

FOR PUBLICATION WITH REQUEST FOR PROPOSAL

CONTRACT #: _____

PROJECT #: _____

PROJECT NAME: MONO COUNTY CIVIC CENTER _____

DESIGN-BUILD CONTRACT
BETWEEN COUNTY AND DESIGN-BUILDER

THIS DESIGN-BUILD CONTRACT BETWEEN COUNTY AND DESIGN-BUILDER ("Design-Build Contract") is entered into on this ____ day of _____, 2018__ by and between the County of Mono, a political subdivision of the State of California ("County") and _____, at _____ ("Design-Builder") for the Mono County Civic Center in Mammoth Lakes ("Project").

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 and perform the entire Work called for by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of County or other Project Team members retained by County.

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 County 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.

This Project will be delivered using a target value design approach. Only upon written approval of the current Design Phase by the County and/or Project Manager and reconciliation with the target cost of the work, may the Design-Builder proceed to construction. Design-Builder is to organize and work in such a fashion as to meet the target cost. If the project expected costs trend above the target cost, the Design-Builder will need to perform such efforts as necessary to meet the program requirements within the project target cost.

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 County's information and Project Manager's approval. The Contract Time for completion of the design shall not exceed three hundred twenty-nine (329) days from Notice to Proceed with Design. Upon County 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, and purchasing and installation phases. 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 design submittal to County, 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 County's information and Project Manager's approval. The proposed time for Substantial Completion of construction set forth in a Design-Build Proposal shall not exceed 18 months from the date of Notice to Proceed with Construction. Upon County approval of the construction schedule 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 COUNTY

3.4.1 County Right. The County and the Design-Builder acknowledge and agree that if the Design-Builder fails to Substantially Complete the Work within the Contract Time, the County 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 complete the design submittal to County within the milestone date called out in the RFP, the Design-Builder shall pay the County as liquidated damages the amount of One Thousand Five Hundred Dollars (\$1000) per day. 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 County as liquidated damages the amount of Fifty Thousand Dollars (\$50,000) for each Calendar Month (or portion thereof) 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.

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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.

3.4.5 Remedies. County 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. County's rights under this Section 3.4 shall not be interpreted as precluding or limiting: (1) any right or remedy of County 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) County'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 County has the right to assess liquidated damages.

3.4.7 Daily Rate for Compensable Delay. The rate paid to be paid to Design-Builder 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 is subject to negotiation between the County and the Design-Builder and shall be \$100 per day.

3.5 EARLY COMPLETION INCENTIVES

3.5.1. Dates and Amounts. There shall be an early completion incentive as set forth below, if the Desired Substantial Completion Date of October 1, 2019 is achieved. This early completion incentive will decrease by \$40,000 monthly until March 1, 2020 when no early completion incentive will be available. See the table below for how the early completion incentive is earned.

Project Substantial Completion	Early Completion Incentive
Before October 1, 2019	\$240,000
Between October 1 – 31, 2019	\$200,000
Between November 1 – 30, 2019	\$160,000
Between December 1 – 31, 2019	\$120,000
Between January 1 – 31, 2020	\$80,000
Between February 1 – 29, 2020	\$40,000

3.5.2 Payment by County. A Change Order or Unilateral Change Order for an adjustment to the Contract Sum for the daily rate permitted by Section 3.4.6 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 County's rights of withholding payment permitted elsewhere in the Contract Documents or under Applicable Laws, amounts due to the Design-Builder pursuant to Section 3.4.6 shall be payable as part of, and not prior to the due date for, Final Payment to Design-Builder.

3.5.3 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 daily rate stated in this Section 3.4.6.

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ARTICLE 4 CONTRACT SUM

4.1 CONTRACT SUM

4.1.1 Total Compensation. County 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 County within thirty (30) days after document submission to County. In no event, however, shall this negotiated GMP price be greater than \$20,500,000.00.

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 Service Fee; 2) Construction Costs, including General Conditions and Direct Cost of the Work; 3) Bonds; 4) Insurance; 5) Overhead and Profit; 6) Contingency (4% of estimated construction costs); and 7) any allowances the County prescribes for the contract. These components will be incorporated into the Total Compensation as stipulated in Section 4.1.1, above.

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 Section 4.1.1, above. 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 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 County 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-Builder's Proposal and Clarification Letters as applicable.

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

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

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

5.1.6 Final Construction Documents. The Final Construction Drawings to be hereafter prepared by the Design-Builder and its Sub-consultants that are approved by the County 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.

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.

CONTRACTORS AND ANY SUBCONTRACTORS ARE FURTHER REQUIRED TO REGISTER WITH THE DEPARTMENT OF INDUSTRIAL RELATIONS PURSUANT TO LABOR CODE SECTION 1725.5. THIS PROJECT IS SUBJECT TO LABOR COMPLIANCE MONITORING BY THE DEPARTMENT.

COUNTY OF MONO

DESIGN-BUILDER

_____, a _____

By: _____

By: _____

Title: _____

Title: _____

APPROVED AS TO FORM:

County Counsel

APPROVED BY RISK MANAGEMENT:

Risk Manager