

RFQ ATTACHMENT C

DRAFT GC/CM AGREEMENT

DRAFT General Contractor/Construction Manager
(GC/CM) Agreement
for
Washington State Convention Center
Addition Project

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EXHIBITS

- Exhibit A – Reservation of Rights to Implement Owner Controlled Insurance Program
- Exhibit B – Summary Matrix of Cost Allocation
- Exhibit C – Form of Construction Cost Estimate – Summary
- Exhibit D – Summary of Completed Cost Estimate

General Contractor/Construction Manager (GC/CM) Agreement

THIS GENERAL CONTRACTOR/CONSTRUCTION MANAGER (GC/CM) AGREEMENT (this "Agreement") is made and entered into by and between Washington State Convention Center ("Owner"), a public facilities district and _____, a _____ ("GC/CM") hereinafter referred to as "Parties". This Agreement shall be effective on the last date set forth on the signature page. This Agreement shall be the agreed basis of performing, and compensating for, all work identified herein.

In consideration of the mutual covenants and agreements of the Parties herein contained, GC/CM agrees to furnish all material, labor, tools, equipment, apparatus, facilities, etc., necessary to perform and complete in an acceptable manner all general contractor and all construction management services and the Work called for in the Contract Documents for a total not to exceed Total Agreement Cost of:

Percent Fee of the Maximum Allowable Construction Cost (___ %)	\$ _____
Fixed Amount for Specified General Conditions	\$ _____
Maximum Allowable Construction Cost (" <u>MACC</u> ")	\$ _____
Total Agreement Cost ("<u>TCC</u>"):	\$ _____
Preconstruction Services Amount	\$ _____
TCC plus Preconstruction Services:	\$ _____

This Agreement is entered into pursuant to the provisions of RCW 39.10.210 and 39.10.340 through 39.10.410. GC/CM agrees, as required by RCW 39.10.350, if the Work cannot be completed for the MACC, excepting increases due to Owner directed changes, design errors or omissions, or unforeseen site conditions, any and all additional costs shall be the sole responsibility of the GC/CM and GC/CM hereby assumes liability for such costs without reimbursement by Owner.

ARTICLE 1 **DEFINITIONS**

In addition to the definitions set forth in the General Conditions for GC/CM Projects, the following definitions shall apply to this Agreement.

- 1.1 Architect. "Architect" or "A/E" refers to: LMN Architects.
- 1.2 Bid Package Estimate. The term "Bid Package Estimate" ("BPE") defined in section 6.6.2.1.
- 1.3 Construction Documents. The term "Construction Documents" means the Drawings and Specifications in the form existing at the applicable time as determined by the paragraph in which the term is used.
- 1.4 Construction Work. The term "Construction Work" shall mean all work performed during the construction phase of the Project by GC/CM, including but not limited to that performed by subcontractors or sub-subcontractors.
- 1.5 Contract Documents. The "Contract Documents" consist of the following:
 - 1.5.1 This General Contractor/Construction Manager Agreement;

- 1.5.2 Any documents referenced herein and attached to this Agreement, including but not limited to Exhibit A, “*Summary Matrix of Cost Allocation*”. In the event of a conflict or inconsistency, the provisions of this Agreement, Specifications Division 00, or Specifications Division 01 shall take precedence over Exhibit A;
- 1.5.3 The following documents are incorporated herein by reference, as if set forth herein in full: (a) General Conditions for the GC/CM Agreement; (b) any modifications and Supplemental Conditions to the General Conditions; (c) Drawings and Specifications with all Addenda and modifications thereof; (d) change orders issued after execution of this Agreement; (e) the Request for Qualifications (“RFQ”) document for selection of the GC/CM and the GC/CM’s Response to the RFQ; (f) the Request For Final Proposals for GC/CM Services (“RFFP”) issued by Owner and its addenda and the GC/CM’s written response to the RFFP including GC/CM’s Percent Fee bid and Fixed Amount for Specified General Conditions Work; and (g) other documents listed in this Agreement.
- 1.6 GC/CM. See the term “General Contractor/Construction Manager”.
- 1.7 CPARB. The term CPARB means the Capital Projects Advisory Review Board as set forth in section 3.1.4
- 1.8 Development Manager. The term “Development Manager” means the person or firm designated by Owner to serve as Owner’s representative, and to which GC/CM shall report for information regarding construction and administration of the Project. Pine Street Group L.L.C. is the Development Manager for the Project, and its designated representatives will be identified prior to the start of construction.
- 1.9 General Conditions. “General Conditions” means those certain General Conditions for GC/CM projects executed by the Parties as may now or hereafter be amended or modified by them in writing.
- 1.10 General Contractor/Construction Manager. “General Contractor/Construction Manager” (“GC/CM”) means a firm with which Owner has negotiated an Agreement for Preconstruction Services applicable to the design phase. Upon execution of this Agreement, GC/CM will continue to provide services during the design phase and act as general contractor and construction manager during the construction phase.
- 1.11 Maximum Allowable Construction Cost. The “Maximum Allowable Construction Cost” (“MACC”) means the maximum cost of the Work to construct the Project including a percentage for risk contingency, Negotiated Support Services, and approved change orders.
- 1.12 Negotiated Support Services. “Negotiated Support Services” means items GC/CM would normally manage or perform on a construction project including, but not limited to staffing, surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal. The Negotiated Support Services shall be provided by GC/CM and the cost thereof shall be included in the MACC.
- 1.13 Owner Furnished Contractor Installed. The term “Owner Furnished Contractor Installed” (“OFCI”) is defined in section 6.6.10.
- 1.14 Owner. “Owner” refers to the Washington State Convention Center, a public corporation.
- 1.15 Parties. The term “Parties” is defined in the first sentence of this Agreement.
- 1.16 Percent Fee. “Percent Fee” means the percentage amount of the MACC to be earned by the GC/CM as overhead and profit and as further defined in section 6.5 of this GC/CM Agreement.
- 1.17 Proposal. The term “Proposal” is defined in section 3.2.1.
- 1.18 Punchlist Work. The term “Punchlist Work” means minor items of repair or completion that do not interfere with Owner’s occupancy or utilization of the Project for its intended purposes.

- 1.19 Total Contract Cost. The term “Total Contract Cost” (“TCC”) means the fixed amount for the detailed Specified General Conditions work, the negotiated Maximum Allowable Construction Cost, and the Percent Fee on the negotiated Maximum Allowable Construction Cost.

ARTICLE 2

THE CONTRACT DOCUMENTS

- 2.1 Contract Documents. The Contract Documents, as defined in Article 1 of this Agreement, form the complete agreement between the Parties, and are as fully a part of the Agreement as if attached to this Agreement or repeated herein. The Contract Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representation or agreements, either written or oral, including, but not limited to, the Agreement for Preconstruction Services. In the event of any inconsistencies between the component parts of the Contract Documents, the order of precedence of the documents shall be as stated in the General Conditions.
- 2.2 Miscellaneous. References in this Agreement to sections are references to sections in this Agreement unless otherwise specified.

ARTICLE 3

WORK OF THIS CONTRACT

- 3.1 General. GC/CM will work collaboratively and proactively with Owner and Architect to proceed with the planning, design, and development of the Work in a manner that supports Owner’s efforts to keep costs within Owner’s budget. Contact with Owner and Architect shall be made through Owner’s Development Manager. GC/CM shall make all submittals, correspondence, inquiries and requests through the Owner’s Development Manager unless otherwise directed by Owner. GC/CM shall provide construction management (“CM”) services throughout the Project, from the preconstruction period through construction and shall closely coordinate such work with A/E and Owner. GC/CM shall provide CM services, including but not limited to: (a) assistance in identifying safe work practices and requirements for construction; (b) assessing and recommending site logistics requirements; (c) recommending phasing, sequencing of work and construction scheduling; (d) providing cost-estimating including Negotiated Support Services budgeting; (e) determining and reconciling constructability issues and performing constructability analysis of the design documents prior to subcontract bidding; (f) assessing alternative construction options for cost savings; (g) identifying products for cost savings and engineering systems for life cycle cost considerations and recommending all work necessary to support their implementation and; (h) participating in Owner’s Design and Construction Documents phases coordination reviews. In addition, the GC/CM shall work with local labor and subcontracting markets to generate viable pricing alternatives, assist in defining, implementing and supporting Owner’s Outreach Plan, and assist in the refining, negotiating and abiding by a potential project labor agreements. GC/CM shall provide full general contracting services for construction of the Project in accordance with the requirements of the Contract Documents and RCW 39.10.210 and 39.10.340 through 39.10.410, except to the extent work is specifically indicated in the Contract Documents to be the responsibility of others. Notwithstanding anything else in the Contract Documents to the contrary, GC/CM shall be solely responsible for the supervision, performance and coordination of all of the Work and shall cause all such Work to be performed in a good and workmanlike manner.
- 3.1.1 Phases. The development of the Project may be comprised of various phases. Early utility relocation, selective demolition, environmental remediation, and transit related work may be part of early phasing.
- 3.1.2 Construction Cost Estimates. GC/CM shall prepare construction cost estimates in a format approved by Owner Agreement at completion of every Architect Design Phase and at other intervals as requested by Owner, unless otherwise approved by Owner. Preconstruction will be synchronized to allow construction cost estimating and coordination reviews to occur simultaneously.

- 3.1.3 LEED. The LEED goal for this Project will be determined by Owner. GC/CM shall work collaboratively and proactively throughout the Project, including construction, to achieve this goal.
- 3.1.4 CPARB Reporting. GC/CM shall provide Owner any project information required to be submitted by GC/CM in accordance with the provisions of chapter 39.10 RCW and the requirements of the Capital Projects Advisory Review Board as defined in RCW 39.10.210(2).
- 3.1.5 Property As-builts. Owner shall make available to GC/CM, as requested, any available record drawings of the existing sites and facilities. Owner cannot guarantee the accuracy of these drawings, and GC/CM shall verify as required elsewhere in this Agreement those aspects of the existing site that are pertinent to the Project and which are necessary for GC/CM to perform its obligations under this Agreement.
- 3.1.6 Taxes. GC/CM shall pay sales, business & occupation, consumer use and similar taxes for the Work provided by GC/CM that are legally enacted when the Work is performed. GC/CM shall indemnify, defend and hold harmless Owner from any liability for all such taxes and those taxes relating to the employees of GC/CM, any Subcontractor or any Sub-subcontractor, including taxes and contributions required under the Federal Social Security Act and the unemployment compensation law or any similar law of any state.
- 3.2 Work Prior to Construction.
- 3.2.1 General. GC/CM shall actively participate as a member of the Project team with Owner and Architect during the Design and Construction Documents phases. GC/CM shall be responsible for providing necessary consulting expertise to the Owner to ensure that the program scope, the construction budget and the Project schedule are met. During this period, GC/CM shall provide the appropriate professional personnel that were named in response to the Request for Qualifications for GC/CM Services (the "Proposal") and other such personnel as necessary to perform the required services. GC/CM personnel on the Project must be approved by Owner, including but not limited to, a professional project manager or higher level person to attend all meetings described herein and provide or oversee the services the GC/CM is obligated to perform to ensure development of the most functional, constructable and cost effective Project. GC/CM shall review the Project draft concept schedule to ensure its viability and make recommendations for change, including recommendations on accelerating and possible phasing options as appropriate.
- 3.2.2 Schematic Design Phase. Schematic Design may have commenced prior to any contract between Owner and GC/CM. In addition to the general services normally provided by a construction manager prior to construction, GC/CM shall provide the following services:
- 3.2.2.1 Attend project management meetings to discuss project status, issues and planning for design committee meetings. Attend design committee meetings.
- 3.2.2.2 Provide constructability comments and estimating services when requested by the Architect and approved by Owner to evaluate critical elements of the design as they are formulated. Propose alternative designs or materials, if appropriate.
- 3.2.2.3 Provide comments on construction feasibility and safe working conditions. Comment on site logistics requirements including, but not limited to, temporary power, haul routes, street closures, construction time periods, site access, temporary construction facilities, debris removal due to demolition, material delivery, hoisting and lay-down area.

- 3.2.2.4 Review record drawings and investigate the existing conditions including utility locations on public and private property at the Project site to ensure that the Contract Documents will reflect the actual site conditions.
 - 3.2.2.5 Review assessments made by Architect and if necessary, recommend and provide, when requested by Owner, additional tests or investigations to verify existing conditions and/or capability of existing systems.
 - 3.2.2.6 Prepare a preliminary construction schedule in a format and software approved by Owner. GC/CM shall be coordinate its Project schedule with Owner's Project schedule.
 - 3.2.2.7 Review the Design Drawings and specifications and provide value engineering, coordination, and constructability comments. Monitor the development of the Schematic Design documents. Provide in-depth review, suggest detailed cost and schedule ideas that could better the Project, detailed quality and constructability reviews comments, and work collaboratively with the Project team to incorporate Owner approved suggestions. GC/CM shall inform Owner of GC/CM's opinion as to whether Architect is complete with the documents in the phase, and if not, why. GC/CM shall also track approved suggestions to the design phase documents and inform Owner whether suggestions have been incorporated into the documents after GC/CM's next document review. Work with Owner and Architect to develop possible phasing options to accelerate schedule and reduce costs and risk.
 - 3.2.2.8 Prepare a construction cost estimate for the entire Work in the detail and format approved by Owner. Upon completion of the estimate, GC/CM, the Architect and any other estimator Owner may retain shall reconcile their estimates and present to Owner one estimate of the construction cost based upon mutually agreed assumptions including: the date of commencement of construction, duration of construction, escalation factors, design contingency and Negotiated Support Services costs. The cost estimate shall be updated to include Owner's and GC/CM's document review comments to achieve a total reconciliation of the cost estimate. In the event that the reconciled estimate is higher than Owner's TCC budget, and as directed by Owner, GC/CM shall present to Owner a list of cost-savings equal to or greater than the amount by which the estimate exceeds the budget and continue to work with Architect to define a scope that is within the budget.
 - 3.2.2.9 Participate in and support Owner's marginal analysis exercises that analyze value and cost to help make informed decisions throughout the project. Create a cost saving item tracking system which identifies each cost saving proposal, provides a cost estimate of the savings to the Project if the cost saving proposal is accepted, indicates the date by which a decision must be made to incorporate the cost saving proposal, indicates the current status of the cost saving proposal and the team member with current action, and the date the cost saving proposal was accepted or rejected. In a similar log, keep a list of scope that is suggested by the Project team that can be added to the project with Owner's approval if there is room in the budget.
- 3.2.3 Design Development Phase. In addition to the general services normally provided by a construction manager or a contractor prior to construction, GC/CM shall provide the following services during the Design Development phase:
- 3.2.3.1 Attend project management meetings to discuss project status, issues and planning for design committee meetings. Attend design committee meetings.
 - 3.2.3.2 Provide constructability comments and estimating services when requested by the Architect and approved by Owner to evaluate critical elements of the design as they are formulated.

- 3.2.3.3 Monitor the development of the Design Development documents. Provide in-depth review, suggest detailed cost and schedule ideas that could better the Project, detailed quality and constructability comments, and work collaboratively with the Project team to incorporate Owner approved suggestions. GC/CM shall inform Owner of GC/CM's opinion as to whether Architect is complete with the documents in the phase, and if not, why. GC/CM shall also track approved suggestions to the design phase documents and inform Owner whether suggestions have been incorporated into the documents after Contractors next document review.
- 3.2.3.4 Work with Owner and Architect to develop possible phasing options to accelerate schedule and reduce costs and risk.
- 3.2.3.5 Prepare a time-scaled master Schedule bar chart and tabular report representing planned progress of the Project utilizing Microsoft Project or other software acceptable to Owner. The Schedule shall identify work to be performed by GC/CM and other team members (i.e. Owner, Architect and consultants), GC/CM and including activities appropriate for the Project (i.e. permitting, subcontractor buyout, fabrication, work of major Subcontractors, etc.). In developing the activities for this schedule GC/CM shall consult with both the Project team to ensure that the responsibility for and duration of these activities are accurate. Indicate important milestones (i.e. notice to proceed, subcontract and material buyout packages, bottom of excavation, topping out, building enclosed, temporary occupancy, beneficial occupancy, etc). The Summary Schedule shall be in a form and detail approved by Owner, be updated regularly and as requested by Owner.
- 3.2.3.6 Within the master schedule identify subcontract bid packages and material procurement packages that should be advertised prior to the completion of Construction Documents. If Owner concurs that the Project will benefit and funds are available Owner may, at its option, elect to authorize GC/CM to advertise and award subcontracts or material procurements for long lead-time items in advance of completion of Construction Documents. All provisions of this Agreement and RCW 39.10.210, and 39.10.340 through 39.10.410 otherwise applicable to subcontract bidding shall apply to any early advertising and award of subcontracts and/or material procurements.
- 3.2.3.7 Review the Final Design Development drawings and specifications and provide general coordination assessment comments, constructability comments of the design and conduct a safe working conditions hazards analysis. Verify that accepted cost savings recommendations are implemented.
- 3.2.3.8 Verify that the Design Development documents reflect the existing Project site conditions.
- 3.2.3.9 Prepare construction cost estimate for the entire Work in detail and format approved by Owner, based upon the Final Design Development documents. Upon completion of the estimate, GC/CM, the Architect and any other estimator Owner may retain shall reconcile their estimates and present to Owner one estimate of the construction cost based upon mutually agreed assumptions including: the date of commencement of construction, duration of construction, escalation factors, design contingency and Negotiated Support Services costs. The cost estimate shall be updated to include Owner's and GC/CM's document review comments to achieve a total reconciliation of the cost estimate. In the event that the reconciled estimate is higher than Owner's TCC budget, and as directed by Owner, GC/CM shall present to Owner a list of cost-savings equal to or greater than the amount by which the estimate exceeds the budget and continue to work with Architect to define a scope that is within the budget.
- 3.2.3.10 Update cost savings monthly for discussion at project management meetings.

- 3.2.3.11 Participate in and support the evaluation and documentation of the LEED scorecard and points to achieve the Project's sustainability goals, including but not limited to, providing a value based analysis and estimating of LEED points. The LEED goal for the Project will be determined by Owner. GC/CM shall work collaboratively and proactively throughout all phases of the Project, including construction, to achieve this goal.
- 3.2.4 Construction Documents Phase. In addition to the general services provided by a construction manager prior to construction, GC/CM shall provide the following services during the Construction Documents phase.
- 3.2.4.1 Attend project management meetings to discuss project status, issues and planning for design committee meetings. Attend design committee meetings.
- 3.2.4.2 Provide constructability comments and estimating services when requested by the Architect and approved by Owner to evaluate critical elements of the design as they are formulated.
- 3.2.4.3 Work with Owner and Architect to develop final phasing plans for the Work.
- 3.2.4.4 Prepare the baseline master schedule for the project, in detail and thought appropriate for organized and expedited execution of the project. Provide notes that explain changes from the last schedule. Provide regular updates to the Owner and Project team.
- 3.2.4.5 Prepare procurement documents for long-lead time materials if and when authorized by Owner.
- 3.2.4.6 Manage contracts for building engineering systems per RCW 39.04.290, if any.
- 3.2.4.7 Monitor the development of the Construction Documents. Identify changes to the documents and update cost saving tracking system for discussion at project management meetings. Provide document reviews at the Architect's document production milestones. Monitor the development of the documents. Provide in-depth review, suggest detailed cost and schedule ideas that could better the Project, detailed quality and constructability reviews comments, and work collaboratively with the Project team to incorporate Owner approved suggestions. GC/CM shall inform Owner of GC/CM's opinion as to whether Architect is complete with the documents in the phase, and if not, why. GC/CM shall also track approved suggestions to the design phase documents and inform Owner whether suggestions have been incorporated into the documents after GC/CM's next document review. Work with Owner and Architect to develop possible phasing options to accelerate schedule and reduce costs and risk.
- 3.2.4.8 Complete an interdisciplinary quality assurance check of the 90% complete Construction Documents submittal or submittals, if the Construction Documents are phased, to validate the documents are complete and coordinated. Provide comments to the Architect and Owner. Verify that the comments are incorporated into the final Construction Documents.
- 3.2.4.9 Provide a constructability analysis of each subcontract bid package.
- 3.2.4.10 Verify that the Construction Documents reflect the existing Project Site conditions.
- 3.2.4.11 Prepare a construction cost estimate for the entire Work in detail and format approved by Owner, based upon the final Construction Documents submittal. Upon completion of the estimate GC/CM, Architect and any other estimators Owner may retain shall reconcile their estimates and present to Owner one estimate of the construction cost based upon mutually agreed assumptions including: the date of commencement of construction,

duration of construction, escalation factors, design contingency and Negotiated Support Services costs. The cost estimate shall be updated to include Owner's and GC/CM's document review comments to achieve a total reconciliation for the phase. If the reconciled estimate exceeds the MACC agreed to between the Parties, because of Owner directed changes or unforeseen site conditions, GC/CM shall take whatever actions are necessary in conjunction with the Architect and Owner to reduce the cost of the Work to within the MACC. If the estimate exceeds the agreed MACC because of increases other than Owner directed changes, design errors or omissions, or unforeseen conditions, any and all additional costs shall be the sole responsibility of GC/CM subject to the provisions of the General Conditions.

3.2.4.12 Assist the A/E to research and document products and vendors compliant with the LEED requirements of the Project.

3.2.4.13 Prior to starting construction, the contractor will perform a quality assurance review of the design specification and documents which they will submit to the Development Manager and Architect for incorporation into the design documents. The GC/CM is to agree that drawings are complete and ready for efficient and effective execution of construction or give Owner notice of deficiencies in time for Architect to correct without delaying work.

3.3 Work During Construction.

3.3.1 General. During construction GC/CM shall provide all services required of a general contractor and construction manager to execute the Work. Some details of GC/CM's work are provided below but this list shall in no way limit GC/CM's overall duty to provide GC/CM services.

3.3.2 Meetings and Tours. GC/CM shall attend construction progress meetings and provide all schedules, logs and other information of construction activities to support the meeting. GC/CM will record and distribute meetings minutes for same. GC/CM shall conduct separate weekly safety, and subcontractor meeting(s) and maintain minutes for same until Owner has determined what documents are to be provided with GC/CM's close-out package. Upon advanced notice, GC/CM shall assist Owner in scheduling site tours for Owner and other officials as required. GC/CM shall (a) record the progress of the Work; (b) keep a daily log of information relevant to the activities and progress of the Work; (c) submit to Owner a brief progress report and copies of the daily logs monthly; and (d) submit to Owner such reports and notifications as Owner may reasonably request from time to time.

3.3.3 Superintendence/Coordination. GC/CM shall be responsible for superintendence, providing ongoing coordination between crafts, job site safety, housekeeping, quality control, settling disputes between Subcontractors, negotiating any Change Orders with Subcontractors (Owner expects GC/CM to negotiate with Subcontractors but reserves the right to reject any Subcontractor proposal), negotiating Change Orders with Owner, reviewing, coordinating and forwarding submittals, substitution requests, and Requests for Information ("RFIs") to Owner, as requested by Owner and for responding to all correspondence related to the effort required for any procurement activities that arise from a Subcontractor's inability or unwillingness to perform, which includes being proactive and taking appropriate actions necessary and/or directed by Owner to exercise Owner's bond rights.

3.3.4 Planning and Layout. GC/CM shall be responsible for the planning and layout of the Work, and for the coordination of layout work provided by separate trades for their own work, to insure that no conflict exists with the work of other trades.

3.3.5 Staffing. This Project shall have the highest priority of GC/CM resources. GC/CM shall staff the Project with adequate personnel that have the appropriate capacity, attitude and expertise to effectively plan and construct the Project in an expeditious manner with tight budget control.

Prior to the start of the Work, GC/CM shall submit for Owner's approval a Project staffing plan providing balanced and complimentary expertise to meet the goals of the Project. Owner shall have the right to direct removal of any project manager, engineers, superintendents or other staff assigned to the Work by GC/CM. Any changes in the personnel assigned including additional assignments by GC/CM to direct supervision or management of the Work shall be subject to Owner's prior approval. GC/CM shall provide sufficient staff of project managers, field engineers, superintendents, health and safety officers, GC/CM's quality control representatives, testing engineers, scheduling engineers, cost engineers, clerical and accounting personnel, etc. to ensure that:

- 3.3.5.1 Change Order Proposals are submitted to Owner no later than seven (7) calendar days of the receipt by GC/CM of Subcontractor's proposal. Submit proposals faster if required to maintain schedule.
- 3.3.5.2 RFIs are reviewed and forwarded to the Architect and Owner as requested or required as expeditiously as possible to not cause delay to the Project.
- 3.3.5.3 Submittals are reviewed for completeness and forwarded to Architect and Owner as requested or required no later than seven (7) calendar days of receipt. Forward submittals faster if required to maintain schedule.
- 3.3.5.4 Replies to correspondence are provided no later than seven (7) calendar days and faster if required to maintain schedule.
- 3.3.5.5 Until closeout is complete, provide adequate qualified staff that is authorized to act on behalf of GC/CM to coordinate and insure that any outstanding work items (including all punchlist work), testing and commissioning are completed.
- 3.3.5.6 All requirements of the Contract Documents are satisfied.
- 3.3.6 Inspections. Special inspection required by the appropriate building officials and regulatory agencies will be provided by Owner. GC/CM shall be responsible to ensure that Owner's inspectors are given notice and are afforded timely and appropriate access to the Work to make their inspections. Additional provisions regarding inspections are set forth in the General Conditions.
- 3.3.7 Regulatory Changes. GC/CM shall keep Architect and Owner informed of regulatory changes and updates to the law affecting the Project.
- 3.3.8 Certificate of Occupancy. GC/CM shall obtain a Certificate of Occupancy, including a Temporary Certificate of Occupancy if allowed and beneficial to Owner, and the required operating permits necessary for Owner to take beneficial occupancy of the Project or any partially completed portion of the Project.
- 3.3.9 Substantial Completion. Substantial Completion is defined in and shall be achieved by satisfying the criteria stated in the General Conditions.
- 3.3.10 LEED Certification: GC/CM shall manage environmental issues and implement and document the Project's LEED requirements, including but not limited to: (a) outline Subcontractor requirements for LEED in the subcontract bid documents; (b) monitor the submittal process to ensure LEED compliance; (c) train Subcontractors in LEED requirements; (d) review design changes during construction for LEED impacts and inform Owner of impacts; (e) ensure installed products are LEED compliant; and (f) assemble and maintain records to document LEED goals compliance.

3.4 Work During Commissioning.

3.4.1 Owner shall hire an independent commissioning authority. GC/CM shall provide necessary and appropriate staff to support all the commissioning effort.

ARTICLE 4
RELATIONSHIP OF THE PARTIES

4.1 General.

4.1.1 GC/CM accepts the relationship of trust and confidence established by this Agreement and covenants with Owner to cooperate with Owner and Architect through every phase of the Work and utilize GC/CM's best skill, efforts and judgment in furthering the interests of Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; to perform the Work in the best way and most expeditious and economical manner consistent with the interests of Owner; and to comply with the terms of the Contract Documents. GC/CM agrees that it has no right or authority to act as a representative or agent of Owner, and shall work with and through the Development Manager. GC/CM recognizes that Owner has a separate agreement with Architect to design the Project and to provide certain construction administration services necessary to ensure that the construction is in accordance with the Contract Documents. GC/CM further recognizes that in order for the Project to be completed on time and within budget, GC/CM, Architect, and Owner will have to closely cooperate on a regular basis to revise plans, drawings, specifications, materials, methods, estimates, schedules, and budgets as necessary to meet the Owner's needs and execute the project within the Owner's budget.

4.1.2 Owner agrees to exercise best efforts to timely furnish information required to be furnished by Owner to GC/CM under this Agreement and to make payments to GC/CM in accordance with the requirements of this Agreement.

4.2 Partnering. Partnering emphasizes a cooperative approach to problem solving involving all key parties to the Project: Owner, Architect, GC/CM and principal Subcontractors. Owner and GC/CM agree to utilize an informal partnering concept for the Project, so that through discussions, mutual objectives can be understood and established, lines of communication defined and problem resolution levels established and maintained. The parties agree to commit reasonable resources to this effort.

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

5.1 Subject to Funding. If Owner determines, in its absolute discretion, that sufficient funds are not available, then Owner shall have the right to immediately terminate this Agreement for its convenience at any time. In the event it does so, it will compensate GC/CM for the value of the Work it has performed, if any, and the reasonable costs for securing and demobilizing from the Project. However, GC/CM shall not be entitled to any compensation for damages, lost profits, or payments of any other kind.

5.2 Time is of the Essence. It is understood that time is of the essence in performing the Work, and GC/CM shall provide the necessary equipment, personnel and services to commence on the date this Agreement is executed and to substantially complete the Work within the time periods set forth herein.

5.3 Date of Commencement. The date of commencement of all other Work including the Construction Work shall be on the later to occur of (a) mutual execution of this Agreement and (b) delivery by Owner of a *Notice to Proceed* letter to GC/CM specifying the Work that is being authorized. Any Work (other than the Work performed under the Preconstruction Services Agreement) performed prior to the occurrence of the last of the events described in clauses (a) and (b) shall be at GC/CM's sole risk and expense.

- 5.4 Substantial Completion. Owner anticipates issuing a *Notice to Proceed* regarding the Construction Work. This *Notice to Proceed* will allow GC/CM to begin site mobilization, which has been shown as a duration in the master schedule, and then begin construction. All Work delineated in the Contract Documents, not including Preconstruction Services, shall be substantially complete within _____ (_____) calendar days after the date specified in the *Notice to Proceed* to begin the Work.
- 5.5 Damages for Delay. In the event GC/CM fails to achieve Substantial Completion of the Work within _____ (____) days after Owner's issuance of the Notice to Proceed, as adjusted for adjustments in the Agreement Time expressly permitted under this Agreement, the parties agree it would be impracticable and extremely difficult to fix the actual damages sustained as a result of the failure of GC/CM to complete the Project in accordance with this Agreement. As a result, the parties agree that Owner shall have the right to recover and GC/CM agrees to pay Owner the liquidated damages in the amounts set forth below, which amounts the parties agree are a reasonable estimate of the delay-related financial damage to Owner, and are intended to fairly measure the loss to Owner and are not a penalty or punitive in nature:
1. \$____,000/day for each day of delay up to the first fourteen (14) calendar days.
 2. \$____,000/day for each day of delay for the next fourteen (14) calendar days.
 3. \$____,000/day for each day of delay for the next fourteen (14) calendar days.
 4. For so long as delay continues after the first forty-two (42) calendar days, the daily charge for each day of delay shall be increased by \$____,000/day after each additional fourteen (14) day period of delay.

Such liquidated damages shall be Owner's sole remedy for recovery of all direct, indirect, and consequential costs associated with the delay in achieving Substantial Completion, but the assessment of liquidated damages shall not limit nor waive or affect Owner's rights and GC/CM's obligations, liabilities and responsibilities for the breaches of other sections and requirements of the Contract Documents.

ARTICLE 6

TOTAL CONTRACT COST

- 6.1 General. The TCC has been mutually negotiated and agreed to by the Parties. GC/CM agrees that the Project is adequately defined, that Construction Documents are at least 90% complete, and has determined that the Project is sufficiently clear and understandable for GC/CM to agree to the TCC in this Agreement.
- 6.1.1 This Agreement is entered into pursuant to the provisions of RCW 39.10. GC/CM agrees if the Work cannot be completed for the agreed MACC any additional costs, except as provided in the following sentence, shall be the responsibility of GC/CM, and GC/CM hereby assumes liability for such costs without reimbursement by Owner. Owner agrees that cost increases due to Owner-directed changes, design errors or omissions subject to section 4.01 of the General Conditions and unforeseen site conditions subject to section 5.10 of the General Conditions are Owner's responsibility.
- 6.2 Determination. The Total Contract Cost was determined through a negotiation of the MACC conducted prior to execution of this Agreement. GC/CM will not be reimbursed for MACC negotiations work.
- 6.3 Preconstruction Services. Prior to execution of this Agreement, Preconstruction Services were provided pursuant to a contract for Preconstruction Services. Upon execution of this Agreement, this Agreement replaces and supersedes the contract for Preconstruction Services and all work shall be performed in accordance with this Agreement.

6.4 Maximum Allowable Construction Cost (“MACC”).

6.4.1 Calculation. The MACC is the amount, mutually agreed to between Owner and GC/CM that is required to complete all Work as described in the Contract Documents. The negotiated MACC shall include funds for all costs through the life of the Project, except those required for:

6.4.1.1 Preconstruction work.

6.4.1.2 Percent Fee.

6.4.1.3 Fixed Amount of Specified General Conditions work.

6.4.1.4 Owner-directed changes.

6.4.1.5 Other changes due to:

(1) Design errors or omissions; and

(2) Unforeseen site condition, subject to applicable provisions of the General Conditions

6.4.1.6 Washington State Sales Tax.

6.4.2 GC/CM Responsibility: GC/CM shall be responsible for: (a) all costs related to Subcontractor claims or charges that result from mistakes or omissions in the subcontract buyout; (b) coordination errors and coordination omissions related to the coordinated shop drawings (c) interference between Subcontractor and the GC/CM; (d) interference between Subcontractors and other Subcontractors; and (e) GC/CM’s failure to coordinate the Work it self-performs with Work of other Subcontractors. Any increase in the cost of the Work or delay of the Work which is not directly attributable to the neglect or omission on the part of Owner or the Architect shall not increase the MACC and also shall not revise the Agreement Time or dates for occupancy and completion.

6.4.3 Risk Contingency Account and GC/CM Incentive Fee: A Risk Contingency Account has been established in the amount of _____ percent (___%) of the Total for Subcontract Costs as identified in Exhibit C Summary of Complete Cost Estimate. The Risk Contingency Account is included in the MACC. GC/CM may utilize the Risk Contingency Account established herein to pay for items for which it is responsible, as defined in section 6.4.2, except that GC/CM may not use the Risk Contingency Account for items that are defined as Percent Fee or as Specified General Conditions in sections 6.5.1 and 6.5.2. GC/CM’s use of the Risk Contingency Account must be approved in advance by Owner. GC/CM shall provide Owner monthly updates on the use of the Risk Contingency Account. Any funds remaining in the Risk Contingency Account shall be returned to Owner with the corresponding Percent Fee. No incentives may be paid to GC/CM from this Account or savings from this Account.

GC/CM Incentive Fee: Within the GC/CM’s total Percent Fee amount, twenty-five percent (25%) shall be allocated as an Incentive Fee, payment of which will be contingent upon the GC/CM achieving specified performance requirements under Incentive Criteria. It will be shown as a separate line item in the schedule of values. The Incentive Fee amount will be divided into three portions, and the GC/CM may earn a portion of the Incentive Fee at the completion of each of three Progress Stages:

<u>Progress Stage</u>	<u>Incentive Fee Percentage</u>
Topping Out of Structure	30%
Completion of Finishes	30%

Project Final Acceptance 40%

For each Progress Stage, the GC/CM's eligibility for an Incentive Fee payment and the amount of the corresponding Incentive Fee Percentage shall be determined by Owner utilizing the following Incentive Criteria:

<u>Incentive Criteria</u>	<u>Percentage</u>
General Performance	20%
Schedule	20%
Budget	20%
Quality	20%
Contracts	20%

At least two weeks prior to the expected date of completion for each Progress Stage, the GC/CM will provide Owner with a written self-evaluation of its performance related to the Incentive Criteria for that Progress Stage. Within thirty (30) days of receipt of the self-evaluation, Owner will review the GC/CM's performance (including meeting with the GC/CM) and issue a written determination on whether GC/CM has earned an Incentive Fee payment for that Progress Stage, and if so in what amount. If Owner in its sole discretion determines GC/CM has earned an Incentive Fee payment for a Progress Stage, the corresponding amount shall be included in the GC/CM's next monthly Application for Payment and will be payable by Owner in accordance with the procedures for monthly progress payments.

6.4.4 Documentation. As part of the MACC negotiations GC/CM has provided the following documentation, which documents are incorporated herein by reference as part of this Agreement as though fully included herein:

6.4.4.1 The documents used as the basis of developing and negotiating the MACC.

6.4.4.2 A complete cost estimate dated _____. The summary of the complete cost estimate is included as Exhibit C to this Agreement and shall be consistent with format provided in Exhibit B "*Form of Construction Cost Estimate – Summary.*"

6.4.5 Negotiated Support Services. The estimated costs for items identified as Negotiated Support Services in Exhibit A "*Summary Matrix of Cost Allocation*" to this Agreement shall be specifically identified and included in the MACC and identified as the Negotiated Support Services costs to be reimbursed by Owner on a direct cost basis and based upon the schedule and duration identified in section 5.4, and/or paid as a lump sum based upon the percent complete.

6.4.6 Subcontract Plan: GC/CM's subcontract plan shall be developed as part of its services prior to construction and such plan may be modified during MACC negotiations with the consent of Owner. Such plan as approved by Owner is made a part of this Agreement. The subcontract plan shall include a statement regarding the Work GC/CM intends (if any) to bid on and to self-perform and an affidavit stipulating that such Work is customarily performed by GC/CM. Upon execution of this Agreement, GC/CM shall submit to Owner a procurement schedule for each package GC/CM intends to prepare to execute the Project.

6.5 Percent Fee and Specified General Conditions.

6.5.1 Percent Fee. GC/CM submitted a dollar amount on the Form of Proposal which represented the Percent Fee stated as a percentage of the estimated MACC. The actual Percent Fee of the MACC stated on page one (1) of this Agreement is a set dollar amount calculated by multiplying the proposed fee percentage by the actual negotiated MACC. The Percent Fee amount shall be adjusted based on deductive or additive change orders by multiplying the proposed fee percentage by the actual amount of the change order. The Percent Fee shall cover the following:

- 6.5.1.1 All profit of GC/CM for this Project.
 - 6.5.1.2 All regional and home office overhead expenses, including labor and materials, travel, phone, facsimile, postage, and other incidental office expenses (such as data processing and similar activities) attributed to work on this Project.
 - 6.5.1.3 All overhead expenses of GC/CM for participation in and the support of Subcontractor's bidding process of the Project.
 - 6.5.1.4 Other than retail sales tax, the fee shall cover all taxes owed by GC/CM including City and State B&O tax.
 - 6.5.1.5 GC/CM's performance and payment bond.
 - 6.5.1.6 All GC/CM's insurance.
 - 6.5.2 Specified General Conditions Work. This Agreement identifies the dollar amount for the "Fixed Amount for Specified General Conditions" Work. Exhibit A "Summary Matrix of Cost Allocation" to this Agreement summarizes the costs associated with Specified General Conditions Work. Specified General Conditions Work must be performed at the expense of GC/CM and may not be made part of a subcontract bid except when so required by the Specifications and approved by Owner.
- 6.6 Subcontract Buyout Procedure.
- 6.6.1 Award to Low Bidder. When subcontract bid packages are awarded, they shall be awarded to the responsible bidder submitting the low responsive bid and satisfying RCW 39.10.380 through RCW 39.10.410. Subcontractor mark-ups for overhead and profit shall not exceed _____ percent (___%) (unless otherwise approved by Owner) for each Subcontractor. Subcontractor mark-up on subtier Subcontractors shall not exceed _____ percent (___%).
 - 6.6.2 Updated Subcontract Plan and Other Requirements. Before soliciting subcontract bids GC/CM shall submit for review and approval by Owner: (a) an updated Subcontract Plan outlining the subcontract packages with bid package estimates and a procurement schedule for each package; (b) an "Outreach" Plan outlining the program and goal achievement strategies GC/CM intends to implement, and addressing GC/CM's proposed actions to comply with the requirements of Part 10 of the General Conditions; (c) bidding instructions; (d) standard Subcontractor agreements; and (e) the updated Summary Schedule required by sections 3.2.3.5 and 3.2.4.4.
 - 6.6.2.1 No allowances shall be included in Subcontractor bid documents if not included in the MACC negotiations or without prior approval of Owner. Denial or approval of any allowance shall not result in a change in the MACC. If Owner agrees an allowance is appropriate within a Bid Package Estimate ("BPE"), the following procedures will be implemented:
 - (1) GC/CM will provide a schedule of allowances included in the BPE.
 - (2) Allowances will be tracked by GC/CM on a Time & Materials ("T&M") basis and shown on the Schedule of Values as a discrete line item for each appropriate Subcontractor.
 - (3) A deductive Change Order will be issued at the end of the Project for any remaining allowances along with GC/CM's Percent Fee multiplied by the amount of unused allowance.

- 6.6.3 Bid Documents Reproduction Costs. Reproductions of bid sets as required for bidding is an Owner expense. Reproductions of conformed documents to provide a consolidated Construction Document set due to phased permitting and partial Construction Document issuance is Owner's expense. The contractor will utilize the reprographics company designated by the owner's representative.
- 6.6.4 Bidding. GC/CM shall bid out subcontracts in accordance with its approved updated Subcontract Plan and in accordance with all requirements stipulated in RCW 39.10.340 through 39.10.410. During subcontract buyout, GC/CM may request a change in its Subcontract Plan, and Owner will not unreasonably withhold approval, provided the sum of all final bid package estimates in the Subcontract Plan as revised does not exceed the MACC.
- 6.6.5 Negotiations. If the low responsive bid for a particular bid package is greater than the bid package estimate, then the provisions of RCW 39.10.380 shall apply. All time delays and costs, including A/E costs associated with the negotiations and/or changes to the Construction Documents shall be the responsibility of GC/CM.
- 6.6.6 Award or Rebid. If GC/CM chooses not to negotiate under the provisions of section 6.6.5 above or if the low conforming bid exceeds the bid package estimate by more than the amount permitting negotiations, GC/CM shall award the bid package to the low responsive responsible bidder at no additional cost to Owner. Provided unusual circumstances exist, GC/CM may request and Owner, in its absolute discretion, may agree to a change in the scope of the work for the bid package. GC/CM may then rebid, but all time delays, including construction schedule impacts, and costs to rebid, including reproduction costs and any A/E costs to Owner associated with changes to the Construction Documents, shall be the responsibility of GC/CM and the MACC shall not be changed, and rebidding costs are specifically not reimbursable Negotiated Support Services costs.
- 6.6.7 Bid Protest. GC/CM shall be responsible for reviewing and responding to bid protests and shall adhere to the requirements of RCW 39.10.380 in the event of a bid protest. All time delays, including construction schedule impacts, and costs related to bid protests shall be the responsibility of GC/CM and the MACC shall not be changed, and bid protest costs are specifically not reimbursable Negotiated Support Services costs.
- 6.6.8 Savings. If GC/CM is successful in awarding contracts for all of its subcontracts in its approved updated Subcontract Plan in an amount less than the negotiated MACC, any remaining savings shall be returned to Owner along with the Percent Fee percentage multiplied by the savings, or utilized to fund additive alternates or other Work as directed by Owner. For purposes of determining if there are any savings, Owner and GC/CM shall agree in writing as to the contract award amount of any Work to be performed by GC/CM as allowed under section 7.2. All discounts, rebates and salvages that accrue to GC/CM during the term of this Agreement shall reduce the MACC along with the Percentage Fee multiplied by the appropriate discount, rebate or salvage.
- 6.6.9 Subcontractor Non-Performance. If any Subcontractor to whom a bid package has been awarded is unable to perform for whatever reason, GC/CM shall have the option to rebid or negotiate for the performance of the work or perform the work itself. GC/CM shall bear all risk and/or be responsible for cost overruns occasioned by a Subcontractor's inability to perform.
- 6.6.10 Owner-Furnished Equipment. GC/CM shall perform all work required to subcontract the installation of Owner Furnished GC/CM Installed equipment ("OFCI").
- 6.7 GC/CM Cost Accounting.
- 6.7.1 Accounting. Starting with the award of the first bid package, GC/CM shall, in accordance with directions given and formats developed by Owner, provide Owner with monthly reports, including

but not limited to, a cash flow showing expenditures on all bid packages, all Agreement changes, and all Negotiated Support Services costs including forecast-to-final completion updates. GC/CM claims shall be accounted for separately. GC/CM recognizes that reimbursable costs are to be actual cost and the fee on the job is the bid fee.

- 6.8 Performance and Payment Bond. Prior to execution of this Agreement by Owner, GC/CM shall provide Owner with performance and payment bonds in a form and with a surety acceptable to Owner for the full amount of the TCC.

ARTICLE 7 **SUBCONTRACTING**

- 7.1 Competitive Bidding Required. Other than the Specified General Conditions and Negotiated Support Services Work, all Work on the Project shall be competitively bid with public bid openings. Subcontract Work shall not be issued for bid until GC/CM has completed the requirements of section 6.6.2. To the extent that the Work qualifies for the use of the alternative subcontractor selection process authorized by RCW 39.10.385, the Contractor may, in conjunction with the Owner, employ this approach in the selection of the mechanical and/or electrical subcontractor(s).
- 7.2 Self-Performance by GC/CM. GC/CM may bid on (a) subcontract work and/or (b) supply of equipment and materials which it customarily performs or supplies. GC/CM's interest in the Work shall not diminish its duty to aggressively seek competition for bid packages. In the event GC/CM will be bidding on subcontract work, the bid opening will be managed by Owner and notice of GC/CM's intention to bid shall be included in the public solicitation for bids for that bid package. In no event may the value of the subcontract Work performed by GC/CM exceed thirty percent (30%) percent of the MACC. GC/CM must provide staff to supervise and manage subcontract packages it undertakes that is separate and distinct from the staff involved in the management of this Agreement. In no event may GC/CM or its subsidiaries purchase equipment or materials for assignment to Subcontractors for installation or warranty.
- 7.3 Prequalification. When it is in the best interest of the Project and critical to the successful completion of a subcontractor bid package as determined by Owner, Owner and GC/CM may determine Subcontractor eligibility to bid prior to seeking bids based on the criteria set forth in RCW 39.10.400. Subcontract bid packages shall be awarded to the responsible pre-qualified bidder submitting the low responsive bid.
- 7.4 Subcontractor Bid Packages. GC/CM may: (a) with approval by Owner organize and solicit bids for the subcontract work in whatever combinations or packages it chooses; (b) not use any allowances except as provided in section 6.6.2; and (c) not use any alternates without approval of Owner, unless such alternates were specified in the MACC.
- 7.4.1 GC/CM shall submit: (a) a draft and final bid package specific scope of work, and; (b) Bid Forms for each subcontract package for Owner's review ten (10) calendar days prior to bidding, and; (c) summary of how bid packages are broken up to help facilitate Outreach Plan. Changes to the final bid package documents shall not occur without Owner's approval.
- 7.5 Cost of Subcontracting Process. GC/CM shall be responsible for all costs associated with the subcontracting process including, but not limited to:
- 7.5.1 Developing solicitations for subcontract packages.
- 7.5.2 Pre-qualification and subcontract procurement.
- 7.5.3 Site tours.
- 7.5.4 Responding to questions from bidders.
- 7.5.5 Providing bid opening facility.

- 7.5.6 Bidding in accordance with the requirements of this section.
- 7.5.7 Subcontractor award.
- 7.6 Solicitations of Subcontractors. Solicitations of Subcontractors by GC/CM shall be made in accordance with the following procedures:
- 7.6.1 A representative from Owner will be present at each bid opening to observe the procedure. In the event GC/CM is bidding on a subcontract package, Owner will conduct the bid opening.
- 7.6.2 Solicitations for bids will be advertised in advance in the Seattle Daily Journal of Commerce newspaper.
- 7.6.3 Bidders may obtain the bid results by telephone from GC/CM. All such calls will be referred to GC/CM.
- 7.6.4 Responsiveness requirements and bidding procedures will be described in each bid solicitation and, along with subcontractor joint venture requests and outreach requests, will be reviewed with Owner prior to each bid opening.
- 7.7 Subcontractor Bonding. For Subcontract bid packages with a bid estimate over Three Hundred Thousand Dollars (\$300,000), GC/CM shall require a bid bond in the amount of five percent (5%) of the amount bid from Subcontractors who bid. GC/CM shall require a performance and payment bond from all Subcontractors who are awarded a contract over Three Hundred Thousand Dollars (\$300,000), in the amount of the Subcontract. GC/CM may require a performance and payment bond of any other Subcontractor, provided that such requirement is set forth in the Subcontract bid documents. GC/CM acknowledges that all costs of Subcontractor bonding are included in the negotiated MACC on page 1 of this Agreement.
- 7.8 General. Subcontract procedure, bidding and agreements shall be in compliance with all of the applicable provisions of Chapter 39.10 RCW.

ARTICLE 8
MISCELLANEOUS PROVISIONS

- 8.1 Builders Risk. Owner shall provide Builder's Risk Insurance per the General Conditions. Any deductibles and/or uninsured losses under said insurance shall be for the account of GC/CM and/or Subcontractors, or their agents and employees, should the loss be attributable to their sole negligence. In the event the loss is attributable to GC/CM and/or Subcontractors, or their agents or employees, concurrent negligence, the deductibles and/or uninsured losses shall be for the account of GC/CM and/or Subcontractor, or their agents or employees, only to the extent of their negligence. In no case shall any deductible be a reimbursable expense.
- 8.2 Audit. Owner shall have the right to audit. Upon request by Owner, GC/CM shall provide Owner full access to all of GC/CM's data, records, accounts or materials relevant to the performance of this Agreement. The contractor should anticipate annual audits at a minimum plus one at completion of the project. Pre-audits should be anticipated for GC/CM and major Subcontractors.
- 8.3 Sales Tax. The actual amount of sales tax to be paid to GC/CM will be based on the then current sales tax percentage applied to actual MACC progress payments, inclusive of approved change orders. For the purposes of invoicing, GC/CM shall not include sales tax as part of the TCC in its pay applications, but the appropriate amount of sales tax will be added by Owner to each progress payment collected by GC/CM from Owner, and paid to the State of Washington by GC/CM.

- 8.4 Attorneys' Fees. In the event either Party shall bring legal action for the breach of, to interpret or to enforce the Contract Documents, the substantially prevailing Party shall be entitled to an award of its legal costs, expert fees, and reasonable attorneys' fees, expenses and court costs, including without limitation, those relating to any appeal. The provisions of this section shall survive the expiration or termination of the Contract Documents.
- 8.5 Interpretation. The Contract Documents have been carefully reviewed and negotiated by both Parties at arm's length and by each party's legal counsel, and the Contract Documents shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one Party or its counsel. Captions and headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof. The word "including" and the phrases "including but not limited to" and "including without limitation" shall all be interpreted to have the same meaning and be construed as illustrative and not limiting.
- 8.6 Waiver, Amendment and Extension. No waiver, amendment, extension or variation in the terms of the Contract Documents shall be valid against a party unless in writing and signed by such Party and then only to the extent specifically set forth in the writing. No failure or delay on the part of a Party in exercising any right, power or privilege under the Contract Documents, nor any course of dealing between the Parties, will waive, amend or vary the terms of the Contract Documents.
- 8.7 Relationship/Approvals. GC/CM at all times is acting as an independent contractor under the Contract Documents. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating GC/CM as an agent for or joint venture with Owner. Whenever the Contract Documents mention or require an approval, consent, decision, acceptance, determination, authorization or election of or by GC/CM or Owner, such approval, consent, decision, acceptance, determination, authorization or election may be granted, made or withheld at such party's good faith discretion, unless otherwise specifically provided in the Contract Documents. Good faith shall mean actions taken or omitted to be taken that are not primarily motivated by a desire to cause injury to the other party and are neither arbitrary nor capricious.
- 8.8 Extent of Agreement. The terms of the Contract Documents are intended by the Parties to be a final expression of their understanding with respect to the Project and may not be contradicted by evidence of any prior or contemporaneous statements or understandings. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in a writing signed by the Parties.
- 8.9 Severability. If any clause or provision of the Contract Documents is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of the Contract Documents shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there shall be added as part of the Contract Documents a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.
- 8.10 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile or delivered via Federal Express, Express Mail, or a similar courier to the address set forth below, and shall be deemed received upon the earlier of actual receipt or (a) if personally delivered, the date of delivery to the address of the person to receive such notice, (b) if mailed, four (4) business days after the date of posting by the United States Post Office, (c) if given by facsimile, when sent or (d) if given by overnight mail or courier service, the following business day. Any notice of default or demand for performance sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

If to Owner:

Washington State Convention Center
800 Convention Place
Seattle, WA 98101
Attn: _____
Facsimile number:
Telephone number:

With a copy to:

Pine Street Group L.L.C.
1500 4th Avenue, Suite 600
Seattle, WA 98101
Attn: Matt Rosauer
Facsimile number: 206.428.3000
Telephone number: _____

If to GC/CM:

Attn:
Facsimile number:
Telephone number:

Notice of change of address shall be given by written notice in the manner detailed in this section.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by having their authorized representatives affix their signatures below.

OWNER

WASHINGTON STATE CONVENTION CENTER,
a public facilities district

By: _____

Name: _____

Title: _____

Date: _____, 2015

CONTRACTOR

a _____

By: _____

Name: _____

Title: _____

Date: _____, 2015

EXHIBIT A

RESERVATION OF RIGHTS TO IMPLEMENT OWNER CONTROLLED INSURANCE PROGRAM

1. Pursuant to the terms of the Agreement, Contractor and all Subcontractors are required to obtain and maintain certain insurance coverages, as specified in the Agreement. Owner hereby reserves the right to modify the insurance requirements set forth in the Agreement, including but not limited to reserving the right to implement an Owner Controlled Insurance Program (“OCIP”) for the Project.

2. In the event an OCIP is implemented, the OCIP will provide certain specified insurance coverages for Owner, and any Contractor or Subcontractor working on the Project who are eligible for, and are properly enrolled in the OCIP. The insurance coverages that may potentially be included in the OCIP include, but are not limited to, commercial general liability insurance, and excess liability insurance. The selection of insurance coverages that may be included in the OCIP, and the limits, terms, and conditions of coverage, shall be established by the Owner, in its sole discretion. The coverages included in the OCIP will be identified by Owner, in writing, if and when the Owner decides to implement an OCIP for the Project.

3. In the event an OCIP is implemented, Contractor and any Subcontractor eligible for the OCIP shall be required to enroll in the OCIP. As part of the OCIP enrollment process, Contractor and each eligible Subcontractor shall be required to provide information to Owner, or its agents, sufficient to enable Owner to determine each Contractor’s and Subcontractor’s reduction in insurance costs due to enrollment in the OCIP. In order to enroll in the OCIP, Contractor and any eligible Subcontractor will be required to accept an insurance credit, either by accepting a deductive credit to their contract price, or by agreeing to exclude from their contract price an amount equal to their reduction insurance costs due to enrollment in the OCIP. The methodology and procedures for identifying the insurance credit, and enrolling in the OCIP, will be established in writing, by the Owner, if and when an OCIP is implemented.

4. In the event an OCIP is implemented, Contractor and all Subcontractors will still be required to maintain other insurance coverages that are not provided under the OCIP. For example, Contractor and Subcontractor will still be required to maintain workers compensation, off-site commercial general liability, contractor’s professional liability and commercial automobile liability insurance consistent with the terms of the Agreement, or as further directed by Owner.

EXHIBIT B

DRAFT SUMMARY MATRIX OF COST ALLOCATION

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EXHIBIT C

DRAFT FORM OF CONSTRUCTION COST ESTIMATE - SUMMARY

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EXHIBIT D

DRAFT SUMMARY OF COMPLETED COST ESTIMATE

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