

TEAMING AGREEMENT

This agreement ("Teaming Agreement"), with an effective date of _____, is by and between **Flint Design Build LLC dba FLINT** ("TEAM LEADER") and _____. ("TEAM MEMBER") (hereinafter also referred to collectively as "Parties" and individually as "Party").

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1 PURPOSE OF TEAMING AGREEMENT

The purpose of this Teaming Agreement is to enter into a joint effort for the preparation and submission of a proposal or bid ("Proposal") to _____ ("Client") and to determine specific design roles and responsibilities of the TEAM LEADER and the TEAM MEMBER in the interest of obtaining a contract for a design-build project with the client ("Prime Contract"). TEAM LEADER and TEAM MEMBER agree to evaluate multiple building systems to provide the highest value to the Client. Building systems shall consider significant use of prefabrication, modularization and/or a hybrid of prefabrication and modularization. Design scope and responsibility shall be finalized as soon as practical so that fees are commensurate with the work of each Party. The Parties agree to cooperate fully towards obtaining the Prime Contract as applicable. In the event the Proposal is accepted by the Client, TEAM LEADER will be the Design-Builder and TEAM MEMBER will be a Design Consultant.

2 RELATIONSHIP

- 2.1 Nothing in this Teaming Agreement shall be deemed to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth herein. Except as explicitly set forth herein, nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of any or all of the Parties.
- 2.2 It is expressly agreed and understood that no Party will solicit personnel of the other Party associated with the work under this Teaming Agreement for the purpose of inducing them to join their employ during the course of this Teaming Agreement.
- 2.3 The Parties agree not to engage in any agreement with another person or entity that would hinder the Parties in their ability to jointly procure the work covered by the Program. The Parties will not actively participate in or knowingly support team efforts of other persons or entities that are competitive to this Proposal, nor compete independently for work covered by the Program throughout the duration of this Teaming Agreement. This term "actively participate," within the meaning of this paragraph, includes the interchange of technical or commercial data with competitors pertaining to the Program.
- 2.4 Under this Teaming Agreement, the Parties shall act as independent contractors and, unless both Parties consent in writing, neither Party shall act as agent for or partner of the other Party for any purpose whatsoever. The employees of one Party shall not be deemed the employees of the other, and such employees shall not be deemed commingled or subject to common management by either of the Parties.
- 2.5 Nothing in this Teaming Agreement shall grant either Party the right to make commitments of any kind for or on behalf of the other Party without prior written consent of the other Party.

- 2.6 In the event that this Teaming Agreement is terminated, both Parties shall be free to pursue any project individually or in joint venture with other firms.

3 TEAM MEMBER'S RESPONSIBILITIES

- 3.1 In assisting with Proposal development and Client communications, TEAM MEMBER will provide its business management, financial and technical information, provide assistance and exert its best efforts on an exclusive basis for the preparation of the Proposal. TEAM MEMBER will designate a coordinator to facilitate communication and exchange of information and will provide qualified personnel to assist in the preparation of the Proposal documents. TEAM MEMBER will bear all its costs and expenses relating to or arising from the preparation of the Proposal. The TEAM MEMBER's anticipated effort is attached as Attachment A.

4 TEAM LEADER'S RESPONSIBILITIES

- 4.1 TEAM LEADER will have lead responsibility for preparation of the Proposal, for integration of the Parties' data, for submission of the Proposal to the Client in a timely manner, and for negotiation of the Prime Contract and/or Task Order(s) with the Client. TEAM LEADER with support from TEAM MEMBER will direct and coordinate, to the fullest extent possible, the Proposal effort, Client contacts and/or conferences, and marketing strategy. TEAM LEADER shall consult with TEAM MEMBER regarding Proposal content but in the event of a disagreement, TEAM LEADER will determine Proposal content. The TEAM MEMBER will have the right to review all portions of the Proposal and approve portions of the Proposal which would be pertinent to its work on the Program. TEAM LEADER will allow for open book review of all costs/estimates during the Proposal phase. The final anticipated construction cost will be shared with the TEAM MEMBER prior to submission.
- 4.2 In the event that TEAM LEADER receives a stipend for the efforts associated with the Proposal, the TEAM LEADER will distribute the proportionate share of stipend (relative to the level of effort of other consultants and TEAM LEADER) to TEAM MEMBER within seven (7) days of receipt of the stipend. TEAM LEADER shall use good character and judgement to decide allocation between TEAM LEADER and TEAM MEMBER and other Consultants.

5 PERFORMANCE

- 5.1 If TEAM LEADER is awarded a Prime Contract and/or, if applicable, a Task Order(s) and the Client contract includes the work proposed by TEAM MEMBER, subject to Section 5.3, the, TEAM LEADER will award the TEAM MEMBER a consultant agreement for the agreed-upon work. The award of this agreement is subject to the Client's approval, if applicable.
- 5.2 In the event of a disagreement between the Parties regarding the TEAM MEMBER's scope of services, price, or any material terms of the design consultant agreement, or other items, and in the event that such disagreement is not resolved through good faith negotiations within 30 days of award of the Prime Contract and/or, if applicable, the Task Order(s), then TEAM LEADER shall have the right, without prejudice or liability, to enter into an agreement with another party for the design consultant work.

- 5.3 The form of design consultant agreement shall be based on Attachment B, with the scope and compensation provisions being negotiated in good faith and modified to reflect the scope and value of the TEAM MEMBER's services required to execute the scope contemplated by the Prime Agreement and/or Task Order(s), as the case may be, and with any required revisions to effectuate items agreed in this Teaming Agreement. However, the TEAM MEMBER's compensation will be determined prior to the submission of the proposal, inclusive of reimbursable expenses, and will be set at an amount as mutually agreed upon by TEAM LEADER and TEAM MEMBER of the total cost of the construction of the Program. If negotiations are conducted after submission of the Proposal between the TEAM LEADER and the Client which affect TEAM MEMBER's work or its costs, the TEAM MEMBER's design consultant price and scope will be adjusted as agreed upon by the TEAM LEADER and TEAM MEMBER.

6 PROPRIETARY INFORMATION

- 6.1 During the term of this Teaming Agreement, it may be necessary for either Party to disclose proprietary information to the other. All proprietary data must be in writing and clearly identified as "proprietary." By signing this agreement TEAM MEMBER acknowledges that all data related to the Hummingbird System is proprietary. Proprietary information furnished hereunder shall remain the property of the furnishing Party and shall be returned to such Party promptly upon request. Each Party agrees not to disclose the other Party's proprietary information to unauthorized parties. However, neither Party shall be liable for the inadvertent or accidental disclosure of such information if a disclosure occurs despite the exercise of the same precautions as the Party normally takes to safeguard its own proprietary information. The Parties' confidentiality obligations will not apply to information that: (i) is in the public domain; (ii) is known by the receiving Party prior to the time of its receipt from the other Party; (iii) is developed independently by the receiving Party; or (iv) required to be disclosed by applicable law or legal process or in defense of a claim. Neither Party shall use the other Party's proprietary information for any purpose other than as is required for the performance of this Teaming Agreement. However, without liability, the information may be disclosed to the Client and used for Proposal preparation, evaluation, and negotiation. The obligation of the Parties under this "Proprietary Information" provision will terminate 3 years from the effective date of this Teaming Agreement.

7 LEGAL EFFECT OF AGREEMENT

- 7.1 The Parties agree that no legal relationship of any kind exists as a result of this Teaming Agreement, other than the covenants expressly contained herein. Neither Party shall have the authority to create any obligation for the other except to the extent stated herein. The Parties agree that this Teaming Agreement may be made known to the Client.
- 7.2 **Limitation of Liability.** No Party will be liable to the other Party for any indirect, special, incidental or consequential damages, such as loss of revenue, cost of capital, loss of business reputation or opportunity, or loss of anticipated profits due to the other Party's acts or omissions in performing this Teaming Agreement. No Party may recover damages against the other Party on the basis of the failure to obtain the Prime Contract and/or, if applicable, the Task Order(s), unless it can show that such failure was the result of the other Party's grossly negligent acts or willful misconduct. In such event, damages will be limited to the aggrieved Party's proposal preparation costs. This paragraph 7.2 will be void upon execution of any design subconsultant agreement between the Parties for services for the Program.

8 TERMINATION OF THE AGREEMENT

- 8.1 This Teaming Agreement for the project pursuit, except the provision on “Proprietary Information,” shall expire 24 months from the date hereof unless terminated earlier by one of the following events: (i) the Client cancels the procurement; (ii) the Client awards the Prime Contract to someone other than TEAM LEADER; (iii) the Parties dissolve this Teaming Agreement by mutual consent; (iv) one of the Parties petitions for relief under bankruptcy laws, or makes an assignment for the benefit of creditors; or (v) one of the Parties notifies the other of a decision not to submit a proposal for the Program. This Teaming Agreement also may be terminated for other valid, compelling reason by either of the Parties including but not limited to debarment, suspension, or criminal investigation of a Party, change in legal status due to merger or sale of one of the entities or grossly unsatisfactory performance of a Party.

9 DISPUTES

- 9.1 If any dispute or claim between the Parties concerning this Teaming Agreement cannot be settled amicably through non-binding mediation within 90 days of notice of a dispute or claim, the matter will be resolved by arbitration conducted according to JAMS or the Construction Industry Arbitration Rules of the American Arbitration Association then in effect.
- 9.2 The decision of the arbitrator(s) will be final. The Parties agree and acknowledge that any award rendered by such arbitrator(s) will be enforceable and judgment may be entered in any court of competent jurisdiction and that no Party will petition any court to amend, modify or revoke the final arbitration award.
- 9.3 Notice of demand for arbitration will be filed in writing with the other involved Parties to this Teaming Agreement and with the arbitrating body. The demand will be made within a reasonable time after the claim or dispute has arisen. In no event will the demand for arbitration be made before mediation has been attempted or after the date when the applicable statute of limitations would bar institution of a legal or equitable proceeding based on such claim or dispute.
- 9.4 No arbitration arising out of or related to this Teaming Agreement will include, by joinder, consolidation or other manner, any person not a Party to this Teaming Agreement. The prevailing Party will be entitled to reasonable attorneys’ fees and the costs of arbitration in addition to such other relief as may be granted. The prevailing party shall be the Party whose last offer of settlement is closer to the award or judgment of the arbitrator(s). If the difference between the award and the last offer of each party is equal, neither party shall be considered the prevailing party. For purposes of this provision, an offer of settlement must be in writing and delivered to the other party at least fifteen (15) days prior to the commencement of arbitration. If a party makes no written offer of settlement, the amount of such party’s final claim is considered to be its final offer of settlement. Any timely offer of settlement supersedes any offer previously made by that party. This provision shall not waive or alter any applicable rule of evidence, except to the extent of determining the prevailing party.

10 MISCELLANEOUS

- 10.1 Headings. The Article, Section and other headings contained in this Teaming Agreement are for reference purposes and shall not affect in any way the meaning or interpretation of this Teaming Agreement.

- 10.2 Governing Law. The validity, construction and performance of this Teaming Agreement and all disputes between the parties arising out of or relating to this Teaming Agreement shall be governed by the laws, without regard to the laws as to choice or conflict of laws, of the State of California.
- 10.3 Assignment. Neither this Teaming Agreement nor any rights under this Teaming Agreement may be assigned by any Party without the prior written consent of the other Party.
- 10.4 Binding Effect. The provisions of this Teaming Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.
- 10.5 Parties in Interest. Nothing in this Teaming Agreement, expressed or implied, is intended to confer on any person or entity other than the Parties any right or remedy under or by reason of this Teaming Agreement.
- 10.6 Notices. Any notice or communication required or permitted by this Teaming Agreement shall be deemed sufficiently given if in writing and when delivered personally, by email, or 48 hours after deposit with the U.S. Postal Service as registered or certified mail, postage prepaid, and addressed as follows:

If to: **Flint Design Build LLC dba FLINT**
401 Derek Place
Roseville, CA 95678
Attention: John Stump
jstump@flintbuilders.com

or

If to: _____
Address: _____
Contact Name & Position: _____
Email: _____

or to such other address as the Party to whom notice is to be given has furnished to the other Party in the manner provided above.

- 10.7 **Amendment and Waiver.** This Teaming Agreement may be amended, modified or supplemented only by a writing executed by each of the Parties. Any Party may in writing waive any provisions of this Teaming Agreement to the extent such provision is for the benefit of the waiving Party. No action taken pursuant to this Teaming Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by that Party or its or any other Party's compliance with any representations or warranties or with any provisions of this Teaming Agreement. No waiver by any Party of a breach of any provision of this Teaming Agreement shall be construed as a waiver of any subsequent or different breach, and no forbearance by a Party to seek a remedy for noncompliance or breach by another Party shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.
- 10.8 **Venue and.** The Parties agree that the venue is located in Sacramento County. Each Party agrees to accept service of process in any such action, suit or proceeding in the manner provided in Section 10.6. Any legal proceeding to enforce the requirement to arbitrate must be brought in the United States District Court or any court of the State of California located in **Sacramento** County.
- 10.9 **Severability.** The invalidity or unenforceability of any particular provision of this Teaming Agreement shall not affect the other provisions, and this Teaming Agreement shall be construed in all respects as if any invalid or unenforceable provision were omitted.
- 10.10 **Publicity.** No publicity or advertising relating to this Teaming Agreement shall be released by either Party without the other Party's prior written approval.
- 10.11 **Entire Agreement.** This Teaming Agreement, including the Exhibits and Schedules, embody the entire agreement and understanding between the Parties pertaining to the subject matter of this Teaming Agreement, and supersede all prior agreements, understandings, negotiations, representations and discussions, whether verbal or written, of the Parties, pertaining to that subject matter.

11 ATTACHMENTS

11.1 The following attachments are incorporated herein, as though fully set forth in this Teaming Agreement.

Attachment A: TEAM MEMBER will be included as a team member for the Proposal. It will not be necessary to compete TEAM MEMBER against other team members or other subcontractors; however, TEAM LEADER has an affirmative responsibility to determine that TEAM MEMBER'S proposed costs are fair and reasonable. As needed, TEAM MEMBER'S contemplated scope may include but is not limited to Attachment A or other services as agreed to by and between the parties. The contemplated scope of services is provided as Attachment A hereto.

Attachment B: The Form of design subconsultant agreement & Sample Fee Matrix.

IN WITNESS WHEREOF, the Parties hereto have executed this Teaming Agreement effective as of the date indicated on the first page.

Design-Consultant:

Flint Design Build LLC dba FLINT

Signature

Signature

John Stump, President

Name (Printed or Typed)

Name (Printed or Typed)

Date

Date

Attachment A: Contemplated Scope of Effort

In addition to TEAM MEMBER'S responsibilities for proposal preparation, based on TEAM MEMBER'S expertise, TEAM MEMBER recognizes the pursuit requires the following effort:

- Planning and Coordination Meetings with RFP Team Members
- Program Assessment
- Site Analysis
- Evaluation of building systems including prefabrication, modularization, and hybrid systems
- Assignment of design roles and responsibilities
- Conceptual Diagrams or Vignettes as required for Proposal and Interview
- Written Narratives in response to the RFP
- Interview Preparation and Participation
- **OTHER DELIVERABLES SPECIFIC TO PURSUIT**

Attachment B: FLINT standard form Consultant Agreement & Fee Schedule (SAMPLE)

FLINT Consultant Agreement (<https://flintbuilders.com/wp-content/uploads/2023/03/FLINT-LLC-DBIA-Agreement-2023.pdf>)

**PRE-CONSTRUCTION FEE MATRIX
BY DISCIPLINE & SYSTEM**

SAMPLE

\$10,000,000 Total Construction
13.45% Pre-Construction Budget

		CONVENTIONAL PRE-FABRICATION	HUMMINGBIRD HYBRID	HUMMINGBIRD
DESIGN-BUILD SERVICES				
Architecture Budget 1.5% of Total Construction		Management	\$150,000 100%	\$150,000 100%
				\$125,000 100%
ARCHITECTURE				
Architecture Budget 5% of Total Construction		Architect	\$475,000 95%	\$400,000 80%
		FLINT A&E	\$25,000 5%	\$300,000 80%
CIVIL				
Civil Budget 0.5% of Total Construction		Civil Engineer	\$50,000 100%	\$50,000 100%
LANDSCAPE				
Landscape Budget 0.4% of Total Construction		Landscape Architect	\$40,000 100%	\$40,000 100%
STRUCTURAL				
Structural Budget 1% of Total Construction		Structural Engineer	\$95,000 95%	\$0 0%
		RW Consulting Engineers	\$5,000 5%	\$100,000 100%
MECHANICAL				
Mechanical Budget 1.25% of Total Construction		Mechanical Engineer	\$118,750 95%	\$100,000 80%
		FLINT A&E	\$6,250 5%	\$75,000 100%
PLUMBING				
Plumbing Budget 0.7% of Total Construction		Mechanical Engineer	\$66,500 95%	\$56,000 80%
		FLINT A&E	\$3,500 5%	\$50,000 100%
ELECTRICAL & LOW VOLTAGE				
Electrical Budget 1.25% of Total Construction		Electrical Engineer	\$118,750 95%	\$100,000 80%
		FLINT A&E	\$6,250 5%	\$100,000 100%
FIRE PROTECTION				
Fire Protection Budget 0.35% of Total Construction		FP Engineer	\$35,000 100%	\$35,000 100%
MISCELLANEOUS				
Misc Budget 1.5% of Total Construction		Consultant	\$150,000 100%	\$150,000 100%
PRE-CONSTRUCTION FEE			\$1,345,000	\$1,345,000
				\$1,100,000