

DESIGN-BUILD AGREEMENT FOR HUMBOLDT TRANSIT AUTHORITY HYDROGEN REFUELING STATION PROJECT 23-01

This DESIGN BUILD AGREEMENT FOR HUMBOLDT TRANSIT AUTHORITY HYDROGEN REFUELING STATION ("Agreement") is made and entered into on _____ by and between Humboldt Transit Authority ("HTA"), a California public agency joint powers authority, and _____, a _____ ("Design-Builder"). HTA and Design-Builder are sometimes referred to herein each as a "Party" and collectively as the "Parties."

RECITALS

- A. HTA is the recipient of a grant award from the California State Transportation Agency Transit and Intercity Rail Capital Program ("TIRCP Grant") awarded for, among other purposes, the design and installation of a hydrogen fueling station ("TIRCP Project").
- B. On November 7, 2022, HTA entered into a Master Service Agreement with the California Department of Transportation ("Master Agreement") to implement the TIRCP Grant.
- C. On March 21, 2024 HTA received California Transportation Commission approval of a budgetary allocation plan allowing HTA to expend TIRCP Grant funds on specified elements and phases of the TIRCP Project ("Project Supplement") and expects to receive additional allocation plan approvals for remaining Project elements and phases on a schedule that will allow for timely completion of the Project.
- D. HTA is authorized by Public Contract Code §§ 22160-22169 to use the design build method of project delivery for the procurement of construction projects.
- E. HTA conducted a competitive best value procurement process for the design and installation of a hydrogen station and the provision of transitional operation and maintenance and fuel supply services (RFQ and RFP No. 23-01), in accordance with the design build procurement requirements of State law cited herein and applicable Federal laws and regulations. Pursuant to that process, HTA selected Design-Builder as offering the best value Proposal to HTA under the evaluation criteria set forth in the RFP. Design-Builder and HTA hereby agree to the following terms and conditions for completing said work and providing services.

NOW, THEREFORE, in consideration of the mutual conditions and covenants recited above and made a mutual part hereof, the Parties agree as follows:

1. Contract Work.

The Work to be completed by Design-Builder, which is specified in the Contract Documents, generally consists of the design, construction, testing, commissioning and start-up of the Hydrogen Refueling Station to be located at HTA's facility located at 133 V. Street, Eureka, CA. Beginning with Final Acceptance of the Construction Work, Design Builder will perform Transitional Services for two years. HTA has the option to extend either or both O&M Services or Fuel Supply Services for three (3) one-year terms, as further described in this Agreement.

2. Time Requirements and Project Schedule.

- a) Substantial Completion Deadline. This Design-Builder shall achieve Substantial Completion of all Work within _____ (____) days after the issuance of the Notice to Proceed.
- b) Final Acceptance Deadline. The Design-Builder shall achieve Final Acceptance no later than _____.
- c) Term. The term of this Agreement shall be from the Effective Date identified below until Design-Builder has ceased providing any Transitional Services and HTA has issued final payment for Transitional Services.
- d) Milestones. Progress Payments will be made upon successful completion of the Milestones set forth in this subsection 2(d). Milestones shall be completed by the respective dates set forth in the Critical Path Schedule. The following respective dates for Milestone completion reflect those dates in the Preliminary Critical Path Schedule and are subject to revision in accordance with the Critical Path Schedule revision process. Any revisions to the Critical Path Schedule Milestone completion dates shall be incorporated herein automatically as amendments to this Section 2(d) without additional action by the Parties:

<u>Construction Milestone</u>	<u>% of Capital One-Time Charges, less Initial Term Transitional Services</u>	<u>Date</u>
(i) Upon evidence of long-lead items purchased	<u>10%</u>	
(ii) Upon demolition of the Cedar House; all building materials have been properly disposed of and all utilities properly terminated as applicable	<u>5%</u>	
(iii) Upon first successful fueling event with the Temporary Fueler	<u>5%</u>	
(iv) PE signed plans and permit application submitted to the local AHJ	<u>10%</u>	
(v) Plan-check approval received from local AHJ and permits ready to issue.	<u>10%</u>	
(vi) Construction mobilization: all temporary facilities installed at site, and construction permit issued	<u>10%</u>	
(vii) All earthwork complete and structural concrete foundations poured	<u>10%</u>	
(viii) Cryogenic vessel successful installed and anchored on foundation	<u>10%</u>	
(ix) Mechanical completion	<u>10%</u>	
(x) Submission of Commissioning Certificate	<u>5%</u>	
(xi) Submission of Operational Performance Test Report	<u>5%</u>	
(xii) Final Payment	<u>10%</u>	

3. Contract Price

The Contract Price for full compensation for the Work and other obligations of the Design-Builder under the Contract Documents is \$_____, equal to the sum of (1) Capital One-Time Charges (inclusive of Initial Term Transitional O&M Services) in the amount shown below, as set forth in the Design-Builder's Price Proposal; (2) Annual Fees for O&M Services during the Optional Extended Terms in the amount shown below, as set forth in the Design-Builder's Price Proposal; and (3) Annual Fuel Charges in the amount shown below, as set forth in the Design-Builder's Price Proposal.

	Construction Work	Initial Term		Option Term	Option Term	Option Term
		Year One	Year Two	Year Three	Year Four	Year Five
Capital One-Time Charges	\$_____			---	---	---
Annual O&M Fees	---	Included in Capital One-Time Charges		\$_____	\$_____	\$_____
Annual Fuel Charges	---	\$_____	\$_____	\$_____	\$_____	\$_____

4. Invoicing and Payments

a) Progress Payments for Work.

- (i) *Invoices.* Applications for Progress Payments shall be submitted by Design-Builder no more frequently than once per calendar month. Applications shall be submitted no later than 15 calendar days after the close of the calendar month.
- (ii) *Schedule of Values.* Payment to the Design-Builder for the Work will be made by HTA on the basis of Progress Payments relating to the completion of Work Milestones, in accordance with the Schedule of Values agreed upon by HTA and the Design-Builder and incorporated into the Critical Path Schedule.
- (iii) *Retention.* HTA will withhold from all Progress Payments five percent (5%) of the Contract Price, excluding costs for Transitional Services.
- (iv) *Payment Offsets.* Prior to Final Completion, Progress Payments will be made in an amount equal to the percentage indicated in Section 2(d) above but, in each case, less the aggregate of payments previously made and less such amounts as HTA may withhold, including but not limited to liquidated damages, in accordance with the Contract Documents.

b) Applications for Progress Payments.

- (i) At least 20 days before the Milestone date established in the Agreement for a Progress Payment, but not more often than once a month, Design-Builder shall submit to HTA's Project Manager for review an Application for Payment filled out and signed by Design-Builder covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
- (ii) If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Design-Builder for the materials and equipment; (b) at HTA's request, documentation warranting that HTA has received the materials and equipment free and clear of all liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect HTA's interest therein, all of which must be satisfactory to HTA.
- (iii) The Application for Final Progress Payment must include an affidavit of Design-Builder stating that all previous Progress Payments received by Design Builder have been applied to discharge Design-Builder's legitimate obligations associated with prior Applications for Payment.
- (iv) The amount of retainage with respect to progress payments will be as stipulated in the Agreement. Pursuant to California Public Contract Code § 22300, Design-Builder may substitute securities for any moneys withheld by HTA under the Contract Documents. At the request and expense of the Design-Builder, securities equivalent to the amount to be withheld shall be deposited with HTA, or with a state or federally chartered bank in California as the escrow agent, who shall then pay those moneys to the Design-Builder. Upon satisfactory completion of the Contract, the securities shall be returned to the Design-Builder.

c) Transitional Services Payments.

- (i) *O&M Services.* HTA will pay Design-Builder for O&M Services on a monthly basis. Design-Builder shall submit monthly invoices no later than the 10th day of the calendar month following the calendar month for which services were performed. In addition to all other information required to be included, invoices shall itemize work performed and hourly rates for such work; and, Equipment, Materials and Supplies consumed or replaced. The amount of compensation for O&M Services may not be increased except pursuant to a Change Order.
- (ii) *Fuel Supply Services.* HTA will pay Design-Builder for Fuel Supply Services on an as-delivered basis for the fuel dispensed into the storage Equipment that is not vented from the trailer during the delivery process. Design-Builder shall submit invoices no later than ten (10) calendar days after delivery of fuel. In addition to all other information required to be included, invoices shall state the quantities of fuel dispensed and not vented.

- 1) At least sixty (60) days before the end of the initial two-year Transitional Services Period and the end of the first and second extended years, if any, HTA and the Contractor shall meet and negotiate in good faith regarding whether any adjustments are necessary or appropriate in the Fuel Price and/or Delivery Cost of Hydrogen Fuel, based on the then applicable market or regulatory conditions impacting Hydrogen Fuel pricing. In considering whether adjustments are necessary or appropriate, the Parties shall take into account established and objective external indices and related information regarding the price of Hydrogen Fuel. Any increase in pricing requires the Approval of HTA. Any agreement of the Parties on adjustments shall take effect for the upcoming Services delivery year. In the event of a failure to agree, the Fuel Price and Delivery Cost set forth in the Proposal for the upcoming Services delivery year shall apply.

5. Contract Documents, Order of Precedence

Each of the Contract Documents is an essential part of the Contract, and is binding upon the Design-Builder in the performance of the Work. The Contract Documents consist of the following, set forth hereafter in their order of precedence:

1. This Agreement;
2. Performance Bond;
3. Payment Bond;
4. General Conditions;
5. Scope of Work as contained in the RFP;
6. RFP No. 23-01 and Addenda thereto;
7. Final Design Documents, as Approved by HTA;
8. Change Orders, Addenda and Contract Amendments, including all attachments, appendices, and exhibits thereto;
9. Design-Builder's Proposal;
10. Third Party Agreements.

6. Labor Code Compliance.

- a) Excavation Work. Pursuant to California Labor Code Section 6705, excavation of any trench or trenches 5 feet or more in depth, involving estimated expenditures in excess of \$25,000 shall require, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection prepared by a registered civil or structural engineer.
- b) Contractor Registration. All Work on the Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR).
- c) Pursuant to Sections 1770 et seq., California Labor Code, the successful Bidder shall pay not less than the prevailing rate of per diem wages as determined by the Director of California Department of Industrial Relations. Design-Builder is responsible for contacting the DIR for applicable determinations of the prevailing rates of per diem, holiday, and overtime wages in the locality where the work is to be performed. The Design-Builder shall be responsible for satisfying

all requirements for paying the prevailing rates.

d) Design-Builder, by signing this Agreement, certifies the following:

"I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this Contract."

e) Nothing in this Agreement shall prevent Design-Builder or any Subcontractor from employing properly registered apprentices in the execution of the Agreement. Design-Builder shall have responsibility for compliance with California Labor Code Section 1777.5 for all apprenticeable occupations.

f) In accordance with Section 1775, California Labor Code, Design-Builder shall forfeit to HTA, as a penalty, not more than \$50 for each calendar day, or portion thereof, for each worker paid, either by Contractor or any subcontractor, less than the prevailing rates as determined by the Director of California Department of Industrial Relations for the Work.

g) In the performance of the Work, a day's work shall be 8 hours of labor in any workday and 40 hours in any work week and any other work as required by Section 510, California Labor Code, and Design-Builder shall further conform to the requirements of Section 1813, California Labor Code, or forfeit to HTA, as a penalty, the sum of \$25 for each worker employed in the execution of the Work by Design-Builder or any Subcontractor, for each day during which any worker is required or permitted to labor more than 8 hours in any workday or more than 40 hours in any 1 calendar week in violation of Section 510.

h) Design-Builder shall carry workers' compensation insurance and require Subcontractors to carry workers' compensation insurance as required by Section 3700, California Labor Code.

7. Funding-Specific Flow Down Requirements.

Design-Builder shall comply with, and ensure that all Subcontractors agree to comply with, the following:

a) Audits and Records

1) Cost Principles

- i. Design-Builder agrees, and will ensure that all Subcontractors will be obligated to follow, the federal Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Title 2, Chapter II, Part 200 of the Code of Federal Regulations (2 CFR Part 200) to determine the allowability of individual Project cost items.
- ii. Travel and per diem reimbursements and third-party contract reimbursements to Design-Builder and any of Subcontractors will be allowable as Project costs only after

those costs are incurred and paid for by Design-Builder or the Subcontractor, as appropriate.

- iii. Any Project costs for which HTA has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR Part 200, are subject to repayment by Consultant to HTA. Should Design-Builder fail to reimburse moneys due HTA within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, HTA is authorized to intercept and withhold future payments due to Design-Builder from HTA.
- iv. HTA may terminate this Agreement for any reason at any time if it is determined by the State or HTA, based on an audit under this section, that there has been a violation of any State or federal law or policy by Design-Builder during performance under this agreement. If this Agreement is terminated under this section, Design-Builder may be required to fully or partially repay funds.

2) Record Retention

- i. Consultant agrees to, and will cause all Subcontractors to agree to, establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs and matching funds by line item for the Project which shall conform to Generally Accepted Accounting Principles (GAAP), to enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of Design-Builder, and all Subcontractors, connected with Project performance under this Agreement shall be maintained for a minimum of three (3) years from the date of final payment to HTA under the Master Agreement and shall be held open to inspection, copying, and audit by representatives of State, the California State Auditor, federal government auditors, and HTA. Copies thereof will be furnished by Design-Builder and all Subcontractors upon receipt of any request made by the State, its agents, or HTA or its agents.
- ii. Design-Builder shall, and will cause all Subcontractors to agree to, maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. Design-Builder, and all Subcontractors, shall make such materials available at their respective offices at all reasonable times during the entire Project period and for three (3) years from the date of final payment to HTA under the Master Agreement. The State, the California State Auditor, or any duly authorized representative of the State or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to the Project for audits, examinations, excerpts, and transactions, and Design-Builder shall furnish copies thereof if requested.
- iii. Design-Builder shall, and will cause its contractors and subcontractors to agree to, permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the California Fair Employment Practices and Housing Commission, or any other California State agency as

may be designated by the State, for the purpose of any investigation to ascertain compliance with the Master Agreement and the Global Warming Solutions Act of 2006 (Health and Safety Code §§ 38500 et seq.).

- 3) Reporting Requirements. Design-Builder agrees that, in addition to the requirements in the General Conditions, it will provide on a schedule determined by HTA reports of the following:

- i. Annual jobs reporting using the template provided in Attachment 4.5 of the RFP. Reporting will be for each calendar year and will be submitted no later than December 15th of the reporting year, or the nearest business day before December 15th of the reporting year. Reporting will include all jobs funded by the Contract Price, less Annual Fuel Charges.

b) Nondiscrimination.

- (i) In the performance of work under this Agreement, Design-Builder shall, and will cause all Subcontractors to agree to, not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, family and medical care leave, pregnancy leave, and disability leave. Design-Builder shall, and will cause all Subcontractors to agree to, ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Design-Builder shall, and will cause all Subcontractors to agree to, comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- (ii) Design-Builder shall, and will cause all Subcontractors to, give written notice of their obligations under this clause to labor organizations with which they have collective bargaining or other labor agreements or other agreements, as appropriate.
- (iii) Design-Builder shall, and will cause all Subcontractors to, permit access to all records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission or any other agency of the State of California designated by Department to investigate compliance with this Section.

8. Notice and Service Thereof.

- a) General. Any notice required to be given by one Party to another under the Contract Documents shall be in writing and dated, and in accordance with the Contract requirements applicable for the notice in question. The notice shall be signed by the Party giving such notice, or by a duly authorized representative of such Party.

- b) Notice Transmittals to HTA. Notices from the Design-Builder or any Design-Builder Related Entity to HTA shall not be effective for any purpose whatsoever unless enclosed in a sealed envelope and transmitted by registered mail addressed to HTA's offices as follows:

Humboldt Transit Authority
Notice to HTA
Attn: Jerome Qiriaz
133 V Street
Eureka, CA 95501

- c) Notice Transmittals to Design-Builder. All notices to the Design-Builder will be enclosed in a sealed envelope and transmitted to Design-Builder's Project Manager by personal delivery at the Site, or by registered mail (or any certifiable delivery service) addressed to Design-Builder as follows:

[Insert name and address for Notice to Design-Builder]

- d) Notice Transmittals to Surety and Others. All notices to the Surety, and/or any other entity and/or person, shall be enclosed in a sealed envelope and transmitted by personal delivery or by registered mail addressed as follows:
- e) Change of Address Notices. Any notice of changes of address shall be given according to the provisions of this Article.
- f) Receipt of Notices. Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U. S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, notices sent by telefacsimile after 4:00 p.m. Pacific Time and all other notices received after 5:00 p.m. Pacific Time shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).
- g) Correspondence to Others. The Design Builder shall copy HTA on all written correspondence it sends to Government Entities and Third Parties related to the performance of this Contract or the Work.

9. Miscellaneous.

- a) Definitions and Terms. Terms used in this Agreement having initial capitalization are defined in the General Conditions, RFP and Scope of Work.
- b) Entire Agreement. The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.
- c) Counterparts. This Contract may be executed in two or more counterparts, each of which shall be

deemed an original, but all of which together shall constitute one and the same instrument.

[Add Signature Block]