA 11111						
SCO Acct	Fund	Sub Fund	Agency	Yr.	Ref/Item	Category	Program	Element	Component	Chapter	Fiscal Yr.	Legal Ref.	
	123456	123456	123456		123456	123456	123456	123456	123456	123456			
Fund Name 123456				PS Account 123456		PS Fund 123456	PS Dept. ID 123456	PS Program 123456	PS Class 123456	PS Project/Grant 123456			
Amount Encumbered \$999,999,999		<i>I hereby certify upon my personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.</i>											
Amount of Increase \$999,999,999		Signature of Accounting Officer									Date		
Amount of Decrease \$999,999,999		<i>I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of California State University Contract Law. FRAMROZE M. VIRJEE, General Counsel</i>											
Total Amount Encumbered \$999,999,999		By Attorney									Date		

This Agreement may be executed in counterparts all of which taken together shall constitute one and the same Agreement. The exchange of copies of this Agreement by electronic mail in "portable document format" (".PDF") form or by other similar 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.

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Rider A – Agreement General Provisions

Design Agreement for Collaborative Design-Build Projects

WHEREAS, Education Code Section 66606 gives the Trustees of the California State University full power and responsibility in the construction and development of any state university campus, and

WHEREAS, The principals of the Design-Builder, identified in the Agreement, are licensed by the laws of the state of California to practice architecture or engineering as appropriate to the project and desire to perform such services, and

NOW, THEREFORE, In consideration of the statements and conditions herein, the Trustees do hereby engage the Design-Builder to perform the services related and incidental to the design, and possible construction of the project under separate contract, and the Design-Builder does hereby agree to perform such services described herein. Trustees and Design-Builder agree as follows:

1.0 DEFINITIONS

The following terms as used in this Agreement are defined as follows:

- 1.1 Not Used.
- 1.2 **Agreement:** The Agreement executed by both the Trustees of the California State University and Design-Builder.
- 1.3 **Design-Builder:** The individual or design firm represented by the Design-Builder who is identified in the signature box of the Agreement. Same as Contractor.
- 1.4 Not Used
- 1.5 **As Built Drawings:** The contractor's annotated set of 'Construction Documents' that have been contemporaneously revised by the Contractor during the course of the project's construction to identify changes to the project subsequent to the issue of the bidding documents so as to record the actual physical constructed condition.
- 1.6 **Authorities Having Jurisdiction:** Private, municipal, county, state, regional or federal authority which may require information or the filing of drawings, specifications, applications, etc., including, but not limited to: the State Fire Marshal, Division of the State Architect, or other organization charged with enforcing regulatory compliance in connection with the project.
- 1.7 **Base Design:** The design arising out of the provision of the Design-Builder's Basic Services that meets project scope and budget absent additive or deductive bid alternates.
- 1.8 **BIM:** Building Information Modeling: The development of a computer-based parametric model of a project and from this model then extracting information to convey a project (a construction document package). This differs from a CAD-based approach wherein individual drawings are created to collectively convey a project. Colloquially, BIM is taken to mean Autodesk's Revit or similar software by others.
- 1.9 **Budgeted Direct Construction Cost:** The Trustees' budgeted cost to construct the project. It includes the Major Categories of the Work, including total Building and Sitework, and escalation. It excludes Contractor site management fees, Contractor-held contingency, Contractor overhead and profits and all soft costs.
- 1.10 **Campus Consulting Architect (Equivalent: Campus Consulting Master Plan Architect):** An architect appointed by the Trustees to advise on the physical development of a Campus.
- 1.11 **Construction Documents:** The design drawings, specifications, general conditions, supplementary general conditions, special conditions, addenda, and change orders developed to convey in detail the design, function and construction of the project. These documents will be used as the basis for estimating the cost of the project, securing bids for constructing the project, and directing a contractor in construction of the project.

- 1.12 **Construction Documents Phase:** The portion of the work during which the Construction Documents are created.
- 1.13 **Contract Documents:** The Request for Proposals, Technical and Cost Proposals, the Trustees-Contractor Agreement, Construction Documents, Bid Proposal Form, Notice to Contractors, bonds, and insurance certificates relative to the project.
- 1.14 **Contractor:** Same as Design-Builder.
- 1.15 **ENR CCCI:** The California Construction Cost Index (CCCI) average of Los Angeles and San Francisco values, as published in the Engineering News Record by the McGraw-Hill Publishing Company of New York, New York or successor.
- 1.16 **Estimated Project Construction Cost [Schematic Design Phase, Preliminary Design Phase, Construction Document Phase as appropriate]:** The estimate of the projected cost of the construction work represented by the drawings and specifications.
- 1.17 **Extra Service (Authorization):** (A written authorization for) additional work beyond that required to be provided by Section 2.0, Design-Builder's Basic Services.
- 1.18 **Initial Project Construction Budget:** The Trustees' initial estimate of the cost to construct the project. This includes: Contractor site management fees, Contractor-held contingency, and Contractor overhead and profit.
- 1.19 **Major Categories of (the) Work:** Key components, systems and sub-assemblies of a project. These categories include, but are not limited to: demolition, site preparation, foundations, exterior enclosure, interiors construction, mechanical, electrical, plumbing systems, built-in casework and equipment, site improvements and landscape. Specific categories and sub-categories are defined within the UniFormat construction component classification system.
- 1.20 **Normal Consulting and Engineering Services:** Professional services provided by architect, civil engineer, landscape architect, structural, electrical, and mechanical engineers, design-assist or design-build trade contractors, and cost estimators which are necessary and appropriate to define the project's design and direct the project's construction.
- 1.21 **Preliminary Design (Design Development) Documents:** Design drawings, outline specifications and cost estimates developed from the Schematic Design Documents prepared to more comprehensively define the size, character and quality of the project and to further confirm compliance of the design with the project scope and budget.
- 1.22 **Preliminary Design (Design Development) Phase:** The portion of the work during which the Preliminary Design Documents are created.
- 1.23 **Principal(s):** Individual(s) of the Design-Builder authorized on behalf of the firm to act as signatories to agreements for this project.
- 1.24 **Project Administrator, Design Administrator, Construction Administrator:** A representative of the Trustees designated to act on behalf of the Trustees with respect to the project.
- 1.25 **Project Construction Budget:** The project construction cost allowance specifically stated in writing as the 'revised' or 'current' 'Project Construction Budget' by the Trustees at each applicable phase of plan development.
- 1.26 **Project Construction Cost:** The actual amount paid by the Trustees for constructing the project.
- 1.27 **Project Inspector of Record (IOR):** Representative(s) of the Trustees tasked to impartially inspect and report on the compliance of construction of the project relative to its approved Construction Documents.

- 1.28 **Project Manager (PM):** Representative(s) of the Trustees, reporting to the Project Administrator, tasked to act in an on-site capacity to provide project management of the project during construction.
- 1.29 **Project Program:** Capital Outlay Budget Change Proposal (COBCP), project narrative, room specification requirements, and Initial Project Construction Budget.
- 1.30 **Record Documents:** An archive reference edition of the Construction Documents prepared by the Design-Builder incorporating changes from the original Construction Documents indicated in the As Built Drawings.
- 1.31 **Schematic Design Documents:** Drawings, outline specifications, and room summary schedule developed to sufficient detail to convey an initial indication of the design of the project, functional relationships of interior areas, the relationship of the project to the site, other buildings and the campus, the materials to be used in construction, the types of mechanical, electrical and structural systems to be utilized.
- 1.32 **Schematic Design Phase:** The portion of the work during which the Schematic Design Documents are created.
- 1.33 **Specialty Design Consultants:** Consultants other than those listed in Section 1.20, Normal Consulting and Engineering Services; such as Laboratory Designer, Acoustical Engineer, Theater Designer, Food Service Designer, Specialty Lighting Design, LEED Compliance Documentation, etc. which, in the estimation of the Trustees, are desirable as appropriate to support the Normal Consulting Design Services of the Design-Builder to develop the project's design and direct the project's construction.
- 1.34 **Trustees:** The Board of Trustees of the California State University.
- 1.35 **UniFormat:** A construction classification system published by the Construction Specifications Institute (CSI) of Alexandria, VA, or successor, for organizing construction information into a standardized order and sequence to facilitate project budget analysis. UniFormat divides construction work into various categories and subcategories referred to as levels. The higher the level, the more detailed the division of the work becomes.

2.0 DESIGN-BUILDERS'S BASIC SERVICES

The Design-Builder shall provide design administrative services necessary to complete in a timely and professional manner the specified public works project. These services are more fully described in this Section, and in Exhibit A. The basic services of the Design-Builder include programming, providing normal consulting and engineering services, estimating Project Construction Costs, responding to Trustees' directions with respect to the project, assisting the Trustees in obtaining required approvals for the construction of the project and preparing project Record Documents.

2.1 GOVERNING LAW

The terms of this Agreement and all work performed hereunder shall be governed by California law. Without preference this includes California Public Contract Code, including the prohibition against proprietary specifications (section 3400), California State University Contract Law (section 10700 *et seq.*), and the California Education Code relating to the Trustees (sections 66000 *et seq.* and 89000 *et seq.*).

2.2 BIM and CAD METHODOLOGY

For projects with a construction cost of three million dollars (\$3,000,000) or greater the architectural, structural, and MEP document sets shall be developed as an integrated 3D BIM model. Use of BIM for other design team members (i.e., civil, engineers) is encouraged, but not required. Projects under the specified cost threshold may be developed by the architect via either BIM or CAD. When BIM is used, the Architectural set shall be BIM-based by 75% Schematic phase. Structural and MEP engineering shall be BIM-based by 50% Preliminary phase.

2.3 *DOCUMENT COORDINATION*

At the onset of the project the Design-Builder shall review document organization and coordination with the Project Administrator. Based on this review the Design-Builder shall issue a letter to the Project Administrator describing measures to be employed by the design team to ensure interdisciplinary document coordination on the project. Where BIM is employed, the letter shall address the elements (level of detail) to be modeled, a summary of elements that will not be relational to the BIM database, file and document format, and the intended methodology for coordination of BIM and non-BIM elements.

2.4 *STANDARD FORMS*

Standard forms and documents will be provided by the Trustees and shall be used in performing services required by this Agreement. Such forms may include, but are not limited to: [Facilities Planning forms](#): 1-3, 2-4, 2-6, 2-6.5, 2-7, 2-7.5, 2-8, 2-8.5, 2-9, 3-1; [Construction Management forms](#) for construction phase and change orders; [A/E forms](#): Extra Service Authorization with countersignature block, and CSU professional services invoice templates.

2.5 *CONSULTANTS*

Prior to the start of work Design-Builder shall submit for approval by the Trustees the names of the consultant firms and key individuals proposed for the project design team. The Trustees shall have the discretion to accept or reject for cause any consultant or individual proposed. If a consultant is rejected, the Design-Builder shall propose an alternate consultant acceptable to the Trustees. Nothing in this Agreement shall create any contractual relation between the Trustees and any consultant retained by the Design-Builder.

2.6 *DESIGN-BUILD*

The Design-Builder at each phase of the design shall identify and review with the Trustees where it may be appropriate or necessary to incorporate design-build elements into the project. Where written concurrence by the Trustees is given, the Design-Builder may incorporate individual design-build components into the project design. Where design-build elements are specified the Design-Builder shall establish written and graphic performance criteria to incorporate each into the project. Design-build elements with a structural component require approval by CSU Seismic Peer Review at each design phase. The coordination of other design-build elements shall be completed prior to submittal of the project for plan reviews.

The Design-Builder shall be responsible to coordinate design-build elements into the overall project design. As a part of this coordination the Design-Builder shall secure design-build elements review and concurrence by CSU Seismic and Mechanical Peer Review at each design phase.

2.7 *PROGRAMMING PHASE*

2.7.1 As part of the Design phase, Design-Builder shall provide programming services to refine, finalize, and complete the architectural program provided with the RFP. The scope of work shall include, but is not limited to, the following:

- a. Program refinement meeting(s) (minimum 1 meeting) on campus with campus representatives and user group.
- b. Develop final program documents including: spreadsheet, room data and adjacency diagrams.
- c. Submit (5) copies to University allowing time to review before meeting.
- d. Meet (minimum 1 meeting) on campus to finalize program requirements.
- e. Submit (5) hard copies, (1) PDF and (1) editable file.
- f. Respond to written edits by the University.
- g. Issue final program.
- h. Obtain University approval of the final program.

2.7.2 Final program shall include but not limited to the following information:

- a. Minimum dimension including ceiling height
- b. Adjacency
- c. Access requirement
- d. Room occupancy hours

- e. Occupancy numbers
- f. Finishes: Ceiling, walls, floor, doors and windows
- g. HVAC requirement
- h. Plumbing requirement
- i. Lighting
- j. Additional electrical; e.g.: dedicated circuitry
- k. Audio and intercom system
- l. Telecom: data ports for telephone and computers
- m. Security: camera and access control
- n. Sound attenuation; privacy
- o. Fixed casework
- p. Movable and modular furniture
- q. Provisions for deliveries and servicing
- r. Room data sheets.

2.8 *THE DESIGN-BUILDER'S DESIGN-TO BUDGET*

- 2.8.1 Not Used.
- 2.8.2 Not Used.
- 2.8.3 Not Used.
- 2.8.4 Not Used.
- 2.8.5 Not Used.

2.8.6 The Design-Builder shall reconcile its estimate at each milestone cost estimate point with its Design-to Budget. During the design effort the Design-Builder shall incorporate prudent estimating contingencies within each of the Major Categories of the Work. These estimating contingencies shall reduce to zero by the end of the Construction Document Phase.

2.9 *SCHEMATIC DESIGN PHASE*

2.9.1 Upon the receipt of a fully executed Agreement from the Trustees, the Design-Builder shall prepare Schematic Design Documents in accordance with the Project requirement furnished by the Trustees and the Program developed during Programming Phase.

2.9.2 The Schematic Design Documents shall convey an initial indication of the design of the project, functional relationships of interior areas, the relationship of the project to the site, other buildings and the campus, the materials to be used in construction, the types of mechanical, electrical and structural systems to be utilized. The Schematic Design Documents shall be prepared in accordance with Exhibit D.

2.9.3 **(Schematic) Physical deliverables.** Physical prints and electronic copies of documents shall be provided as listed in Exhibit D. Deliverable quantities may be modified in Exhibit A. Absent specific exclusion no less than the following minimums shall be provided:

- Three (3) full size print copies of completed phase work
- One (1) electronic copy of above on CD
- Provide copy of the integrated 3D BIM model, DWG and PDF of sheet documents*

2.9.4 **(Schematic) Project meetings and site visits.** Project meetings/site visits shall be provided as basic services. The Design-Builder shall propose the number of visits and meetings as required to meet the scope and complete the phase. Meeting and visit requirements may be modified in Exhibit A. Absent specific exclusion no less than the following minimums shall be provided:

- One (1) Phase start meeting
- Minimum of three (3) Project review meetings One (1) Phase completion meeting

2.9.5 The Design-Builder shall complete work and services required under the Schematic Design Phase of this Agreement, and submit such work to the Trustees for their approval in accordance with Exhibit C. The Design-Builder shall keep the Trustees informed as to the progress of the work and document to the Trustees in writing if the Project Design Schedule needs to be revised.

- 2.10 **PRELIMINARY DESIGN PHASE**
- 2.10.1 The Design-Builder shall solicit and obtain written authorization from the Trustees to proceed with the Preliminary Design Phase work. Upon receipt of written authorization, the Design-Builder, using the approved Schematic Design Documents, shall prepare the Preliminary Design Documents. The development of the Preliminary Design Documents shall be responsive to the comments received from the Trustees during the Schematic phase.
- 2.10.2 The Preliminary Design Documents shall continue from the Schematic Design Documents to develop the design of the project in greater detail confirming or adjusting as required all aspects of the Schematic Design Documents to fix and illustrate the size, character, and quality of the project. The Preliminary Design Documents shall be prepared in accordance with Exhibit D.
- 2.10.3 **(Preliminary) Physical deliverables.** Physical prints and electronic copies of documents shall be provided as listed in Exhibit D. Deliverable quantities may be modified in Exhibit A. Absent specific exclusion no less than the following minimums shall be provided:
- Three (3) print copies of completed phase work
 - One (1) electronic copy of above on CD
 - Provide copy of the integrated 3D BIM model, DWG and PDF of sheet documents*
- 2.10.4 **(Preliminary) Project meetings and site visits.** Project meetings/site visits shall be provided as basic services. The Design-Builder shall propose the number of visits and meetings as required to meet the scope and complete the phase. Meeting and visit requirements may be modified in Exhibit C. Absent specific exclusion no less than the following minimums shall be provided:
- One (1) Phase start meeting
 - Minimum of Three (3) Project progress review meetings
 - One (1) Phase completion meeting
- 2.10.5 The Design-Builder shall complete work and services required under the Preliminary Design Phase of this Agreement, and submit such work to the Trustees for their approval in accordance with Exhibit C. The Design-Builder shall keep the Trustees informed as to the progress of the work and advise the Trustees in writing if the Project Design Schedule needs to be revised.
- 3.0 **EXTRA SERVICES**
- During the course of the project the Trustees may elect to seek additional work beyond that required to be provided by Section 2.0, Design-Builder's Basic Services. Such work shall be considered Extra Services.
- Extra services require pre-authorization in writing by the Trustees and countersignature acceptance by the Design-Builder. When extra services are authorized and accepted, they shall be provided by the Design-Builder and shall be paid for by the Trustees as provided in Section 4.2, Compensation, Extra Services.
- The following services are not covered by Section 2, Design-Builder's Basic Services, of this Agreement and are considered extra services:
- a. Providing feasibility studies necessary to define scope for a Schematic Design.
 - b. Providing civil surveys, site evaluations, or comparative studies of prospective sites.
 - c. Making measured drawings of existing construction, as required for planning renovation work, if adequate Record Drawings are not available. As a part of basic services, the Design-Builder shall confirm the accuracy of available information and shall make themselves familiar with observable site and existing building conditions.
 - d. Revising previously approved work. There shall be no extra services for changes by the Design-Builder, required by code, or as a result of Design-Builder's errors or omissions.

- e. Providing additional design assessments and remedial documentation for the replacement of work during construction damaged by fire or other causes not the fault of the Design-Builder.
- f. Providing additional professional services made necessary through no fault of the Design-Builder, but by the fault of the contractor or Trustees in the performance of the construction contract, including failure to complete the project on time. No extra services will be authorized in connection with change order preparation arising out of Design-Builder's misinterpretations, errors or omissions.
- g. Providing additional professional services made necessary to affect a material change of Project Program requested by the Trustees.
- h. Providing consulting and engineering services additional to Normal Consulting and Engineering Services (See Section 1.20, Definitions).
- i. Providing special delineations or renderings, other than that required in Section 2.0.

4.0 COMPENSATION

The Trustees shall compensate the Design-Builder, in accordance with the terms and conditions of this Agreement as follows: Design-Builder

4.1 *COMPENSATION, BASIC SERVICES*

Compensation for the Design-Builder's basic services shall be as indicated in the Design-Builder's Schedule of Values (Exhibit B). The Trustees may adjust the interim payment frequency for good cause.

- 4.1.1 The Design-Builder fee basis shall be derived using the full Budgeted Direct Construction Cost value.

4.2 *COMPENSATION, EXTRA SERVICES*

- 4.2.1 Fee proposals by the Design-Builder shall be reflective of actual effort necessary to design and document the condition identified in the extra service.

- 4.2.2 For Design-Builder's extra services, as described in Section 3.0, the compensation to be paid will be identified as a part of the extra service. The basis of payment, either lump sum or hourly on a not to exceed basis, will also be identified.

4.4 *COMPENSATION, TIMES OF PAYMENT*

Payments under this Agreement shall be made in arrears of work increment completed to the satisfaction of the Trustees and upon submittal of an invoice in CSU invoice format. If not otherwise specified, payment for services rendered will be processed monthly upon presentation of invoice.

- 4.5 Not Used.

4.6 *COMPENSATION, FINAL INVOICE AND FINAL PAYMENT*

At the conclusion of work on the project the Design-Builder shall submit a final invoice for any remaining amounts due. This invoice shall be prominently identified as 'FINAL INVOICE'. The Design-Builder shall respond to a request by the Trustees for a final invoice within seven (7) days.

5.0 TRUSTEES' RESPONSIBILITIES

5.1 *TRUSTEES, RESOURCES TO BE SUPPLIED*

The following resources, surveys and reports will be made available to the Design-Builder as required, at Trustees' expense:

a. **Project Program:**

A description of the project and key requirements. Detailed programming is part of the Design-Builder's scope.

b. **Project Administrator:**

A representative of the Trustees designated to act on behalf of the Trustees with respect to the project.

c. **Site Survey:**

A land survey of the site indicating lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries, grades and contours of the site; locations, dimensions and data pertaining to known utilities, existing structures, landscaping and trees, and other improvements.

d. **Soil and Foundation Data:**

A geotechnical report, test borings, test pit information, soil bearing values, and other geotechnical assessments appropriate to define sub-surface conditions.

5.2 Not Used.

5.3 ***TRUSTEES, FAILURE TO ACT***

Nothing in this Agreement or act or failure to act on the part of the Trustees shall be construed as a waiver of claim by the Trustees for defects or deficiencies in the documents prepared by or services required of the Design-Builder.

6.0 OWNERSHIP AND USE OF DOCUMENTS

6.1 ***OWNERSHIP OF DOCUMENTS***

The Design-Builder agrees that designs, drawings, specifications, electronic equivalents and other technical data produced in the performance of this Agreement shall become the property of the Trustees. The Trustees grant the Design-Builder the right to reuse *aspects* (i.e. details and design elements) of the design developed for this project in other designs for other future projects including those with other clients.

The Design-Builder agrees that the Trustees shall have access at reasonable times to inspect and obtain copies of notes, designs, drawings, specifications, electronic files, calculations and other technical data pertaining to the work performed under this Agreement.

6.2 ***USE OF DOCUMENTS***

The Trustees reserve the right to use documents prepared under this Agreement regardless of whether the Agreement is terminated or the project is suspended or abandoned. This right allows the Trustees to use these documents in the future for the same project, a modified version of it, or for one that is similar.

6.3 ***REUSE OF DOCUMENTS***

Trustee reuse of documents in whole or in part on another project relieves the Design-Builder of liability resulting from such use.

7.0 TERMINATION

7.1 ***AGREEMENT CANCELLATION***

The Trustees may terminate this Agreement or suspend or abandon the project upon written notice to the Design-Builder. The Design-Builder may terminate this Agreement only if the Trustees substantially fail to perform in accordance with Section 5.0 (Trustees' Responsibilities) of this Agreement. Notice of termination must be given in writing to the Trustees allowing the Trustees 14 days to correct the default. If the default is corrected the Design-Builder may not terminate.

7.2

TERMINATION PAYMENT

In the event the Trustees terminate this Agreement, suspend the project for more than 180 days, abandon the project, or the Design-Builder terminates this Agreement, in accordance with Section 7.1 (Agreement Cancellation), the Trustees shall pay to the Design-Builder as full payment for services performed and expenses incurred under this Agreement as follows: the sum due under Section 4.0 (Compensation) as shall have become payable under Section 4.4 (Compensation, Times of Payment) because of progress in the work plus a pro-rata portion of the next succeeding and uncompleted step, if any, for services actually rendered by the Design-Builder, plus any pro-rata sums due the Design-Builder for extra services. In ascertaining the services actually rendered up to the date of termination of this Agreement, suspension or abandonment of the project, consideration will be given to completed work and work in process including incomplete drawings and other documents whether delivered to the Trustees or in the possession of the Design-Builder.

8.0

INSURANCE and RISK MANAGEMENT

8.1

INDEPENDENT FROM STATE

The parties agree that the Design-Builder its agents, officers and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State of California.

8.2

INDEMNIFICATION

The Design-Builder agrees to hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, and the officers, agents, and employees of each of them from any and all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, resulting from or in any manner arising out of or in connection with any negligent act or omission or willful misconduct on the part of the Design-Builder, its officers, agents, and employees, in the performance of this Agreement. This provision shall survive the expiration or termination of this Agreement.

8.3

DESIGN-BUILDER'S INSURANCE

The Design-Builder shall not commence work until the Trustees have received evidence of the insurance required in this section and approved it.

Policies, Coverage and Amounts:

Design-Builder shall obtain the following policies and coverage. The insurance furnished by the Design-Builder under this section shall provide coverage in amounts not less than the following, unless a different amount is stated in Exhibit A:

a. **Comprehensive or Commercial Form General Liability Insurance:**

This insurance shall on an occurrence basis, cover work done or to be done by or on behalf of the Design-Builder and shall provide insurance coverage for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work.

Limits of Liability:

\$2,000,000 General Aggregate

\$1,000,000 Each Claim - combined single limit for bodily injury and property damage.

b. **Business Automobile Liability Insurance:**

This insurance shall on an occurrence basis, cover owned, scheduled, hired, and non-owned automobiles used by or on behalf of the Design-Builder and shall provide insurance coverage for bodily injury, property damage, and contractual liability.

Limits of Liability:

\$1,000,000 Each Accident - combined single limit for bodily injury and property damage.

c. **Workers' Compensation Insurance:**

This insurance shall include Employers Liability limits of \$1,000,000 and other limits required under California law.

d. **Professional Liability Insurance:**

Professional liability (errors and omissions) insurance on an occurrence basis, covering work done or to be done by or on behalf of the Design-Builder and providing insurance for professional liability in the amount of \$1,000,000 each occurrence. At a minimum the Design-Builder shall obtain and maintain professional liability insurance on a claims-made basis for no less than \$1,000,000 each claim and \$2,000,000 annual aggregate, and certification of coverage shall be submitted to the Trustees upon signing of this Agreement. If the total contract amount exceeds \$1,000,000 the Design-Builder shall renew and keep such insurance in effect for at least ten (10) years after the recordation of the notice of completion.

8.4 **ACCEPTABILITY OF INSURERS**

Insurers shall be authorized in the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A: VII or carrier acceptable to the Trustees.

8.5 **VERIFICATION OF COVERAGE**

8.5.1 The Design-Builder shall submit to the Trustees certificates of insurance and endorsements to the policies of insurance required by the Agreement as evidence of the insurance coverage.

8.5.2 The scope of coverage and deductible shall be shown on the certificate of insurance.

8.5.3 The certificates of insurance and endorsements shall provide for no cancellation of coverage without thirty (30) days written notice to the Trustees, ten (10) days' notice for non-payment of premium.

8.5.4 Renewal certifications shall be timely filed by the Design-Builder for coverage until the work is accepted as complete.

8.5.5 The Design-Builder shall notify the Trustees in writing of any material change in insurance coverage.

8.6 **INSURANCE PROVISIONS**

Insurance policies shall contain, or be endorsed to contain, the following provisions:

- a. For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be covered as additional insureds.
- b. For claims related to the work, the Design-Builder's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Design-Builder's insurance and shall not contribute with it.
- c. Each insurance policy required by this section shall state that coverage shall not be canceled, except after thirty (30) days prior written notice by mail, return receipt requested, has been given to the Trustees, ten (10) days' notice for non-payment of premium.
- d. The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

8.7 **ADDITONAL INSURANCE CONDITIONS**

- a. Any deductible under any policy of insurance required in this section shall be the Design-Builder's liability.
- b. Acceptance of certificates of insurance by the Trustees shall not limit the Design-Builder's liability under the Agreement.
- c. In the event the Design-Builder does not comply with these insurance requirements, the Trustees may, at their option, provide insurance coverage to protect the Trustees. The Design-Builder shall pay the cost of the insurance and, if the insurance carrier does not receive prompt payment from the Design-Builder, the Trustees may pay for the insurance from Agreement sums otherwise due the Design-Builder.
- d. If the Trustees are damaged by the failure of Design-Builder to provide or maintain the required insurance, the Design-Builder shall pay the Trustees for such damages.
- e. The Design-Builder's obligations to obtain and maintain required insurance are non-delegable duties under this Agreement.

9.0 ADDITIONAL PROVISIONS

9.1 WARRANTY

The Design-Builder warrants that it has not paid or agreed to pay any person compensation, contingent or otherwise, to solicit or procure this Agreement.

The Design-Builder warrants that no officer or employee of the State of California shall receive compensation from the Design-Builder or consultants for work performed in the execution of this Agreement, or for any architectural or engineering services, public or private, performed for the Design-Builder or of its consultants.

Breach of any provision of this warranty shall give the Trustees the right to terminate this Agreement without any compensation or payment to the Design-Builder or, in its discretion, to deduct from the payment due the Design-Builder under this Agreement, the amount of sums the Design-Builder has paid or has agreed to pay in violation of this Article.

9.2 SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement shall be binding upon the Trustees and its successors and upon the Design-Builder and its successors, executors, and administrators. Neither this Agreement, nor any part, nor any monies to become due may be assigned nor responsibilities delegated by the Design-Builder without the written consent of the Trustees.

- 9.3 **NOTICES**
Notice for either party may be served by delivering it in writing via United States Mail with first class postage thereon fully prepaid to the respective party and address as shown on the Agreement page.

Nothing herein shall preclude the giving of written notice by personal service.
- 9.4 **COMPLIANCE WITH NLRB**
By signing this Agreement, Design-Builder swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Design-Builder within the immediately preceding two-year period because of the Design-Builder's failure to comply with an order of a federal court which orders the Design-Builder to comply with an order of the National Labor Relations Board. The Trustees may rescind this Agreement if the Design-Builder falsely swears to this statement [Public Contract Code, section 10296].
- 9.5 **COMPLIANCE WITH PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996**
If the Design-Builder is a natural person, the Design-Builder certifies by signing this Agreement that s/he is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).
- 9.6 **NONDISCRIMINATION**
9.6.1 During the performance of this Agreement the Design-Builder and its consultants shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. Design-Builder shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 9.6.2 Design-Builder shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 *et seq.*), the regulations promulgated thereunder (California Code of Regulations, Title 2, sections 7285.0 *et seq.*), and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code sections 11135-11139.5).
- 9.6.3 Design-Builder shall permit access by representatives of the California Department of Fair Employment and Housing and the Trustees upon reasonable notice at times during normal business hours with at least 24 hours' notice, to its books, records, accounts, other sources of information, and its facilities as the Department or Trustees shall require to ascertain compliance with this Agreement.
- 9.6.4 Design-Builder and its consultants/subcontractors shall give written notice of their obligations under this Agreement to labor organizations with which they have a collective bargaining or other agreement.
- 9.6.5 Design-Builder shall include the nondiscrimination and compliance provisions of this Agreement in subcontracts to perform work under the Agreement (Government Code sections 12990, 11135, *et seq.*, Title 2, California Code of Regulations, section 11105).
- 9.7 **DRUG FREE WORKPLACE CERTIFICATION**
Design-Builder hereby certifies compliance with Government Code sections 8355, 8356 and 8357 in matters relating to providing a drug-free workplace. Design-Builder shall:
a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).

- b. Establish a Drug-Free Awareness Program, as required by Government Code section 8355(b), to inform employees about the following:
 - i. Available counseling, rehabilitation, and employee assistance programs, and
 - ii. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide, as required by Government Code section 8355(c), that every employee who works on the Agreement:
 - i. Will receive a copy of the firm's drug-free policy statement, and
 - ii. Will agree to abide by the terms of the statement as a condition of employment on the Agreement.

9.8 ***EXAMINATION, AUDIT and REPORTING***

9.8.1 Records of the Design-Builder's direct personnel, consultants, extra and reimbursable expenses pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Trustees or authorized representative at mutually convenient times.

9.8.2 If the Agreement exceeds \$10,000 the contracting parties shall be subject to the examination and audit of the State Auditor of the State of California and the California State University Auditor for a period of three years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement (Government Code section 8546.7).

9.8.3 Design-Builder performance is evaluated on a per-project basis. Evaluations are shared systemwide and are considered in the award of future commissions and in the renewal of CSU systemwide project architect prequalification.

10.0 ENTIRE AGREEMENT AND AMENDMENTS

This Agreement is the entire agreement between the parties. Oral representations, understandings or writings not expressly incorporated in the Agreement are void.

10.1.1 **Changes prior to execution of the Agreement:** Unless identified within Exhibit A under a separate sub-heading entitled 'Modifications to Agreement' it is the intent of the Trustees to use the standard published form of this Agreement and Rider A without modification. The Agreement and Rider A shall not be modified without review and concurrence by CSU Office of General Counsel.

10.1.2 **Changes after execution of the Agreement:** This Agreement may be amended by mutual consent of the parties hereto in writing.

End of Rider A, Agreement General Provisions

Agreement No. **XXXXXX**
Name of Service Provider
EXHIBIT A
Page 1 of X

Exhibit A - Scope of Work
Trinity Children's Center and Child Development Lab, Project #XPL252
Humboldt State University

1. **Contract Scope of Work**
The complete and specific scopes of work to be performed by the Design-Builder are defined in separate agreements for Phase 1 and Phase 2 of the Project. This RFP summarizes and supplements services specified in the Contract Documents. Documents are cumulative, and Design-Builder is required to provide services specified in the RFP, their proposal, and executed agreements.
2. **No Guarantee for Design-Build Contract Award**
There is no guarantee that the Trustees will award the Phase 1 agreement or the Phase 2 agreement. The Design-Builder will not be entitled to recover any unreimbursed costs, anticipated profit, or monetary awards for proposal preparation.
3. **Collaboration**
The Design-Builder shall work in collaboration and cooperation with the Trustees towards realizing a high quality Project.
4. **Integrated Project Delivery / LEAN Methods**
The Design-Builder shall exercise the appropriate standards of the industry for Integrated Project Delivery to guide its relationships to the other members of the team, and for LEAN methods in the preconstruction and construction process.

Exhibit B – Fee Schedule

*{Campus to list all design and construction phase fees provided on the fee proposal form hereon.
Sample provided below.}*

Direct Construction Cost Budget per RFP 3.02: \$xx,xxx,xxx

Fees as Proposed		Fee Percentage (Fee as % of the DCCB)	Fee in \$ (Fee % * DCCB)
1	Total Design Fees for Design Phase and Design-Build Phase (percentage includes Overhead & Profit)	%	\$
	Phase 1 Design Fees (included in above line 1 total; 60% of design fees)		
	Phase 2 Design-Build Fees (included in above line 1 total; 40% of design fees)		
2	Preconstruction Fees (percentage includes Overhead & Profit)	%	\$
3	Site Management Fee for Construction of the Project	%	\$
4	Design-Builder's Payment & Performance Bonds	%	\$
5	Subcontractor Payment & Performance Bonds or equivalent. Contractor allowance.	%	\$
6	Construction Phase Overhead & Profit	%	\$
Total Fees (Total lines 1-6)		%	\$

-End of Exhibit B-

Agreement No. **XXXXXX**
Name of Service Provider
EXHIBIT C
Page 1 of X

Exhibit C – Project Design Schedule
Trinity Children’s Center and Child Development Lab, Project #XPL252
Humboldt State University

SELECTION PROCESS SCHEDULE AND PROPOSED PROJECT SCHEDULE	
Scheduled Activities	Dates
Proposer shortlist published	<i>April 29, 2020</i>
Draft RFP distributed to shortlist	<i>May 7, 2020</i>
Pre-Proposal Meetings	<i>May 18-22, 2020</i>
Distribute final RFP	<i>May 29, 2020</i>
Last day to submit RFP questions	<i>June 2, 2020</i>
RFP Addenda issued (if required)	<i>June 4, 2020</i>
Proposals due date and time	<i>3:00pm, June 12, 2020</i>
Proposing firms interviewed (Week of)	<i>June 15–June 19, 2020</i>
Cost Proposal Opening	<i>June 22, 2020</i>
Successful Proposer announced	<i>June 26, 2020</i>
Design-Builder Agreement for Design Phase I executed	<i>July 24, 2020</i>
75% Schematic Design for CPDC Meeting	<i>August 21, 2020</i>
CPDC meeting review of Schematic Design	<i>August 28, 2020</i>
CPDC comments on Schematic Design	<i>September 11, 2020</i>
Design-Builder provides submits 100% Schematic Design and GMP for submission to BOT	<i>October 2, 2020</i>
University submits Schematic Design to BOT	<i>October 16, 2020</i>
BOT Meeting – Project Approval – Schematic and Finance	<i>November 6, 2020</i>
GMP Due per RFP 6.27 and RFP 6.28	<i>December 11, 2020</i>
Collaborative Design-Build Agreement executed Phase II	<i>February 19, 2021</i>
Notice to Proceed effective	<i>February 22, 2021</i>
Submit for Construction Permit / Plan Checks	<i>June 11, 2021</i>
Construction Permit issued	<i>July 16, 2021</i>
Occupancy / Move in Furniture	<i>May 20, 2022</i>
Notice of Completion	<i>July 1, 2022</i>