

FOR PUBLICATION WITH REQUEST FOR PROPOSAL

CONTRACT #: _____
PROJECT #: _____
PROJECT NAME: _____

DESIGN-BUILD CONTRACT
BETWEEN DISTRICT AND DESIGN-BUILDER

THIS DESIGN-BUILD CONTRACT BETWEEN DISTRICT AND DESIGN-BUILDER ("Design-Build Contract") is entered into on this ____ day of _____, 2015__ by and between the Palomar Community College District ("District") and _____, at _____ ("Design-Builder") for a new Maintenance and Operations Complex.

ARTICLE 1
DEFINITIONS

Capitalized terms used in the Contract Documents shall have the meanings assigned to them in the General Conditions. If not defined in the General Conditions they shall have the meanings assigned to them elsewhere in the Contract Documents. If not defined in the General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context of the portion of the Contract Documents where such terms are used.

ARTICLE 2
THE WORK

2.1 SCOPE OF WORK

Design-Builder shall execute the entire Work called for by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of District or other Project Team members retained by District.

2.2 STANDARD OF PERFORMANCE

In addition to and without limiting Design-Builder's other obligations under the Contract Documents, Design-Builder shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

2.2.1 comply with the requirements of the Contract Documents;

2.2.2 comply with Applicable Laws;

2.2.3 conform to the standard of care applicable to those who provide design-build project services and construction of the type called for by this Design-Build Contract for projects of a scope and complexity that is comparable to the Project;

2.2.4 furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and

2.2.5 apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the District and within the limitations of the Contract Sum and Contract Time.

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ARTICLE 3 CONTRACT TIME

3.1 DATES OF COMMENCEMENT

The Contract Time for completion of the design portion of the Work shall be measured from the Date of Notice to Proceed with Design. The Contract Time for Substantial completion of the construction portion of the work shall be measured from the Date of Notice to Proceed for Construction.

3.2 NOTICES TO PROCEED

The design portion of the Work shall not commence prior to the date fixed in the Notice to Proceed with Design. No physical construction at the Site shall proceed prior to the date fixed in the Notice to Proceed with Construction.

3.3 CONTRACT TIME

3.3.1 Design. Within ten (10) days after notification of award, the Design-Builder shall prepare and submit a Design-Build Schedule for the design portions of the Work, both in hard copy and electronically, for the District's information and Campus Project Manager's approval. The Contract Time for completion of the design shall not exceed three hundred sixty-five (365) days from Notice to Proceed with Design. Upon District approval of the design phase schedule and Notice to Proceed with Design, the Design-Builder shall proceed with the design of the project according to the approved schedule. The design schedule shall include a program verification phase, schematic design phase, design development phase, construction document phases, FF&E design, purchasing and installation phases, and a minimum of 6 months for DSA review and back check. The Design-Build Schedule shall in all respects conform to and be consistent with the time requirements for the Project set forth in the RFP Documents.

3.3.2 Construction. Within thirty (30) days after DSA submittal, the Design-Builder shall prepare and submit a Design-Build Schedule for the construction portions of the Work, both in hard copy and electronically, for the District's information and Campus Project Manager's approval. The proposed time for Substantial Completion of construction set forth in a Design-Build Proposal shall not exceed 14 months from the date of Notice to Proceed with Construction. Upon District approval of the construction schedule, DSA approval and Notice to Proceed with Construction, the Design-Builder shall proceed with the construction of the project according to the approved schedule. The construction schedule shall include a construction phase, commissioning phase, close out phase and FF&E installation phase. Design-Builder shall achieve Final Completion of the entire Work not later than thirty (30) Days after the occurrence of Substantial Completion. The Design-Build Schedule shall in all respects conform to and be consistent with the time requirements for the Project set forth in the RFP Documents.

3.4 LIQUIDATED DAMAGES TO DISTRICT

3.4.1 District Right. The District and the Design-Builder acknowledge and agree that if the Design-Builder fails to Substantially Complete the Work within the Contract Time, the District will suffer substantial Losses which are both extremely difficult and impracticable to ascertain and on that basis agree, as a reasonable estimate of those Losses and not a penalty, to the payment by Design-Builder of liquidated damages pursuant to this Section 3.4.

3.4.2 Daily Rate. If the Design-Builder fails to achieve Substantial Completion of the entire Work within the Contract Time for Substantial Completion, the Design-Builder shall pay the District as liquidated damages the amount of Three Thousand Five Dollars (\$2,500) per Day for each Day occurring after the expiration of the Contract Time for Substantial Completion until the Design-Builder achieves Substantial Completion of the entire Work.

3.4.3 Extensions of Time. Liquidated damages shall not be charged to Contractor for Delays to Substantial Completion for which the Contractor is entitled under the Contract Documents to receive an adjustment of the Contract Time for Substantial Completion.

3.4.4 Partial Completion. Liquidated damages shall not be reduced or apportioned for Substantial Completion of portions of the Work prior to Substantial Completion of the entirety of the Work.

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3.4.5 Remedies. District may deduct such liquidated damages as are payable hereunder from money due or to become due to the Design-Builder, or pursue any other legal remedy to collect such liquidated damages from the Design-Builder and/or its Surety.

3.4.6 Not a Limitation. District's rights under this Section 3.4 shall not be interpreted as precluding or limiting: (1) any right or remedy of District in the event of an Event of Design-Builder Default other than a failure to Substantially Complete the Work within the Contract Time; or (2) District's right to order an acceleration, at Design-Builder's Own Expense, of performance of the Work to overcome Delay, including, without limitation, a Delay for which District has the right to assess liquidated damages.

3.5 LIQUIDATED DAMAGES TO DESIGN-BUILDER

3.5.1 Design-Builder's Right. District and Design-Builder acknowledge and agree that if Design-Builder is unable due to Compensable Delay to Substantially Complete the Work within the Contract Time, the Design-Builder and its affected Subcontractors and Sub-consultants will suffer Losses which are both extremely difficult and impracticable to ascertain and on that basis agree, as a reasonable estimate of those Losses and not a penalty, to the payment by District of liquidated damages pursuant to this Section 3.5.

3.5.2 Daily Rate. The Contract Sum shall be increased by a rate provided by the Design-Build team on the Proposal form. The District reserves the right to negotiate this rate with the Design-Builder prior to contract signing. This rate shall serve as liquidated damages for each Day for which Design-Builder is entitled under the Contract Documents to an adjustment extending the Contract Time for Substantial Completion due to Compensable Delay, with no additional amount added thereto for Allowable Markup thereon.

3.5.3 Payment by District. A Change Order or Unilateral Change Order for an adjustment to the Contract Sum for the liquidated damages permitted by this Section 3.5 shall be executed following, and not before, actual Substantial Completion and prior to Final Completion. Notwithstanding any other provision of the Contract Documents to the contrary and without limitation to the District's rights of withholding payment permitted elsewhere in the Contract Documents or under Applicable Laws, amounts due to the Design-Builder pursuant to this Section 3.5 shall be payable as part of, and not prior to the due date for, Final Payment to Design-Builder.

3.5.4 Exclusive Remedy. Liquidated damages payable pursuant to this Section 3.5 constitute the Design-Builder's sole and exclusive right and remedy for recovery of Losses to Design-Builder and its Subcontractors and Sub-consultants, of every Tier, due to Delay, regardless of the cause or duration of the Delay and regardless of whether the Delay is a Compensable Delay, Excusable Delay or Unexcused Delay.

3.5.5 Deleted Work. In the event of Deleted Work results in a shortening of the Contract Time, the Contract Sum shall be reduced by an amount calculated as the product of (1) by the number of Days in the period of shortening, multiplied by (2) the liquidated damages amount stated in this Section 3.5.

ARTICLE 4 CONTRACT SUM

4.1 CONTRACT SUM

4.2 CONTRACT SUM

4.1.1 Total Compensation. District shall pay the Design-Builder in current funds for the Design-Builder's complete performance of the Work in accordance with the Contract Documents. The actual Contract sum will be negotiated as a Guaranteed Maximum Price (GMP), established at the completion of the Construction Document design phase and upon DSA approval. The Design-Builder shall provide draft GMP for the partnering subcontractors and estimates for bidding trades to District within thirty (30) days after document submission to DSA. The final GMP draft shall be submitted to District within thirty (30) days after DSA approval. In no event, however, shall this negotiated GMP price be greater than \$xxxxxxx.

4.1.2 Guaranteed Maximum Price Components. The Guaranteed Maximum Price (GMP) shall consist of the following components: 1) Pre-Construction Costs, including Design Fee, FF&E Fee and Pre-Construction

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Service Fee; 2) Net Construction Costs, including General Condition Fee and Direct Cost of the Work; 3) Bonds; 4) Insurance; and 5) Overhead and Profit. These components will be incorporated into the Total Compensation as stipulated in Article 4.1.1.

4.1.3 Design Fee, FF&E Fee, Pre-Construction Service Fee and General Conditions Fee. The Design Fee, FF&E Fee, Pre-Construction Service Fee and General Conditions Fee shall consist of the fees submitted on the Design-Builder's Proposal. These fees will be incorporated into the Total Compensation as stipulated in Article 4.1.1. The amount payable to the Design-Builder in the event that the Design-Build Contract is terminated prior to commencement of construction shall be limited to a prorated amount of the agreed Design Fee based on the percentage of completion of the Construction Documents that has been accomplished by Design-Builder at the time of such termination.

4.1.4 Bond and Insurance. Bond and insurance amounts shall be determined at the final GMP based on the actual Pre-Construction Costs plus the Net Construction Costs as defined above.

4.1.5 Overhead and Profit. Overhead and Profit shall be calculated at the percentage noted on the Design-Builder's proposal multiplied by the Total Construction Costs, consisting of General Condition Fees, Direct Cost of the Work as agreed to in the final GMP plus Design-Builder Bond and Insurance Costs. If subcontractor performance and payment bonds, or Sub-Guard, are required by Design-Builder, the costs for these must be covered in the Design-Builder's overhead as submitted with the Design-Build proposal. Overhead and Profit mark-up shall not be permitted on Pre-construction Services, Design Fees or FF&E fees.

4.1.6 All Inclusive Price. The Contract Sum is the total amount payable by District to Design-Builder for performance of the Work under the Contract Documents and is deemed to cover all Losses arising out of or related to the performance of the Work, including, without limitation, the effects of natural elements upon the Work, unforeseen difficulties or obstructions affecting the performance of the Work (including, without limitation, unforeseen conditions at the Site that do not constitute Differing Site Conditions) and fluctuations in market conditions and price escalations (whether occurring locally, nationally or internationally) from any cause, including, without limitation, causes beyond the control or foreseeability of the Design-Builder.

ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

5.1 LIST OF CONTRACT DOCUMENTS

The Contract Documents, include, without limitation, the following:

5.1.1 Project Criteria. The Project Criteria set forth in the RFP Documents.

5.1.2 RFP Documents, Design-Build Proposal. The RFP Documents or the Design-Build Proposal, with the exception of Approved Deviations, the Contract Documents shall not include any portion of the Design-Build Proposal that deviates from the Project Criteria. The RFP Documents include the original RFP and all Addenda, the Design-Builders Proposal and Clarification Letters as applicable.

5.1.3 Design-Build Contract. This executed Design-Build Contract between District and Design-Builder.

5.1.4 General Conditions. The General Conditions to the Design-Build Contract.

5.1.5 General Requirements, Supplemental and Special Conditions. The General Requirements and Supplemental / Special Conditions will be developed by the District and Design-Builder throughout the design phase.

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5.1.6 Final Construction Documents. The Final Construction Drawings to be hereafter prepared by the Design-Builder and its Subconsultants that are approved by the District in accordance with the terms of the Contract Documents; provided, however, that, with the exception of Approved Deviations, the Contract Documents shall not include any portion of the Design-Build Proposal that deviates from the Project Criteria.

5.1.7 Addenda. All Addenda associated with the completed set of contract documents.

5.1.8 Reference Documents. All Reference Documents associated with the completed set of contract documents.

5.1.9 Labor Compliance Program. The District's Labor Compliance Program adopted pursuant to District's Governing Board Resolution No. 06-20888 for projects funded by Prop M proceeds which includes requirements relating to the payment of prevailing wages and compliance with all applicable state and federal labor and public contract laws.

5.1.10 CA Department of Industrial Relations (DIR). The work performed under this agreement is considered public work and subject to prevailing wage requirements as set forth in Labor Code §1720 *et seq.* The "Design Builder" and all subcontractors of every tier are required to pay laborers performing any portion of work on the project(s) assigned under this agreement not less than the prevailing wage rate established for the labor provided. Pursuant to Labor Code §1771.4(a) (4), prevailing wage rate monitoring and enforcement shall be by the California Department of Industrial Relations ("DIR"). Design Builder must be registered with the DIR pursuant to Labor Code §1725.5 in order to be qualified to submit a proposal on or to perform work on any projects assigned under this agreement. At all times during performance of any project(s) assigned under this agreement, the Design Builder and ***all*** subcontractors, ***of any tier***, must be registered with the DIR.

WHEREFORE, This Design-Build Contract is entered into as of the day and year first written above.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST DESIGN-BUILDERS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA, 95826.

PALOMAR COMMUNITY COLLEGE DISTRICT

DESIGN-BUILDER

_____, a _____

By: _____

By: _____

Title: _____

Title: _____