# RFQPA

# Attachment 3

# DRAFT

General Contractor/

Construction Manager

# CONSTRUCTION SERVICES CONTRACT

**City of Seattle**

# CONSTRUCTION SERVICES CONTRACT

THIS AGREEMENT (“Contract”), made and entered into this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2010, by and between THE CITY OF SEATTLE ("Owner" or “City”), and CONTRACTOR (also referred to as “Contractor” or “GC/CM"), hereinafter collectively referred to as "Parties.”

The Contractor agrees to furnish all material, labor, tools, equipment, apparatus, facilities, etc. necessary to perform and complete in an acceptable manner the Work called for in the Contract Documents for the amounts shown below in Table 1, Total Contract Cost.

**Table 1: Total Contract Cost**

|  |  |
| --- | --- |
| **Maximum Allowable Construction Cost (MACC)** |  |
| Direct Construction Cost | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Negotiated Support Services | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| MACC Contingency | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Total MACC** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| **Percentage Fee @ \_\_% of MACC** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| **Contractor's Fixed Amount for General Conditions** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |
| **Total Contract Cost (TCC)** | $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

This Contract is entered into pursuant to the provisions of RCW 39.10.210 and 39.10.340 through 39.10.410. Contractor agrees, as required by RCW 39.10.350, that if the Work cannot be completed for the agreed Maximum Allowable Construction Cost (MACC), excepting increases due to Owner-directed changes, regulatory changes, design errors or omissions, or unforeseen site conditions, any and all additional costs shall be the sole responsibility of the Contractor and Contractor hereby accepts responsibility for such costs without reimbursement by the Owner.

**ARTICLE 1 - DEFINITIONS**

The definitions contained in the General Conditions, as attached to the Request for Qualification and Proposed Approach (RFQ/PA) for the Project apply to this Contract.

**ARTICLE 2 - THE CONTRACT DOCUMENTS**

The Contract Documents form the Contract, which represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representation or agreements, either written or oral. A description of the Contract Documents and the order of precedence of the Contract Documents is contained in Section 1.02 of the General Conditions.

1. **TOTAL CONTRACT COST**

The Total Contract Cost (“TCC”) has been determined through a negotiation of the MACC between the Contractor and the Owner. The Contractor shall not be reimbursed for any efforts related to MACC negotiations.

* 1. By executing this Contract, the Contractor represents and acknowledges that the TCC is reasonable compensation for all of the Work, that the Contract Time set forth in the Construction Schedule is adequate for the performance of the Work, and that Contractor has carefully examined the Contract Documents and the Project site, including any existing structures. The Contractor further represents and acknowledges that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, including the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface and subsurface conditions and other matters that may be encountered at the Project site or may affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power and utilities; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography; and equipment and facilities needed preliminary to and at all times during the performance of the Work, and furthermore acknowledges that no variation in the aforesaid site conditions from those observed, assumed or contemplated by the Contractor shall form the basis for any claim of changed condition by the Contractor.
  2. **Maximum Allowable Construction Cost (MACC)**
  3. The MACC is the fixed amount that has been negotiated by the Owner and Contractor to construct the Work. The MACC includes the Direct Construction Cost, MACC Contingency and an allowance for Negotiated Support Services. The Owner shall maintain a separate contingency for Owner-directed changes and unforeseen conditions.
  4. The Direct Construction Cost is the cost of the work to be performed by Subcontractors, including any subcontract work that the Contractor self-performs. The Direct Construction Cost includes all costs of performing services, furnishing labor, providing construction equipment, furnishing and incorporating materials and other equipment into the construction, performance or furnishing of services, and furnishing documents, all as required by the Construction Documents.
  5. The allowance for Negotiated Support Services is the amount agreed to by the Parties for items identified as Negotiated Support Services the “Cost Responsibility Matrix,” Exhibit X to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Negotiated Support Services costs shall be reimbursed monthly by the Owner on an actual cost basis. The costs for management of Negotiated Support Services Work are included in the Fixed Amount for Specified General Conditions.
  6. A MACC Contingency Account has been established in the amount of \_\_\_\_% of the Total for Subcontract Costs. The MACC Contingency is a line item included in the MACC. The Contractor may utilize MACC Contingency to pay for items that are the Contractor’s responsibility as defined in section 2.1.2.5 herein, and in no event for items that are defined as Percent Fee or as General Conditions. The Contractor’s use of the MACC Contingency must be approved in writing in advance by the Owner. The Contractor shall provide the Owner monthly updates on the status of the MACC Contingency. Upon closeout of the Project any funds remaining in the MACC Contingency shall be returned to the Owner together with the corresponding Percent Fee on the balance. No incentives may be paid to the Contractor from this Account.
  7. The Contractor shall be responsible for:

1. Excess costs if the cost of the bid subcontract Work exceeds the negotiated MACC (subject to application of Project Buyout Savings);
2. All costs related to Subcontractor claims or charges that result from mistakes or omissions in the subcontract buyout;
3. Shop Drawing coordination errors and coordination omissions;
4. Interference between Subcontractor and the Contractor;
5. Interference between Subcontractors and other Subcontractors;
6. The Contractor's failure to coordinate the Work it self-performs with Work of other Subcontractors;
7. Delays in the Work caused by the Contractor or its Subcontractors and Suppliers;
8. Correction of Work not performed in accordance with the Contract Documents;
9. Correction of Work caused by the Contractor or its Subcontractors and Suppliers less the value of any amounts recovered from the Subcontractors and Suppliers;
10. Schedule recovery costs, acts or omissions of the Contractor or its Subcontractors and Suppliers and related Change Orders;
11. Costs relating to the nonperformance of any subcontractor or supplier, including legal fees, less any amounts recovered by the Contractor; and
12. Costs relating to bid protests and appeals.
    1. Project Buyout Savings.

If the Contractor is successful in awarding contracts for all of its subcontracts in an amount less than the negotiated MACC, any remaining savings shall be returned to the Owner together with the corresponding Percent Fee on the balance.

* 1. As part of the MACC negotiations the Contractor has provided the following documentation, which are incorporated herein by reference:
  2. The General Conditions as attached to the RFPQA and bid in the selection phase
  3. The Construction Drawings and Specifications Contractor used as the basis of developing and negotiating the MACC. (Exhibit X)
  4. The MACC and Negotiated Support Services Document (Cost Breakdown). (Exhibit X)
  5. The approved Inclusion and Subcontract Plan outlining the subcontract packages and procurement schedule for each package the Contractor intends to prepare to execute the Project. (Exhibit X). If early bidding has occurred Contractor will include the bid tabulations and issued Intent(s) to Award Subcontract(s).
  6. Prevailing Wage Rates
  7. **Percent Fee and General Conditions**
  8. Percent Fee. The "Percent Fee" is that amount stated in the Contractor's Price Proposal and reflected in Table 1, Total Contract Cost, on page 1 of this Contract. Other than Washington State Sales Tax, the Percent Fee shall cover all taxes owed by the Contractor. The Percent Fee includes all profit (and loss) of the Contractor for this Project as well as home or regional general overhead office expenses of the Contractor during construction phase and all costs of general home office staff assigned to this Project. The fee dollar amount is the MACC multiplied by the Percent Fee.
  9. General Conditions Work. The dollar amount for the “General Conditions Work" is that amount stated in the Contractor's Price Proposal and reflected in Table 1. The "Specified General Conditions Work" consists of salaried Project Staffing as defined in GC/CM Bid Requirements, Part 3 - "General Conditions Work” and Subparts 3.1 and 3.2.
  10. **Payment and Performance Bond**

The Contractor shall deliver to the Owner an executed payment and performance bond for the TCC. The Payment and Performance shall:

2.1.4.1 Be on a form furnished by the Owner; and

2.1.4.2 Be signed by an approved Surety (Sureties) that:

A. Is registered with the Washington State Insurance Commissioner,

B. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner;

C. Has a current rating of at least A-VII in A.M. Best’s Key Rating Guide or is included in the U.S. Department of the Treasury’s Listing of Approved Sureties (Circular 570).

The Owner may require any Surety named on the payment and performance bond to appear and qualify itself whenever the Owner deems the Surety to be inadequate. In such case, the Owner may require upon written demand that the Contractor furnish an additional Surety to cover any remaining Work. Until the added Surety is furnished, payment on the Contract will stop.

The costs of such bonds are included in the Contractor’s bid for General Conditions Work, and therefore are the Contractor’s responsibility.

**ARTICLE 3 - WORK OF THIS CONTRACT**

1. **General**

The Contractor will be responsible for construction of the project within the dollar limits of the TCC. The Contractor shall coordinate with the Engineer. The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The Contractor shall provide construction management (“CM”) services, including but not limited to: scheduling the project in logical steps and budget time required to meet project deadlines; determine labor requirements and dispatch workers on the construction site; inspect and review work an ensure compliance with safety codes and other regulations; obtain the necessary permits and licenses; preparation of subcontractor bid packages and contracts; negotiate subcontractor changes and revisions and handle subcontractor claims. CM services shall be provided throughout the Project, from the preconstruction period through construction, and shall be closely coordinated with the Design Team and the Owner. See Section 3.4 below.

Representatives from the Design Team will be on site as necessary to provide design support, working through the Engineer. Weekly construction coordination meetings will be held, which will be attended by the Engineer, the Contractor, and the Design Team as further defined in the General Conditions. The services to be provided will include construction, construction management, procurement, fit out, Quality Assurance/Quality Control (QA/QC) coordination, test engineer, coordination of as-built drawings, site safety, etc.

* 1. Contractor and each of its agents performing work under this Contract shall comply with all applicable laws of the United States and the State of Washington, the Charter and ordinances of The City of Seattle, and the pertinent rules, regulations and authorized directives of each of their respective agencies and officers.
  2. Contractor shall comply with applicable nondiscrimination, equal employment opportunity, and affirmative effort requirements in accordance with the Contract Documents (General Conditions, Section 5.06).
  3. Contractor shall comply with applicable prevailing wage laws (General Conditions, Section 5.05.)

3.1.4 Contractor shall utilize apprentices for the Project in accordance with the City of Seattle Apprentice Utilization Requirement. (General Conditions, Section 5.06.)

1. **Supplemental Contract Documents**

The Contractor and Owner have agreed to the Maximum Allowable Construction Cost (MACC) set forth above. The Contractor represents to the Owner that the Contract Documents are sufficiently complete to enable the Contractor to establish the TCC of the Work, and the issuance of subsequent Contract Documents will not affect the TCC of the Work, unless there is a change in the scope of the Work.

The Contractor recognizes that the Contract Documents may not be fully completed or developed at the time of the execution of this Agreement. The Contractor agrees to cooperate with the Owner and the Design Team in order to satisfy the Owner's requirements for the Project and to incorporate all the Work described under other Contract Documents hereafter completed or developed. The Contractor and the Owner recognize that construction may commence on the basis of scope or incomplete Contract Documents; and in such event, additional Contract Documents will be prepared and issued, from time to time, for purposes of construction which will detail more completely all requirements of the Work.

Inclusion of items not detailed in the Contract Documents will not be considered a change in the scope of the Work if the need for such items was reasonably inferable from or contemplated by, or a prudent contractor should have realized that same was necessary or appropriate under the Contract Documents in existence at the time the TCC was approved by the Owner. Contractor agrees to use its best efforts, exercising its best and prudent judgment, to accomplish the Work in conformance with, and as required or described by, or referred to in, the Contract Documents then available and developed. The Contractor and Owner have concurred in the “Assumptions and Exclusions” from the Contract Documents attached hereto as Exhibit X.

1. **Owner/Contractor/Design Team**

The Owner shall give direction to both the Contractor and the Design Team. The relationship between the Contractor and the Design Team is intended to be collaborative and proactive, both participating on the same team with the Owner.

1. **Construction Administration and Management**

The GC/CM shall:

3.4.1 Provide full general contracting services for construction of the Project in accordance with the requirements of this Contract and RCW 39.10.340 - 410. Throughout the duration of this Contract, Contractor shall work collaboratively and proactively with the Owner and Design Team to proceed with the planning, design, and development of the Work within the negotiated MACC.

3.4.2. Coordinate all on-site activities. The Contractor shall provide ongoing coordination between crafts, control the quality of the Work, settle disputes between subcontractors, negotiate any modification proposals with the subcontractors (Owner expects the Contractor to negotiate with subcontractors but reserves the right to reject any subcontractor proposal), negotiate modification proposals and change orders with the Owner, revise and forward submittals and RFIs to the Engineer for action, and respond to all correspondence related to subcontractors’ performance.

3.4.3 Prepare a detailed plan for provision of temporary facilities, a construction phasing plan, a road-haul and laydown plan and a traffic management plan.

3.4.4. Conduct weekly progress meeting(s) and weekly subcontractor meeting(s) and maintain and distribute minutes to the Project Team. The Contractor shall attend construction oversight meetings with the Engineer and Design Team as required. The Contractor shall conduct site tours for the Owner and other officials as requested by Owner.

3.4.5. Coordinate general layout, including layout work provided by separate trades for their own work, to insure that no conflict exists with the work of other trades.

3.4.6. Implement the accident prevention program submitted, develop site specific safety plan and manage job site safety.

3.4.7. Provide sufficient staff of project managers, field engineers, superintendents, engineers, construction quality control representatives, testing engineers, scheduling engineers, cost engineers, clerical and accounting personnel, etc. to ensure that:

1. Modification proposals are complete and submitted to the Owner within fourteen (14) calendar days of the receipt by the Contractor’s receipt of the subcontractor's proposal. Only changes negotiated between Contractor and subcontractor and approved by Owner are acceptable.
2. RFIs are properly reviewed, screened, revised as necessary and forwarded to the Engineer within three (3) working days of receipt, unless a shorter period of review is required to avoid delay.
3. Submittals are reviewed to ensure completeness and compliance with Contract Documents and forwarded to the Engineer within seven (7) calendar days of receipt.
4. Replies to correspondence from subcontractors, Owner, and other outside agencies are provided within seven (7) calendar days from the date the Contractor receives the correspondence.
5. For a minimum of ninety (90) calendar days after Physical Completion, the Contractor will ensure adequate qualified staff are present to coordinate any outstanding Work items, punchlists, testing and commissioning are completed, at no additional cost to the Owner.

3.4.8. Contractor has a system to administer all construction correspondence and maintain a document tracking and filing system for the Project, including RFI’s, submittals, and change requests

3.4.9. Contractor can participate in community meetings, meetings with regulatory agencies, City Council and committee meetings as requested by the Engineer.

3.4.10. Ensure the Owner’s inspectors are afforded timely and appropriate access to the Work to make their inspections, obtain samples and perform related activities. The Owner will provide any special inspections required by regulatory agencies and building officials.

3.4.11. Perform all Work in compliance with building permit requirements.

3.4.12. Contractor can obtain a Certificate of Occupancy, if required, and all required operating permits necessary for the Owner to take beneficial occupancy on or before the Completion Date. The Owner will obtain NPDES permits.

* 1. **Subcontractor Bidding**
     1. The Contractor is responsible for issuing subcontractor bid packages and for ensuring that all bids fit within the MACC. With notice to the Owner, the Contractor may use MACC contingency to cover any bid package that exceeds the amount budgeted within the MACC as described in Section 2.1.2, or negotiate or rebid as provided in Sections 3.8.4. and 3.8.5. If there is no remaining MACC contingency the Contractor shall cover the cost of the excess. See Article 6 below.
     2. The Owner reserves the right to review any subcontractor bidding documents or bidding processes. The Contractor will only proceed with bidding after the approval of the subcontracting plan and consent of the Owner.
  2. **Subcontract Plan**

3.6.1 Prior to soliciting bids for subcontract packages, the Contractor shall submit to the Owner for review and approval a Subcontract Plan, including a final MACC bid package breakdown. The Contractor shall at the same time, inform the Owner of its intention to bid on all or any part of any bid package, provided the Contractor meets the requirements of RCW 39.10.390. The sum of all the final bid package estimates in the Subcontract Plan shall not exceed the MACC.

3.6.2. The Contractor shall bid the subcontracts in accordance with its approved Subcontract Plan. During subcontract buyout, the Contractor may request a change in its Subcontract Plan and the Owner will not unreasonably withhold approval provided the sum of all of the final bid package estimates in the Subcontract Plan as revised does not exceed the negotiated MACC.

3.6.3. Pursuant to RCW 39.10.380, the GC/CM may negotiate an adjustment of the bid price with the lowest responsible and responsive bidder based upon agreed changes to the Contract plans and specifications if:

1. All responsive bids or proposal prices exceed available funds as certified by a fiscal officer designated by the Owner;
2. The lowest responsive bid of a responsible bidder does not exceed the final bid package estimate by greater of $125,000 or 2% for projects valued over $10 million, and
3. The negotiated adjustment will bring the bid price within the estimate.

3.6.4. If the Contractor chooses not to negotiate as described in Subsection 3.6.3, above, or if the low conforming bid exceeds the final bid package estimate by more than 2%, the Contractor shall award the bid package to the low responsive responsible bidder or rebid the package. The Contractor may request and the Owner, in its sole discretion, may agree to changes in the bid package. The Contractor may then re-bid, but all time delays and costs associated with the re-bid shall be the responsibility of the Contractor. If contingency funds are available within the MACC, Contractor may use said funds to offset the costs. If contingency funds are not available within the MACC, Contractor will be responsible for the overages.

3.6.5. If any subcontractor to whom a Bid Package has been awarded is unable to perform, the Contractor shall re-bid the work unless otherwise directed by the Owner. Except as provided in this Section, the Contractor shall bear all risk and/or cost overruns occasioned by a subcontractor’s inability to perform. If contingency funds are available within the MACC, Contractor may use said funds to offset the costs outlined in this subsection. If contingency funds are not available within the MACC, Contractor will be responsible for the overages.

* 1. **Cost Reporting**

The Contractor shall, together with any applicable provisions in the general conditions:

* 1. Prepare a detailed construction budget for the Project based on the MACC cost documentation. The Contractor shall update the budget each month showing a complete, detailed, and current accounting for the actual cost of the Work, buyout, versus the negotiated MACC amount for each line item. The accounting shall also include MACC approved contingency usage and provisional sums, if applicable.
  2. Prepare a schedule of values for each subcontract.
  3. Prepare monthly cost reports. For each subcontract, the Contractor shall state costs expended, budget remaining, and change order status. The Contractor shall provide a cost forecast for each subcontract and the project as a whole. The format of the report shall be reviewed and approved by the Owner.
  4. Prepare a monthly progress report narrative.
  5. Prepare a monthly earned value report.
  6. Establish pay request procedures. The Contractor shall prepare monthly applications for payment.
  7. Track Buyout and Buyout Savings and MACC Contingency.
  8. Track all request for changes and Owner-issued change orders and prepare independent cost estimates for subcontractor change orders. The Contractor shall document and track all change order payments.
  9. At the conclusion of the Project, prepare a final accounting of Project costs and prepare final subcontractor payment and buyout.
  10. **Schedule**

The Contractor shall:

* + 1. Develop and keep current a master critical path schedule (“CPM“) for the project that includes design and construction activities as well as applicable regulatory agency, outside entity, project team, and City activities and constraints. The CPM shall identify all long-lead procurement items. In developing the activities for the CPM, the Contractor shall consult with both the Engineer and Design Team to ensure that the responsibility for and duration of these activities is accurate. The Contractor shall submit the CPM to the Engineer for approval. Based on the approved CPM, the number of “Working Days” acceptable to both Parties will be established. The approval of the CPM schedule does not
    2. Monitor construction progress and formally update the CPM every month. The Contractor shall discuss the need for corrective action regarding the CPM with the Engineer in the weekly coordination meetings.
    3. Prepare a two-week look-ahead schedule each week for presentation to the Engineer not later than the weekly coordination meeting, and a monthly summary schedule and six-week look-ahead with the monthly progress.

## 3.8.4 PROGRESS SCHEDULE

1. The Contractor shall submit the Progress Schedule to the Owner within 14 days of execution of the Contract for Construction Services. The Progress Schedule shall show the sequence in which Contractor proposes to perform the Work, and the dates on which Contractor plans to start and finish major portions of the Work, including dates for shop drawings and other submittals, and for acquiring materials and equipment.

The Progress Schedule shall be in the form of a critical path method analysis, as specified by Owner.

1. Review by Owner of Contractor's schedule does not constitute an approval or acceptance of Contractor's construction means, methods, or sequencing, or its ability to complete the Work within the Contract Time.
2. Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall submit an updated Progress Schedule at its own expense to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than acts of Force Majeure as identified in Section 3.05, Contractor shall take such steps as are necessary to bring its work activities into conformance with the Progress Schedule, and if directed by Owner, Contractor shall submit a corrective action plan and revise the Progress Schedule to reconcile with the actual progress of the Work. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this Section.
3. Contractor shall promptly notify Owner in writing of any actual or anticipated event, which is delaying or could delay achievement of any milestone or performance of any critical path activity of the Work. Contractor shall indicate the expected duration of the delay, the anticipated effect of the delay on the Progress Schedule, and the action being or to be taken to correct the problem. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.
4. In addition to the Progress Schedule, Contractor shall maintain and update a two-week look ahead schedule in a format acceptable to Owner, which identifies critical path activities during that time-period.

**3.9 Quality Control/Quality Assurance**

3.9.1 The Contractor shall ensure that the Owner's inspectors are given notice of, and are afforded timely and appropriate access to the Work to make their inspections.

3.9.2 The Owner will arrange independent testing and construction inspection of the project under a separate contract. The GC/CM shall coordinate the Owner’s independent testing and inspection services.

3.9.3 The Contractor shall review the Owner’s testing and inspection reports and where required, take appropriate remedial actions.

3.9.4 The Contractor shall, in cooperation with the Engineer and Design Team, develop an appropriate system for reporting and correcting deficiencies.

* 1. **Procurement of Materials, Supplies and Goods**

The Contractor shall:

3.10.1 Prepare and maintain a detailed procurement schedule, to be approved by Owner, for all purchased materials, furnishings, fixtures, and equipment. The procurements schedule shall account for owner-purchased material and Contractor purchased material.

3.10.2 Coordinate delivery and installation of owner-purchased items.

3.10.3 Continuously monitor the pre-construction schedule and advance procurement of long lead items to ensure delivery by required dates.

* 1. **Tests and Inspections**
     1. Owner may, at any reasonable time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall promptly notify Contractor if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless Owner expressly accepts the subject items, such Owner inspection and tests are for the sole benefit of Owner and do not:

1. Constitute or imply acceptance;
2. Relieve Contractor of responsibility for providing adequate quality control measures;
3. Relieve Contractor of responsibility for risk of loss or damage to the Work, materials, or equipment;
4. Relieve Contractor of its responsibility to comply with the requirements of the Contract Documents; or
5. Impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled.
   * 1. Neither observations by an inspector retained by Owner, the presence or absence of such inspector on the site, nor inspections, tests, or approvals by others, shall relieve Contractor from any requirement of the Contract Documents, nor is any such inspector authorized to change any term or condition of the Contract Documents.
     2. Contractor shall promptly furnish, without additional charge, all facilities, labor, material and equipment reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge Contractor any additional cost of inspection or testing when Work is not ready at the time specified by Contractor for inspection or testing, or when prior rejection makes re-inspection or retest necessary. Owner shall perform its inspections and tests in a manner that will cause no undue delay in the Work.
     3. Costs for testing and inspections may be covered in the negotiated support services.

## Project Record (As Builts)

3.12.1 Contractor shall legibly mark in ink on a separate set of the Drawings and Specifications all actual construction, including depths of foundations, horizontal and vertical locations of internal and underground utilities and appurtenances referenced to permanent visible and accessible surface improvements, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, and Change Order proposals. This separate set of Drawings and Specifications shall be the "Project Record."

* + 1. The Project Record shall be maintained on the project site throughout the construction and shall be clearly labeled "PROJECT RECORD". The Project Record shall be updated at least weekly noting all changes and shall be available to Owner at all times.
    2. Contractor shall submit the completed and finalized Project Record to the Engineer prior to Completion.
    3. Working in conjunction with Design Team and the Engineer, the Contractor shall develop a protocol for preparing as-built drawings and coordinate the preparation of CADD-ready as-built contract drawings in accordance with Section 4.03 of the General Conditions.

## Safety Precautions

3.13.1 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work as outlined in the submitted Accident Prevention Plan. Contractor shall at all times employ the individual identified in Contractor’s RFQ/PA proposal as the Safety Officer for the project. The project Safety Officer may only be replaced with an equally or better qualified Safety Officer subject to Owner approval. Prior to the commencement of construction, Contractor shall submit to Owner for approval, the Project safety plan which will describe in detail the means by which the requirements of Project safety, including those enumerated below, will be achieved.

* + 1. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of workers performing the Work and other persons who may be affected by the Work; prevent damage to materials, supplies, and equipment whether on site or stored off-site; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss; shall erect and maintain all necessary safeguards for such safety and protection; and shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.
    2. Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment. Contractor shall immediately report any such incident to Owner. Owner shall, at all times, have a right of access to all records of exposure.
    3. Contractor shall provide all persons working on the Project site with information and training on hazardous chemicals in their work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
    4. Information. At a minimum, Contractor shall inform persons working on the Project site of:

1. The requirements of chapter 296-62 WAC, General Occupational Health Standards;
2. Any operations in their work area where hazardous chemicals are present; and
3. The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by chapter 296-62 WAC.
   * 1. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:
4. Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
5. The physical and health hazards of the chemicals in the work area;
6. The measures such persons can take to protect themselves from these hazards, including specific procedures Contractor, or its Subcontractors, or others have implemented to protect those on the Project site from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
7. The details of the hazard communications program developed by Contractor, or its Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.
   * 1. Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
8. Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any substances now or hereafter designated as, or which are subject to regulation as, hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute or ordinance (hereinafter collectively referred to as "hazardous substances"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous substance be stored more than 90 days on the Project site.
9. Contractor shall promptly notify Owner of all spills or releases of any hazardous substances, which are otherwise required to be reported to any regulatory agency and pay the cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, or local law, regulation, or ordinance; all inspections of the Project site by any regulatory entity concerning the same; all regulatory orders or fines; and all responses or interim cleanup actions taken by or proposed to be taken by any government entity or private party on the Project site.
   * 1. All Work shall be performed with due regard for the safety of the public. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians. All arrangements to care for such traffic shall be Contractor's responsibilities. All expenses involved in the maintenance of traffic by way of detours shall be borne by Contractor.
     2. In an emergency affecting the safety of life or the Work or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and Contractor shall so act if so authorized or instructed.

## Nothing provided in this Section shall be construed as imposing any duty upon Owner or Design Team with regard to, or as constituting any express or implied assumption of control or responsibility over, Project site safety, or over any other safety conditions relating to employees or agents of Contractor or any of its Subcontractors, or the public.

## 3.14 Operations, Material Handling and Storage Areas

3.14.1 Contractor shall confine all operations, including storage of materials, to Owner-approved areas.

3.14.2 Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor at its expense upon completion of the Work.

3.14.3 Contractor shall use only established roadways or temporary roadways authorized by Owner. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by federal, state, or local law or regulation.

3.14.4 Ownership and control of all materials or facility components to be demolished or removed from the Project site by Contractor shall immediately vest in Contractor upon severance of the component from the facility or severance of the material from the Project site. Contractor shall be responsible for compliance with all laws governing the storage and ultimate disposal. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.

3.14.5 Contractor shall be responsible for the proper care and protection of its materials and equipment delivered to the Project site. Materials and equipment may be stored on the premises subject to approval of Owner. When Contractor uses any portion of the Project site as a shop, Contractor shall be responsible for any repairs, patching, or cleaning arising from such use that are necessary to return such portion of the Project site to the same or better condition than it was prior to such use.

3.14.6 Contractor shall protect and be responsible for any damage or loss to the Work, or to the materials or equipment until the date of Substantial Completion, and shall repair or replace without cost to Owner any damage or loss that may occur, except damages or loss caused by the acts or omissions of Owner. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, and shall repair or replace without cost to Owner any such damage or loss that might occur, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any Subcontractor.

## 3.15 Unforeseen Physical Conditions

3.15.1 If Contractor encounters pre-existing conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly and in no event later than 2 days after discovery of the pre-existing conditions. Any such condition shall not be disturbed prior to Owner’s approval of that activity.

3.15.2 If such conditions: 1) differ materially as provided above; 2) are pre-existing; 3) were not and could not have been discovered upon reasonable inspection of the Project site, and 4) cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor will be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefore as provided in Part 7.

## Protection of Existing Structures, Equipment, Vegetation, Utilities and Improvements

3.16.1 Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation: at or near the Project site; and on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.

* + 1. Contractor shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place.

## Archaeological and Historic Preservation

3.17.1 Should the Contractor discover during construction any artifacts, skeletal remains, or other archaeological resources (as defined under RCW Ch. 27.53.040) at the Project Site, it shall be the responsibility of the Contractor to both immediately cease construction activity at the discovery site and surrounding area, and promptly notify the Engineer. If ordered by the Engineer, the Contractor shall suspend construction activity that, in the opinion of the Engineer would be in violation of Chapter 27.53 of the RCW.

* + 1. Suspension of this construction activity shall remain in effect until the Engineer has obtained permission to proceed from the State Historic Preservation Officer or from other authority.

## Layout of Work

3.18.1 Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.

* + 1. Contractor shall lay out the Work from Owner-established baselines and benchmarks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. Contractor shall be responsible for executing the Work to the lines and grades that may be established. Contractor shall be responsible for maintaining or restoring all stakes and other marks established.

## Material and Equipment

3.19.1 All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract Documents. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Design Team, is equal to that named in the specifications, unless otherwise specifically provided in the Contract Documents.

* + 1. Contractor shall do all cutting, fitting, or patching that may be required to make its several parts fit together properly, or receive or be received by work of others set forth in, or reasonably implied by, the Contract Documents. Contractor shall not endanger any work by cutting, excavating, or otherwise altering the Work and shall not cut or alter the work of any other contractor unless approved in advance by Owner.
    2. Should any of the Work be found defective, or in any way not in accordance with the Contract Documents, this Work, in whatever stage of completion, may be rejected by Owner.

## Availability and Use of Utility Services

3.20.1 Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at prevailing rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities furnished.

* + 1. Contractor shall, at its expense and in a skillful manner satisfactory to Owner, install and maintain all necessary temporary connections and distribution lines, together with appropriate protective devices, and all meters required to measure the amount of each utility used for the purpose of determining charges. Prior to the date of Completion, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

## Permits, Fees and Notices

3.21.1 Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits except for licenses and inspections necessary for proper execution and completion of the Work. Prior to Completion, the approved, signed permits shall be delivered to Owner.

* + 1. Contractor shall comply with and give notices required by all federal, state, and local laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

## 3.22 Traffic Control Management

The Contractor shall submit site and/or work package specific traffic control plans ten (10) days prior to commencement of work activity for Owner’s review and approval. The traffic control plan shall comply with provisions set forth in Section 01 55 80, Public Convenience and Safety/Temporary Traffic Control.

## Spare Parts and Maintenance Materials

3.23.1 The Contractor shall provide products, spare parts, maintenance, and extra materials in quantities specified in individual specification sections.

* + 1. The Contractor shall deliver such products, spare parts, maintenance, and extra materials to the project site, and place/store them in locations as specified in the Contract Documents or as Directed by the Engineer. The Engineer must receive all products and materials prior to final payment being issued.

**3.24 Commissioning and Close-Out**

3.24.1 Substantial Completion, for purposes of Section 6.07 of the General Conditions and Article X of this Contract, includes those commissioning activities necessary to obtain a certificate of occupancy.

The Contractor shall assist the Owner in obtaining a certificate of occupancy and the required permits necessary for the Owner to take a beneficial occupancy of the Project.

3.24.2 The Contractor shall prepare and/or coordinate the preparation of all operations and maintenance manuals in accordance with Division 1 – Section X.

3.24.3 The Contractor shall assemble and coordinate all vendor manuals, warranties, guarantees, affidavits, releases, bonds waivers, certificates of occupancy, etc.

3.24.4 The Contractor shall administer and coordinate the preparation of all subcontractor and/or vendor shop drawings, if any.

3.24.5 The Contractor shall prepare closeout documentation in accordance with of the General Conditions.

**ARTICLE 4: TIME AND SCHEDULE**

4.1 The Contractor shall diligently prosecute the Work, with adequate forces and achieve Substantial Completion, Physical Completion, and Completion within the Contract Time.

* 1. The Contractor shall not commence any Work until the Owner has issued the written Notice to Proceed. Notice to Proceed will not be issued until the contract has been executed and any required contract bonds, evidence of insurance, Inclusion Plan and Schedules have been approved by the Owner. The Contractor shall begin on the date specified in the Notice to proceed and shall bear all risks for any Work begun prior to such Notice.

**ARTICLE 5 - DATE OF COMMENCEMENT, TIME OF COMPLETION, LIQUIDATED DAMAGES**

1. **Date of Commencement and Time of Completion**
   1. Based on the approved CPM schedule, the Contractor shall commence construction of the Project on \*\*\*\*\*\*\*DATE\*\*\*\*\*\*\*\*\*\*\*provided all of the necessary permits have been issued and the Contractor has been given notice to proceed by the Owner.
   2. Based upon the commencement of construction of the Project occurring on \*\*\*\*\*\*\*\*DATE\*\*\*\*\*\*, the Contractor shall have substantially completed all of the Work of this Project on or before \*\*\*\*\*DATE\*\*\*\*\*.
2. **Liquidated Damages, Default**

5.2.1 LIQUIDATED DAMAGES.

Time is of the essence of this Contract. Any delay in the scheduled date for completion of the Project will interfere with the governmental functions of the City to the loss and damage of the City. From the nature of this Contract, it would be impracticable and extremely difficult to calculate the actual damages sustained as a result of such a delay. The City and Contractor therefore agree that in the event of any such delay which is not caused by the actions or inaction of the City, the Contractor agrees to pay the City as liquidated damages, and not as a penalty, the sum of $XXXXX per day for each calendar day that completion of the Project is delayed beyond the completion date, up to a maximum of 60 days, and thereafter the sum of $XXXX per day until the delay is cured. The Parties agree that this sum is a fair and reasonable estimate of the actual damages that would be caused by the failure to complete the Project within the agreed time.

5.2.2 In addition to enforcing the liquidated damages provisions set forth above, if the Contractor is in default of this Contract in any material term, including material deviation from schedule under the then approved Critical Path Method and under circumstance where recovery of schedule is not forthcoming within 30 days, then by written notice to the Contractor the Owner may, in its sole discretion, terminate this Contract as provided in Part 9 Section 9.01 of the General Conditions, pursue such remedies as provided by the Contract Documents or by law, or agree to any other modification of this Contract.

5.2.3 Amounts due the City as liquidated damages may be deducted by the Owner from any money payable to the Contractor pursuant to this Contract, or the Owner may bill the Contractor as a separate item. The Owner will notify the Contractor in writing of any claim for liquidated damages at least thirty calendar (30) days prior to the date the Owner deducts such sums from money payable to Contractor.

**ARTICLE 6 - SUBCONTRACTING**

1. Other than the General Conditions and Negotiated Support Services, all Work on the Project shall be competitively bid with public bid openings. Subcontract Work shall not be issued for bid until the Owner has approved a Subcontract Plan and given consent to commence bidding. The Contractor shall organize and solicit bids for the subcontract Work to accomplish the Work in the most efficient and cost effective manner possible. The Contractor may not use any alternates without approval of the Owner. As part of the General Conditions Work, the Contractor shall be responsible for all costs associated with the subcontracting process including, but not necessarily limited to:
2. Outreach to small, women’s, and minority business enterprises
3. Developing solicitations for Subcontract packages.
4. Site tours.
5. Responding to questions from bidders and issuing addenda as appropriate.
6. Providing bid opening facility.
7. Bidding in accordance with public works requirements.
8. Contract award.
9. Advertising costs.
10. The Contractor shall conduct public solicitation of bids and public bid openings, evaluate bids for bid responsiveness and bidder responsibility, and conduct or coordinate appropriate hearing of any bid protests as further described in the General Conditions.
11. Solicitations of subcontractors by the Contractor shall be made in accordance with the provisions of RCW 39.10.380 through 39.10.410 and will included the following procedures:
    * 1. All subcontractor bids shall be in writing, signed, and submitted in a sealed envelope at a specific time and to a specific location, where the bids will be publicly opened and read aloud.
      2. Solicitations for bids shall include the specific objective criteria that will be used by the Contractor to evaluate bidder responsibility.

6.3.3. Bid solicitation notices shall be advertised in advance in the Seattle Daily Journal of Commerce, Public Notice Section.

6.3.4. Contractor shall make public the results of all bidding. All questions received by the Owner regarding results of subcontractor bids will be referred to the Contractor.

* + 1. When it is in the best interest of the Project and critical to the successful completion of a subcontractor bid package, the Contractor and the Owner may chose to pre-determine subcontractor eligibility to bid pursuant to the provisions of RCW 39.10.400. The Contractor shall notify the Owner if the Contractor feels that a pre-determination of subcontractor eligibility is in the best interest. The Owner reserves the right to deny the use of the pre-determination. If the Owner agrees to proceed, the Contractor will submit the requirements to the Owner to review prior to any notification or hearing.
    2. Subcontract bid packages shall be awarded to the responsible bidder submitting the low responsive bid. The Contractor shall be responsible for ensuring all of these requirements are complied with. The Contractor will describe responsiveness requirements and bidding procedures in each bid solicitation and will review the requirements and procedures with the Owner prior to issuing each bid solicitation.
  1. The Contractor shall require a bid bond from subcontractors who bid Work with a bid estimate over $300,000, and such subcontracts shall be required to provide a payment and performance bond for the subcontract amount.
  2. The Contractor shall require a performance and payment bond of any subcontractor who are Awarded Work over $100,000, and shall outline such requirement in the subcontract bid documents.
  3. The Contractor may bid to self-perform subcontract Work only if the requirements of RCW 39.10.390 are met. In the event the Contractor will be bidding on subcontract work, the bid opening will be managed by the Owner and notice of the Contractor's intention to bid shall be included in the public solicitation for bids for that bid package. In no event may the Contractor or its subsidiaries purchase equipment or materials for assignment to subcontract bid package bidders for installation or warranty. The value of all subcontract work performed and equipment and materials supplied by the Contractor or its subsidiaries shall not exceed thirty percent (30%) percent of the MACC not including Negotiated Support Services.
  4. Negotiated Support Services performed by the Contractor shall not be considered subcontract work. For self-performed work, the Contractor must provide staff to superintend and manage that work that is separate and distinct from the staff involved in the overall management of this Contract. Contractor’s interest in the Work shall not diminish its duty to aggressively seek competition for bid packages.

**ARTICLE 7 - OWNER'S CONSULTANTS/CONTRACTORS**

It is the Owner’s intention that the Contractor control the project site at all times. If necessary, the Contractor shall provide construction management required to interface and integrate the work of third-party consultants/contractors performing construction that the Owner requests separately on the Project Site, with the Work of the Contractor and its subcontractors. The Contractor, with the support of the Owner, shall ensure that all such consultants/contractors cooperate with the Contractor’s Project safety programs, Project Schedule and Project work rules as required for the efficient completion of the Work. The Contractor shall assist the Owner to develop the terms and conditions for agreements with its separate Project consultants/contractors in this regard and the Owner shall incorporate reasonable terms in its agreements with the Owner's consultants/contractors to facilitate the Contractor’s construction management role. This requirement shall include the Owner's consultants/ contractors retained to supply vehicles and remove hazardous materials. The GC/CM is not responsible for any hazardous materials removal.

**ARTICLE 8 - INSURANCE**

## 8.01 MINIMUM INSURANCE COVERAGES, LIMITS AND OTHER REQUIREMENTS

The insurance shall provide the minimum coverages and limits of liability and meet all other requirements as set forth in each Contract. Providing evidence of coverage for these stated minimum limits of liability shall not relieve the Contractor, any subcontractor of any tier or any of their respective insurers from liability for claims in excess of such stated minimum limits of liability should higher limits of liability be placed. If Work is subcontracted, applicable minimum coverages and limits of liability may be evidenced by any subcontractor provided that such insurance fully meets the applicable requirements set forth herein.

1. **Commercial General Liability (CGL) Insurance**

CGL insurance shall include coverage for:

1. Premises/Operations
2. Products/Completed Operations
3. Personal/Advertising Injury
4. Contractual
5. Independent Contractors
6. Stop Gap (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy)
7. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent
8. Blasting (if explosives are used in the performance of the Work)

Such insurance must provide a minimum limit of liability of $1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) except $1,000,000 each Offense Personal/Advertising Injury and $1,000,000 each Accident/ Disease - Policy Limit/ Disease - each Employee Stop Gap or Employers Liability.

**B. Automobile Liability Insurance**

Automobile Liability for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of $1,000,000 CSL. If pollutants are to be transported, MCS 90 and CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

**C. State of Washington Statutory Workers’ Compensation Insurance**

The Contractor shall comply with Workers’ Compensation coverage as required by Title 51 RCW (Industrial Insurance).

D. XCU and Subsidence Perils Not Excluded

The Contractor’s CGL insurance shall not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.

**E. Products and Completed Operations Additional Insured**

The Contractor’s CGL insurance shall include the Owner as an additional insured for Products and Completed Operations by providing additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for the Owner shall remain in effect for not less than three (3) years following the Physical Completion Date or Final Acceptance of the Work (as applicable) by the Owner.

1. **Umbrella or Excess Liability Insurance**

The Contractor shall provide minimum Excess or Umbrella Liability coverage limits of $ 5,000,000 each occurrence in excess of the primary CGL and Automobile liability insurance limits specified in section 2.01.A and 2.01.B. The minimum total limits requirement of $6,000,000 may also be satisfied with primary CGL and/or Automobile liability insurance limits or any combination of primary and excess/umbrella limits.

**G. Contractor’s Professional Liability**

The Contractor shall provide evidence of Professional Liability insurance covering professional errors and omissions for construction management, value engineering, or any other non-construction professional services. Such insurance must provide a minimum limit of liability of $5,000,000 each claim and may be evidenced as an extension of a CGL policy or by a separate Professional Liability policy. If insurance is on a claims made form, its retroactive date, and that of all subsequent renewals, shall be no later than the Notice to Proceed Date.

**H. Owner-Provided Builders Risk Property Insurance**

1. The Owner shall, at its sole expense, maintain Builders Risk Property insurance (“Builder’s Risk”) covering interests in the Work of the Owner by the Contractor and any subcontractor of any tier (“Subcontractor”). Builders Risk shall insure against all risks of physical loss or damage, including earthquake and flood, except as are excluded. The Builders Risk shall:
2. Attach upon notification to the Owner’s Builder’s Risk property insurance underwriter of the Notice to Proceed Date and shall terminate upon such notification of the Physical Completion date.
3. Be written with an amount of insurance equivalent to the completed value of the project plus “soft costs,” including design costs, licensing fees, architect fees and engineer fees.
4. Include coverage for temporary buildings, debris removal, and building materials in transit or stored on or off-site, but not for Contractor’s or Subcontractor’s owned, hired, or leased property or tools, equipment, or supplies used for construction and not intended to form a permanent part of the Work .
5. Have a deductible of $100,000. Payment of deductibles shall be the responsibility of the Contractor except for (i) earthquake or flood claims, or (ii) all risks claims to the extent damage is not caused by the negligent acts of the Contractor or any Subcontractor.
6. Include the Contractor as loss payee as its interest may appear.
7. Within five (5) business days of binding Builder’s Risk coverage, the Owner shall cause to be provided to the Contractor a certificate of Builder’s Risk Property insurance that includes coverage information, amounts of insurance, deductibles and provisions for thirty (30) day notice of cancellation and additional insured status; evidence of renewal of such insurance shall thereafter be delivered until the earliest of the Substantial Completion Date or occupancy of the Work by the Owner. Upon written request of Contractor by email to Sheila.barker@seattle.gov or by fax to (206) 470-1275, Owner shall, in addition, provide an electronic copy by email in Portable Document Format (PDF) of the current original Builder’s Risk Property insurance policy or, or if the policy has not been issued and received by Owner, an electronic copy of the current Builder’s Risk Property insurance binder.
8. In the event of any claim or potential claim against the Owner-provided Builder’s Risk, the Contractor shall, as soon as practicable, provide electronic written notice by email to sheila.barker@seattle.gov or by fax to (206) 470-1275**.**
9. Builder’s Risk shall cover all materials, supplies, and equipment that are intended for specific installation in the project while such materials, supplies and equipment are located at the project site, in transit or while temporarily located away from the project site. However, Builder’s Risk insurance does not cover Contractor’s or Subcontractor’s owned, hired, or leased property or tools, equipment, or supplies used for construction and not intended to form a permanent part of the Work, for which Contractor and Subcontractor shall be responsible and at their sole option may insure.

The Contractor and the Owner mutually waive all rights of subrogation against the other and any of their Subcontractors, and their respective agents and employees, each of the other, for damage caused by insured perils to the extent covered by Builders Risk or other property insurance applicable to the work. The applicable property insurance policies shall provide automatic blanket provisions for such waivers.

1. The Contractor shall:
   * 1. Not begin Work until evidence of insurance as required in section 2.05 has been delivered to and approved by the Owner and the Owner has given written notice to proceed, and
     2. Keep required insurance in force at all times during the term of the Contract. The term “insurance” herein shall include (if accepted by the Owner in writing) but not be limited to self-insurance, alternative risk transfer techniques, capital market solutions or any other form of risk financing.
2. Each insurer must either be:
   * 1. Authorized to do business in the state of Washington and maintain A.M. Best’s ratings of A-: VII or higher, or
     2. Procured as surplus lines under the provisions of chapter 48.15 RCW (“Unauthorized Insurers”), except as may otherwise be approved by the Owner.
3. “The City of Seattle” shall be included as an additional insured for primary and non-contributory basis as respects insurance coverages specified in sections 2.01 A (CGL insurance) and 2.01B (Automobile Liability insurance).

As respects CGL insurance such additional insured status shall:

* + 1. Be evidenced by an ISO endorsement form CG 20 10 or equivalent designated or blanket additional insured endorsement or policy language,
    2. Be primary and non-contributory as respects the Owner’s insurance, and
    3. Contain a “separation of insureds” provision.

ISO endorsement form CG 20 12 or equivalent endorsement or blanket additional insured language limiting additional insured status to governmental permitting shall not satisfy the requirements of this paragraph.

As respects section 2.01 B (Automobile Liability insurance), such additional insured status shall:

* + 1. Be evidenced by ISO endorsement form CA 20 48 or equivalent designated or blanket additional insured endorsement or policy language,
    2. Be primary and non-contributory as respects the Owner’s insurance, and
    3. Contain a “separation of insureds” provision.

1. Written notice of cancellation must be actually delivered or mailed to the Owner not less than thirty (30) days prior to the effective date of any cancellation, except for cancellation for nonpayment of premium, which notice shall be not less than ten (10) days prior to such date, unless a longer period of written notice is required under the provisions of Revised Code of Washington (RCW) 48.18.290 (“Cancellation by insurer.”). Notice under this paragraph shall be issued to:

The City of Seattle

FAS Risk Management Division

P.O. Box 94669

Seattle, WA 98124-4669

If sent by facsimile transmission, fax to (206) 470-1270; if emailed, send as a PDF or XLS format attachment to [RiskManagement@Seattle.Gov](mailto:RiskManagement@Seattle.Gov).

1. Failure on the part of the Contractor to maintain insurance as required shall constitute a material breach of contract, upon which Owner, after giving five (5) business days notice to the Contractor to correct, may immediately terminate the contract. At the sole discretion of the Owner, it may also procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Owner on demand, or at the sole discretion of the Owner, it may offset sums expended against funds due the Contractor.
2. Any self-insured retention (S.I.R.) in excess of $25,000 that is not “fronted” by an insurer must be disclosed and is subject to the Owner’s approval. Upon request by the Owner, the Contractor shall:
   * 1. furnish financial information that the Owner may reasonably require to assess the Contractor’s risk bearing capacity, and
     2. provide a written statement that the Contractor will defend and indemnify the Owner against any claim within the Contractor’s S.I.R. at least to the same extent that coverage would be afforded to the Owner under the relevant insurance policy(ies) meeting the requirements stated herein.

The cost of any payments for defense and indemnity falling within the S.I.R. shall be the responsibility of the Contractor.

1. The Contractor and/or any subcontractor of any tier shall comply with all of a railroad's risk management requirements (including purchasing Railroad Protective Liability Insurance) before performing construction services work adjacent to or upon a railway's right of way and/or property.
2. All costs for insurance shall be at the incidental to and included in the Specified General Conditions bid lump sum of the contract and no additional payment will be made.

## 8.02 SUBCONTRACTOR INSURANCE

Contractor shall contractually require that each subcontractor of every tier maintain at a minimum the insurance coverages specified in sections 2.01.A (CGL insurance) and 2.01.B (Automobile Liability insurance) and include the City of Seattle as an additional insured for primary and non-contributory limits of liability.

## 8.03 NO LIMITATION OF LIABILITY; ADDITIONAL INSURED

The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the Contractor, that of any subcontractor of any tier or of any of their respective insurers. Any provision in any Contractor or subcontractor insurance policy that limits available limits of liability to those specified in a written agreement or contract shall not apply and all insurance policies, with the exception of Professional Liability and Workers Compensation, shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Contractor or subcontractor, whether such limits are primary, excess, contingent or otherwise. This provision shall apply regardless of whether limits maintained by the Contractor are greater than those required by this Contract, and regardless of whether the certification of insurance provided by a subcontractor of any tier pursuant to section 2.03 specifies lower minimum limits than those specified for or maintained by the Contractor.

## 8.04 EVIDENCE OF INSURANCE (DOES NOT APPLY TO STATE OF WASHINGTON STATUTORY WORKERS’ COMPENSATION)

* 1. The Contractor shall deliver to the Owner certification of insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work. The certification of insurance must include the following:

1. An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.
2. A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability and (if required) Pollution Liability insurance documenting that the City of Seattle is an additional insured for primary and non-contributory limits of liability and (if required) Products and Completed Operations Additional Insured; a statement of additional insured status on an ACORD or other form of certificate of insurance will not satisfy this requirement.
3. A copy of each policy’s declarations page and schedule of forms and endorsements.
4. Any other policy language or endorsements that documents compliance with the requirements herein, including (if required) CA 99 48 and MCS-90 endorsements.
   1. Should any insurance policy neither be issued nor delivered to the named insured Contractor at the time it delivers the signed Contract for the work, the Contractor shall deliver and maintain on file with the City binders of insurance evidencing compliance with the requirements herein. As soon as practicable after delivery of the policy(ies), the Contractor shall deliver the insurance certification specified in subparagraphs 2.,3.,and 4. above.
   2. At any time upon the Owner’s request, the Contractor shall forward to the Owner a true and certified copy of any insurance policy(s).
   3. Certification of insurance shall be issued to:

The City of Seattle

FAS Purchasing and Contracting Services Division

700 Fifth Avenue, Suite 4112

P.O. Box 94687

Seattle, WA 98124-4687

If sent by facsimile transmission, fax to (206) 684-4511; if emailed, send as a PDF or XLS format attachment to ContractingServices@Seattle.gov.

## 8.05 INDEMNIFICATION

The Contractor shall indemnify, defend, and hold harmless the City, and its officers, officials, employees, agents and persons under the City’s control or supervision (each a “City Indemnitee”), from and against, and pay the full amount of, any and all Loss-and-Expense incurred by a City Indemnitee to third parties and shall defend the City Indemnitees in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property, and in any proceeding instituted by a governmental entity, arising from or in connection with (or alleged to arise from or in connection with (1) any performance or failure to perform by the Contractor of its obligations under this Contract (except to the extent the Contractor is excused from performance due to the occurrence of an Uncontrollable Circumstance); (2) the negligence, or willful misconduct of the Contractor or any of its officers, members, employees, agents, representatives, Affiliates, contractors or Subcontractors (collectively and severally the “Indemnitor”) in connection with its obligations or rights under this Contract; and (3) in any circumstance identified as a Contractor responsibility otherwise identified in the terms of this Contract. The Contractor’s indemnification is limited to the extent provided in RCW 4.24.115, and the parties specifically and expressly intend that where this indemnification provision addresses a situation where the Loss-and-Expense is caused by or results from the concurrent negligence of a City Indemnitee and an Indemnitor, then the Contractor shall indemnify the City Indemnitee to the extent of the Indemnitor’s negligence. These indemnification provisions are for the protection of the City Indemnitees only and shall not establish, of themselves, any liability to third parties. This indemnification obligation shall include, but is not limited to, all claims against the City by an employee or former employee of the Contractor, the Guarantor or any Subcontractor and the Contractor expressly waives all immunity and limitation on liability under Washington’s Industrial Insurance Act, RCW Title 51, any other Industrial Insurance Act, other workers’ compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such a claim, with respect to the City only, and only to the extent necessary to provide the City with a full and complete indemnity. The Contractor intends to indemnify, defend and hold the City Indemnitees harmless to the fullest extent allowed by Applicable Law, and, therefore, any limitation on indemnity shall automatically be deemed amended without further act by either party so as to remove any of the restrictions contained in this Section no longer required by then Applicable Law. To the extent that Applicable Law invalidates any portion of this Section, the remainder shall be construed to provide the broadest protection to the City Indemnitees allowed by Applicable Law. The parties acknowledge that the foregoing waiver of RCW Title 51 immunity was mutually negotiated and that the provisions of this Section shall survive expiration or termination of this Contract by either party for any reason.

## 8.06 WORKER’S BENEFITS

1. The Contractor shall make all payments required for unemployment compensation under Title 50 RCW and for industrial insurance and medical aid required under Title 51 RCW. If any payment required by Title 50 or Title 51 is not made when due, the Owner may retain such payments from any money due the Contractor and pay the same into the appropriate fund.
2. For work on or adjacent to water, the Contractor shall make the determination as to whether workers are to be covered under the Longshoremen's and Harbor Worker's Compensation Act administered by the U.S. Department of Labor, or the State Industrial Insurance coverage administered by the Washington State Department of Labor and Industries, or both coverages.

The Contractor shall include in the cost of work, all costs for payment of unemployment compensation and for providing either or both of the insurance coverages. The Contractor will not be entitled to any additional payment for:

1. Failure to include such costs, or
2. Determinations made by the U.S. Department of Labor or the Washington State Department of Labor and Industries regarding the insurance coverage.
3. The Public Works Contract Division of the Department of Labor and Industries will provide the Contractor with applicable industrial insurance and medical aid classification and premium rates. The "Request for Release" form of the Department of Labor and Industries is also for the purpose of obtaining a release with respect to the payments of industrial insurance and medical aid premiums.

## ARTICLE 9 - BONDS

## 9.1 Payment and Performance Bond

9.1.1 A Payment and Performance bond for 100% of the Total Contract Cost (TCC), including all Change Orders and state sales tax shall be furnished by the Contractor for the Work. The bond shall be on a bond form provided by the Owner.

9.1.2 Subcontractors with subcontracts above $300,000 shall provide a performance bond for 100% of the Subcontract Amount, including all Change Orders and state sales tax, and a payment bond in accordance with applicable legal requirements, shall be furnished for the Work.

* + 1. Subcontractors who bid work with a bid estimate over $300,000 shall provide a bid bond on a form provided by their surety with their respective bid.

## 9.2 Additional Bond Security

Contractor shall promptly furnish additional security required to protect Owner and persons supplying labor or materials required by the Contract Documents if Owner has a reasonable objection to the surety; or any surety fails to furnish reports on its financial condition if requested by Owner.

**ARTICLE 10 - CONTRACTOR VIOLATIONS**

If the Contractor violates any material covenant or provision of this Contract the Owner may: withhold payment due on any work done under the Contract until the Contractor complies with the Contract; order that the Work be stopped; terminate the Contract; and/or debar the Contractor in accordance with SMC Ch. 20.70.

**ARTICLE 11 - RELATIONSHIP OF THE PARTIES**

11.1 General

The Contractor accepts the relationship of trust and confidence established by this Contract and covenants with the Owner to cooperate with the Design Team through every phase of the Work and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to use best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to assist the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with the requirements of the Contract Documents. The Contractor recognizes that the Owner has a separate agreement with the Design Team to design the project and to provide certain construction administration services necessary to ensure that the construction conforms to the Drawings and Specifications. The Contractor further recognizes that in order for the Project to be completed on time and within the TCC, the Contractor and the Design Team and the Owner will have to cooperate closely on a regular basis to revise plans, drawings, specifications, materials, methods, estimates and budgets as necessary to meet the Owner's financial constraints.

11.2 No Agency

11.2.1 No Agency Relationship. This Agreement does not constitute the Contractor as the agent or legal representative of the City for any purpose whatsoever, and the relationship of the Contractor to the City by reason of this Agreement shall be that of an independent contractor. The Contractor is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

11.2.2 Independent Status of Contractor. Both Parties hereto, in the performance of the Contract, will be acting in their individual capacities and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one Party shall not be deemed or construed to be the employees or agents of the other Party for any purpose whatsoever. The Contractor’s staff shall work under the direction and control of the Contractor. The Contractor shall ensure that all Contractor’s staff are properly trained and fully equipped to perform their assigned tasks. The Contractor shall provide any necessary reasonable accommodations to enable Contractor’s staff to perform assigned tasks.

11.2.3 Status of Contractor’s Employees. The Parties agree that no person supplied by Contractor in the performance of obligations under this Agreement is an employee of the Owner, and that no rights in the Owner’s civil service, retirement system, other employee benefits, or personnel rules shall accrue to such persons. Contractor shall have total responsibility for all salaries, wages, bonuses, retirements, withholdings, worker's compensation, other employee benefits and all taxes and insurance premiums pertinent thereto concerning such persons used by them in the performance of this Contract; and Contractor shall indemnify, defend, save and hold the Owner harmless with respect thereto.

11.2.4 Standards of Conduct. Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, appearance and integrity. Contractor’s staff must be cooperative and work in harmony with each other, City employees, other City contractors, and City customers at all times. While on the City’s work premises, Contractor’s staff must comply with all City ordinances, rules, and regulations related to behavior and conduct required by invitees and City employees. Any Contractor staff found in violation of any City ordinances, rules, or regulations may be asked to immediately leave City premises. The Contractor must be prepared to provide an immediate replacement.

**ARTICLE 12 - RETAINAGE OPTION FORM**

Contractor shall declare its option for management of the statutory retained percentage of this Contract by checking applicable box below and affixing signature and date. See Article 6.06 of General Conditions.

[ ] Bond in lieu of retainage.

[ ] Contractor hereby elects to have The City of Seattle invest the retained percentage of the Contract from time to time as such retained percentage accrues and in accordance with RCW 60.28.011, .021, and .051. Contractor hereby designates:

Name of Financial Institution

Address of Financial Institution

City, State, Zip Code of Financial Institution

as the repository for the escrow of said funds. Contractor hereby further agrees to be fully responsible for payment of all costs or fees incurred as a result of placing said retained percentage in escrow and investing it as authorized by statute and to assume all risks in connection with the investment of the retained percentages in securities. The City of Seattle shall not be liable in any way for any cost or fees in connection therewith.

IN WITNESS WHEREOF, the Owner has caused this Contract to be signed by the City of Seattle, and the Contractor has hereunto affixed the signature of its authorized representative.

THE CITY OF SEATTLE

Department of Finance and Administrative Services

City Purchasing and Contracting Services

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Nancy Locke, Director

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_

CONTRACTOR

Print Name and Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibits**

Exhibit A: The General Conditions with Division 1

Exhibit B: The MACC and Negotiated Support Services Documentation

Exhibit C: Drawings and Specifications, Division 1

Exhibit D: Subcontracting and Inclusion Plan

Exhibit E: Assumptions and Exclusions (If needed)

Exhibit F: Construction Forms

Exhibit G: Prevailing Wage Rates