



**REQUEST FOR COMPETITIVE PROPOSALS
(RFCP)**

**Solicitation No. 6039
Volume I**

**PROJECT MANUAL / PROPOSAL REQUIREMENTS
for**

**14378 30TH AVE NE Affordable Housing
in
14378 30th Ave NE
Seattle, WA 98125**

**Seattle Housing Authority
101 Elliott Avenue W, Suite 100
Seattle, WA 98119**

**Proposal/Bid Submittal Deadline:
3:00 PM on June 03, 2025**

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NOTES:

Forms preceded by an “” (asterisk sign) must be completed and returned with Bid submittal.*

Forms preceded by a “+” (plus sign) must be completed and returned if Bidder claims to be a HUD Section 3 firm.

VOLUME 1 PROPOSAL REQUIREMENTS

PROJECT DIRECTORY

OWNER:

14378 30TH AVE NE LLLP
c/o Development
101 Elliott Avenue W
Suite 100
PO Box 79015
Seattle, WA 98119

CONTACT:

Veronica Sharp, Lead Sr. Contract Administrator - Construction & Design Team
Tel: (206) 239-1553

PROJECT ADDRESSES:

14378 30th Ave NE
Seattle, WA 98125

ARCHITECT:

GGLO
1301 1st Ave, #301
Seattle, WA 98101

END OF SECTION 00005

SECTION 00015 – PLANS AND SPECIFICATIONS

See ATTACHMENT G. 1 14378 Plans Permit Set (Separate attachment)

See ATTACHMENT G. 2 14378 Specifications Permit Set Updated 040725 (Separate Attachment)

END OF SECTION 00015

SECTION 1 BID REQUIREMENTS AND CONDITIONS

1.01 Responsible Bidder

- A. The Seattle Housing Authority (as the General Partner of the Owner 14378 30TH AVE NE LLLP, hereinafter referred to as “SHA”) will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, SHA will consider such matters as the bidder’s:
1. Integrity;
 2. Compliance with public policy and bid requirements;
 3. Record of past performance; and
 4. Financial and technical resources (including construction and technical equipment).

Before a contract is awarded, the bidder may be asked to submit a statement or other documentation regarding the items above. A bidder’s failure to provide the requested information will render the bidder non-responsible and ineligible for award of the contract.

- B. As provided in RCW 39.04 or 2 CFR 200, a bidder must meet the responsibility criteria listed under “A. MANDATORY RESPONSIBILITY EVALUATION CRITERIA” of ARTICLE 6. PROPODAL EVALUATION AND CRITERIA in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.
- C. As required by RCW 39.06.020, bidders must verify responsibility criteria for each first tier Subcontractor, and a Subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors, in accordance with “C. SUBCONTRACTOR RESPONSIBILITY” of ARTICLE 6. PROPODAL EVALUATION AND CRITERIA in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.
- D. If SHA finds a bidder to be not responsible, SHA will provide, in writing, the reasons for the determination. The bidder may appeal the determination by following the process described in “B. PROTEST AND APPEAL PROCEDURES” of ARTICLE 6. PROPODAL EVALUATION AND CRITERIA in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP. If the final determination affirms the finding that the bidder is not responsible, Owner will not execute a contract with any other bidder until two (2) business days after the final determination is sent by SHA to the bidder determined to be not responsible.

1.02 EXAMINATION OF CONTRACT DOCUMENTS

- A. The bidder shall verify that all documents, upon which the bidder is basing its bid, are full and complete with no missing pages, sheets, or unintentional blank spaces, and that the bidder has received all addenda issued prior to the bid opening date.
- B. Each bidder shall thoroughly examine the Bid Documents and strictly comply with all instructions and provisions contained therein. "Bid Documents" means this Request for Competitive Proposals; "Bid Documents" is used interchangeably with "Request for Competitive Proposals" (the RFCP). "Bid Form" means the "Proposal Cost Form" in Volume 1, Section 00320 REQUIRED FORMS of this RFCP.
- C. The submission of a bid shall constitute an acknowledgement upon which SHA may rely that the bidder has thoroughly examined, and is familiar with, the Bid Documents and has reviewed and inspected all applicable federal, state and local statutes, ordinances, regulations, environmental assessments or impact statements relating to the work, and all permits that have been applied for or issued pertaining to the Work.

A bidder's failure, for any reason, to receive, examine, or understand any of the Bid Documents, statutes, ordinances, regulations, or permits shall not relieve the bidder from any obligations with respect to the bid or to the contract. Bidders bear full responsibility for any errors or misunderstandings in its estimating and preparing the bid.

1.03 INSPECTION OF WORK SITE

The construction site is available for bidders' inspection. Bidders who fail to inspect the work site do so at their risk and peril.

1.04 EXPLANATIONS AND INTERPRETATIONS TO BIDDERS

- A. Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request the explanation by the time period specified in ARTICLE 1 INSTRUCTION in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP. Requests must be submitted in writing. The only oral clarifications that will be provided will be those related to bid solicitation procedures. No other oral explanation or interpretation will be provided or may be relied upon by bidders for any reason. Any information given a prospective bidder concerning this solicitation that is necessary for submitting bids, or that would prejudice other prospective bidders is not disclosed, will be furnished promptly to all other prospective bidders as a written amendment to the solicitation.

- B. Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

1.05 ADDENDA

- A. If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- B. Addenda will be posted according to “I. PLANS, SPECIFICATIONS, ADDENDA, AND PLANHOLDER’S LIST” of ARTICLE 1. INTRODUCTION in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.

1.06 Section 3 and Related

- A. GENERAL: SHA’s Section 3 and related policies and goals for employment and contracting identify key objectives that SHA will promote and encourage in this RFCP. Provisions of these Bid Documents related to Section 3 and related policies and goals include, but are not limited to Sections 00200, 00320, 00700, 00800. Bidders shall carefully review all provisions in the Bid Documents and take such provisions into account when preparing and submitting their bids, including the Community Participation Plan requirements.
- B. EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION: It is the policy of SHA that no one contracting with the Owner or SHA shall deny any person, on the basis of race, creed, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, Vietnam-era veteran status, disabled veteran status, political affiliation, or the presence of any sensory, mental or physical disability in an otherwise qualified disabled person the benefits of, or exclude any person from participation in, the award and performance of any work under contracts and agreements awarded by the Owner or SHA, and that everyone doing business with the Owner or SHA shall afford equal, non-discriminatory opportunities to potential subcontractors, subconsultants, and suppliers on contracts and agreements awarded by the Owner or SHA.

It is the policy of SHA that practices of employment discrimination against any person on the basis of race, creed, color, national origin, religion, ancestry, sex, age, marital status, sexual orientation, Vietnam-era veteran status, disabled veteran status, political affiliation, or the presence of any sensory, mental or physical disability in an otherwise qualified disabled person are prohibited. SHA encourages bids from firms that demonstrate a commitment to equal employment opportunity and bids from firms that employ a workforce that reflects the region’s diversity.

- C. EMPLOYMENT AND TRAINING; PARTICIPATION BY SMALL BUSINESSES, SECTION 3 BUSINESSES, AND WOMEN AND MINORITY BUSINESSES: SHA is committed to maximizing employment and training opportunities. This commitment includes a commitment to ensuring both formal and on-the-job training and work experiences for women and minorities and Section 3 eligible persons in accordance with the COMMUNITY PARTICIPATION PLAN in Volume 1. Section 00320 REQUIRED FORMS of this RFCP.

SHA promotes and encourages small business participation, which also includes Section 3 and women- and minority- owned businesses (WMBEs). SHA encourages bids that involve such participation as prime contractors, joint venture partners, or subcontractors, including, lower-tier subcontractors. Such participation, however, is not required to respond to this solicitation. The Section 3 contract clause contained in Section 00700, Part 11, will be included as part of the contract to be executed based on this RFCP.

Each bidder shall affirm its intent to utilize good faith efforts to comply with the apprenticeship goal, WMBE Inclusion Plan, Section 3 Labor Hour goal and other requirements set out in Section 00700 and the COMMUNITY PARTICIPATION PLAN in Volume 1. Section 00320 REQUIRED FORMS of this RFCP, through the submission of the applicable Community Participation Plan. Bidder's Community Participation Plan will be evaluated by SHA as part of its Bidder Responsibility Review.

1.07 CONTRACT COMPLIANCE REQUIREMENTS

- A. MONTHLY/QUARTERLY COMMUNITY PARTICIPATION PLAN REPORTING: as described in Sections 00320, 00700 or 00800, the Contractor shall report on a monthly or quarterly basis, as SHA may requires, its progress in achieving its goals as identified in its Community Participation Plan or other related documents, if applicable, concerning the Section 3 and related requirements established for the Project.
- B. MONTHLY/QUARTERLY COMMUNITY PARTICIPATION PLAN MEETINGS: as described in Sections 00320, 00700 or 00800, the Contractor and select subcontractor(s) may be required to attend monthly or quarterly meetings at SHA's request to discuss implementation of the Community Participation Plan. Some of these meetings will be held after business hours, such as SHA's Section 3 Advisory Committee meeting which is attended by members of the community and business representatives. Other meetings may be required as a result of other related requirements, if applicable.

1.08 PREVAILING WAGES

- A. The Work is subject to prevailing wage requirements as specified in applicable parts of Section 00700, Article 3. WAGES, CERTIFICED PAYROLL AND CONTRACT PAYMENTS in Section 00300 REQUEST FOR COMPETITIVE PROPOSALS, and Section 00800 (if applicable). Copies of the applicable Wage Decision established for the Project are included in Section 00830.
- B. Bidders shall examine and be familiar with the above requirements as well as any Section 3 and related requirements under this RFCP. No claim for additional compensation will be allowed that is based upon lack of knowledge or error in interpretation of any such requirements by a bidder.

SECTION 2 BID PREPARATION AND SUBMISSION

2.01 FORM OF BID

- A. Bids shall be made on the Bid Form provided in Section 00320, which shall be completed in its entirety and prices entered for each Bid item and a total in the extended price column.
- B. Bids that contain omissions, erasures or irregularities of any kind may be deemed nonresponsive and rejected. Any qualification, addition, limitation or provision

attached to or contained in a bid may render the bid non-responsive. Erasures or other changes must be initialed by the person signing the bid.

No verbal, facsimile, telegraphic, or telephonic bids or modifications will be considered.

- C. The bid shall be signed by a person authorized to legally bind the bidder. If the bid is signed by an agent of the bidder, the bid shall be accompanied by evidence of the agent's authority to bind the bidder.

If the bid is made by a partnership or joint venture, it shall contain the names of each partner, the mailing address of the partnership or joint venture, and shall be signed in the firm name, followed by the signature of the person signing, indicating that person's position in the partnership or joint venture. If the bid is made by a partnership or joint venture, a certified copy of the resolution or agreement empowering such representative to execute the bid and bind the firm, partnership or joint venture shall be furnished upon request to SHA.

- D. A bidder, upon request of, shall provide copies of Articles of Incorporation, partnership or joint venture agreements, and any other documents evidencing the legal status of the bidder and the authority of the officer signing the bid and executing the Contract.
- E. If the Bid Documents require bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders shall insert the words "No Bid" in the space provided for any items on which no prices are submitted.

2.02 SUBMISSION AND RECEIPT OF BIDS

- A. Bidders shall deliver bids no later than the date and time specified in the "G. PROPOSAL SUBMISSION DEADLINE" of ARTICLE 1. INTRODUCTION in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP, and in accordance with ARTICLE 5. SUBMISSION REQUIREMENTS in Section 00300.

The time specified herein is the Pacific Time (PT).

- B. SHA will not be liable for delays in delivery of bids.
- C. SHA reserves the right to postpone the date and time for submittal of bids at any time prior to the bid opening or to delay or reschedule the bid opening for its own convenience.

Owner reserves the right to cancel, revise, or amend this RFCP and associated Bid Documents up to the proposal submission deadline in the Bid Documents.

2.03 TOTAL BID PRICE

The total bid price, as shown on the Bid Form shall include all costs (except for MACC) for the performance and completion of the Work and fulfillment of the Contract, including but not limited to, applicable taxes imposed by law, furnishing all labor, materials, equipment, tools, transportation, plant and other facilities, and all management, superintendence, services, field design, and all operations necessary to perform and complete the Work within the Contract Time.

2.04 TAXES

- A. **RETAIL SALES TAX:** unless otherwise specified on the Bid Form, the Contractor's bid price shall include Washington State retail sales tax or the compensatory use tax for labor or services in the performance of the Contract. See PROPOSAL COST FORM in Volume 1, Section 00320 REQUIRED FORMS of this RFCP for more information.
- B. **FEDERAL EXCISE TAX:** the price quoted by the Contractor shall include all applicable Federal Excise Taxes. The amount of the excise tax will be deducted from the contract price by SHA when tax refunds are permitted and authorized under applicable law. The Contractor shall show the amount of Excise Tax in its bid.

2.05 RESERVED

2.06 RESERVED

2.07 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWAL OF BIDS

- A. Any bid received after the proposal submission deadline will not be considered.
- B. Any modification or withdrawal of a bid is subject to the same conditions as in paragraph A of this provision. The modification may not disclose the original or revised bid amount, but only the amount of the modification. SHA shall not be responsible for technical problems involved in the transmission and receipt of the modification or withdrawal.
- C. RESERVED
- D. RESERVED
- E. RESERVED
- F. Notwithstanding paragraph A of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Owner or SHA will be considered at any time it is received and may be accepted.

- G. Bids may be withdrawn by written notice, or if authorized by this solicitation, by e-mail received at any time before the submission deadline specified in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP. A bid may be withdrawn in person by a bidder or its authorized representative if, before proposal submission deadline, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

SECTION 3 BID EVALUATION

3.01 CLAIM OF ERROR

- A. In the event a bidder wishes to claim a material error in its bid, the bidder must submit the claim of error in writing to the Contract Administrator named in SHA's Bid Form, no later than twenty-four (24) hours after the bid submittal time or the claim will not be considered.
- B. The request must be a sworn affidavit under penalty of perjury that (i) states that the bid contains an error, (ii) describes the manner in which the error occurred, (iii) provides the amount of the intended price, (iv) has the original worksheets used in the preparation of the bid attached that demonstrates the error, (v) states that the bidder is requesting withdrawal of its bid and (vi) certifies that the worksheets are the originals used in the preparation of the bid. SHA reserves the right to require the submittal of other bid records or information, as SHA may deem necessary to evaluate the claim of error.
- C. Any review by SHA of a bid or claim of error (including supporting evidence) creates no duty or liability on to discover any other bid error or mistake, and the sole liability for any bid error or mistake rests with the bidder.
- D. In the event the bidder demonstrates a material error in the Bid to SHA's satisfaction, SHA may allow that bidder to withdraw its bid, without prejudice.
- E. A bidder selected by SHA who claims error on a public works project and fails to enter into a contract is prohibited from bidding on the same project if the project is re-bid.

3.02 VALIDITY OF BIDS

- A. Unless otherwise specified in the Bid Form, all bids submitted in accordance with the Bid Documents shall be valid and binding on the bidder for a period of sixty (60) days following the bid submittal date.
- B. If the Contract has not been awarded within the specified time period, the bids will expire and will no longer be valid unless the bidder grants a written extension to SHA.

- C. SHA reserves the right to request extensions of the award period from the bidder. Upon such extension, bids shall remain valid and enforceable until execution of the Contract.

3.03. BID TABULATION

- A. SHA reserves the right to correct mathematical errors that are obvious on the face of the bid.
- B. Bids will be checked for correctness of bid item price extensions and the total bid price. A discrepancy between a bid item unit price and the extended amount of any bid item shall be resolved by accepting the bid item unit price as correct.
- C. The low bid shall be determined by the summation of bid item prices or bid item price extensions, corrected where necessary, plus any Additives, Alternates, and/or Deductives that SHA decides to include in the Contract Award. Additives, Alternates, and/or Deductives may be selected in any order that SHA chooses.
- D. The summation of extensions, corrected where necessary and including sales tax, if applicable, will be used for evaluation and award purposes.

3.04. BID REVIEW

- A. SHA will evaluate bids in response to this solicitation and will award a contract to a responsible and responsive bidder according to “D. Proposal Evaluation” in Article 6 PROPOSAL EVALUATION AND CRITERIA of Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.
- B. SHA’s evaluation will include evaluation of the bidder’s good faith efforts as outlined in its Community Participation Plan and an evaluation of the bidder’s compliance with the mandatory responsibility criteria. The documentation must demonstrate that the bidder is qualified to perform the work based on the firm’s successful completion of past work and the firm’s compliance with legal and contractual requirements. SHA reserves the right to take whatever action it deems necessary to ascertain the ability of the bidder to perform the work satisfactorily.
- C. SHA reserves the right to arrange the Bid Form with Alternate, Additive, and/or Deductive items, if such be to the advantage of the Owner or SHA. The bidder shall bid on all Alternates, Additives and Deductives in the Bid Form.
- D. In the case of tie low bids, award shall be made in accordance with SHA’s written policy and procedures.
- E. Unless precluded elsewhere in the solicitation, SHA may accept any item or combination of items bid.

F. Reciprocal Preference for Resident Contractors:

A nonresident Contractor is a Contractor who does not have a physical office located in Washington at the time of bidding and is from a state that provides a percentage bid preference to its resident contractors bidding on public works contracts per RCW 39.04.380. The state of residence for a nonresident contractor is the state in which the contractor was incorporated or, if not a corporation the state where the contractor's business entity was formed. For a public works bid received from a nonresident contractor from a state that provides an in-state percentage bidding preference, a Comparable Percentage Disadvantage (CPD) will be applied to the bid of that nonresident contractor. The CPD is the percent advantage provided by the nonresident contractor's home state. For the purpose of determining the successful bidder, SHA will multiply the nonresident contractor bid amount by the CPD. The "bid amount" shall be the total of the base bid and all accepted alternate bid items. The CPD shall be added to the nonresident contractor bid amount to establish the Nonresident Disadvantage Total. The Nonresident Disadvantage Total shall be compared to the Washington state contractor bid amounts.

See example below:

EXAMPLE:

Alaska Nonresident Contractor Bid Amount	\$100,000
Multiplied by the Alaska CPD	x 0.05
<hr/>	
Alaska CPD Total	\$ 5,000
Alaska Nonresident Contractor Bid Amount	\$100,000
Alaska CPD Total	+5,000
<hr/>	
Nonresident Disadvantage Total	\$105,000

If the Nonresident Disadvantage Total is lower than all other Washington contractor bid amounts, the Alaska nonresident contractor is the low bidder and will be awarded a contract for the bid amount of \$100,000, provided that they are determined to be a responsive and responsible bidder.

If the Nonresident Disadvantage Total is higher than a Washington contractor bid amount, the Washington bidder will be awarded a contract for the bid amount, provided that they are determined to be a responsive and responsible bidder.

3.05 BID EVALUATION CONFERENCE

A. At SHA's request, a bidder shall attend a bid evaluation conference. Upon SHA's request, the bidder shall bring to the conference any supporting bid related

documents required by SHA for review. SHA reserves the right to conduct concurrent evaluations of multiple bids, including holding bid evaluation conferences with multiple bidders.

- B. By conducting a bid evaluation conference, SHA does not waive its right to make determinations regarding responsiveness of bids and responsibility of the bidder(s) or to reject any or all bids.

3.06 REJECTION OF BIDS

- A. SHA may reject any bid, or all bids for any reason, including, but not limited to the following:
1. Any omission, erasure, or irregularity of the Bid Form;
 2. Any qualification, addition, limitation, or provision attached to or contained in the bid;
 3. Any bid that omits a price on any item on the Bid Form; or
 4. Any bid determined to be non-responsive by SHA.
- B. SHA reserves the right to waive informalities and irregularities related to the bidding process.

3.07 DISQUALIFICATION OF BIDDERS

- A bidder may be deemed not responsible and be disqualified from Award if:
1. The bidder does not meet the bidder responsibility criteria in RCW 39.04.350(1);
 2. The bidder appears on the Excluded Parties List System (EPLS) on GSA's SAM (System for Award Management);
 3. More than one bid is submitted for the same project from a bidder under the same or different names;
 4. Evidence of collusion exists with any other bidder or potential bidder;
 5. An unsatisfactory performance record exists as shown by past or current work for SHA, or for others, as judged from the standpoint of conduct of the work, environmental or safety compliance records, workmanship, progress, or equal employment opportunity practices;
 6. The bidder failed to settle bills for labor or materials on past or current contracts;
 7. The bidder has failed to complete a public contract or has had a public contract terminated for cause;
 8. The bidder has been convicted of a crime arising from a previous public contract;
 9. The bidder is unable, financially or otherwise, to perform the work;
 10. The bidder failed to meet the Section 3 and related requirements;
 11. If applicable, the bidder failed to attend a mandatory pre-bid conference or site visit; or
 12. For any other reason deemed proper by the SHA.

3.08 RESERVED

3.09 COLLUSION

- A. By submitting a bid, the bidder represents and warrants that such bid is genuine and not collusive or a sham or made in the interest or on behalf of any person or bidder, and that the bidder has not, directly or indirectly, induced or solicited any other bidder to put in a sham bid, or any other person, firm or corporation to refrain from proposing, and that the bidder has not in any manner sought by collusion to secure to the bidder an advantage over any other bidder.
- B. If at any time it is discovered that a bidder or Contractor colluded with any other party or parties in presenting a bid or bid(s), then the bid or Contract, if awarded, shall be null and void, and the bidder or Contractor and its sureties shall be liable to the Owner and SHA for all loss or damage which the Owner and SHA may suffer thereby. SHA may advertise for a new Contract for the labor, supplies, materials or equipment called for in this Contract, and the rejected bidder or terminated Contractor shall be fully responsible for all costs to the Owner and SHA of rebid, including any increase in the Contract Sum, and all costs, expenses, or other damages arising out of the rejection of the bid or termination of the Contract. A rejected bidder or terminated Contractor is prohibited from submitting a bid.

3.10 PUBLIC DISCLOSURE

- A. Pursuant to RCW 42.56, et seq., bids submitted under this RFCP shall be considered public records and with limited exceptions will be available for inspection and copying by the public after SHA has announced its Intent to Award a contract.
- B. Bidders shall specifically designate and clearly label as "CONFIDENTIAL" any and all materials or portions thereof which they deem to contain trade secrets or other proprietary information, which is exempt from public inspection and copying. The bidder shall provide the legal basis for the exemption to upon request.
- C. If a bid does not clearly identify the "CONFIDENTIAL" portions, SHA will not notify the bidder that its bid will be made available for inspection. If a request is made for disclosure of material or any portion marked "CONFIDENTIAL", SHA will determine whether the material should be made available under the law.
- D. If SHA determines that the material is not exempt and may be disclosed, SHA will notify the bidder of the request and allow the bidder ten (10) business days to take appropriate action pursuant to RCW 42.56.540. If the bidder fails or neglects to take such action within said period, SHA may release the portions of the bid deemed subject to disclosure.

- E. To the extent that SHA withholds from disclosure all or any portion of bidder's documents at bidder's request, bidder shall agree to fully indemnify, defend and hold harmless from all damages, penalties, attorneys' fees and costs incurs related to withholding information from public disclosure.
- F. By submitting a bid, the bidder consents to the procedure outlined here in 3.10 and shall have no claim against by reason of actions taken under this procedure.

3.11 PROTEST AND APPEAL PROCEDURES

“Protest” means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation. All protests shall be resolved in accordance with B. PROTEST AND APPEAL PROCEDURES of ARTICLE 6. PROPODAL EVALUATION AND CRITERIA in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.

SECTION 4 AWARD AND CONTRACT EXECUTION

4.01 NOTICE OF AWARD

A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

4.02 EXECUTION OF THE CONTRACT

Contracting process shall be carried out according to steps (including but not limited to, timely submission of evidence of insurance, Letter of ESD to confirm the bidder's good standing) specified under ARTICLE 3 WAGES, CERTIFIED PAYROL AND CONTRACT PAYMENT in Volume 1 Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.

Applicable time limit may be extended by mutual agreement between SHA and the successful bidder.

4.03 RESERVED

4.04 PAYMENT AND PERFORMANCE BONDS

- A. Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion. This assurance will be in the form of a performance and payment bond meeting the requirements specified under “F. Performance and Payment Bonds in ARTICLE 11 OTHER ADMINISTRATIVE AND CONTRAC REQUIREMENTS” in Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.

- B. Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <https://www.fiscal.treasury.gov/surety-bonds/circular-570.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.
- C. Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the MACC Contract.
- D. Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as SHA may grant based upon reasons determined adequate by SHA, shall render the bidder ineligible for award of the MACC Contract.

4.05 PRECONSTRUCTION CONFERENCE

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of SHA and its architect/engineer, and other interested parties convened by SHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., prevailing wage as well as Section 3 and related provisions of the Contract). SHA will provide the successful bidder with the date, time, and place of the conference.

4.06 LABOR COMPLIANCE MANAGEMENT TRAINING

See "ELECTRONIC CERTIFIED PAYROLL SUBMISSION AND SECTION 3 AND RELATED REPORTING" in ARTICLE 3. WAGES, CERTIFIED PAYROL AND CONTRACT PAYMENT of Volume 1. Section 00300 REQUEST FOR COMPETITIVE PROPOSALS of this RFCP.

4.07 NOTICE TO PROCEED

After the Owner executes the Contract, SHA will issue a written Notice to Proceed (NTP) stating the effective date on which the successful bidder shall commence the Work.

END OF SECTION 00200

CONTRACT FORMS

Contract # 6039 14378 30th Ave NE RFCP
Pre-Construction Services Contract

THIS CONTRACT is made and entered into between 14378 30TH AVE NE LLLP, a Washington Limited Liability Limited Partnership (hereinafter referred to as “Owner”), and [Contractor name] (hereinafter referred to as the “Contractor”).

WHEREAS Owner solicited proposals from contractors qualified to provide assistance to Owner consistent with Exhibit 1 attached and made a part of this Contract; and

WHEREAS the Contractor represents that it is qualified, duly authorized and willing to provide the requested services,

NOW THEREFORE, in consideration of the terms, conditions, covenants and performances contained herein, or attached, incorporated, and made a part hereof, the parties hereto agree as follows:

SECTION 1 - SCOPE OF WORK: The Contractor shall perform such services as required by Owner to complete the work as defined in Exhibit 1 - Scope of Work and Contractors approved Preconstruction Services Plan, and shall provide all labor, materials, equipment, tools, apparatus, facilities and services etc. necessary to perform and complete in an acceptable manner the tasks contemplated or otherwise required herein. The Scope of Work and approved Preconstruction Services Plan shall serve as the DRAFT Progress Schedule and be used to measure work performed unless revised and approved by the Owner.

SECTION 2 - TIME FOR BEGINNING AND COMPLETION: The Contractor shall not begin any work under the terms of this Contract until authorized to do so in writing by Owner. All work under this Contract shall be completed between the date authorized to begin work and the completion date specified in Exhibit 2 – Terms and Conditions, attached and made a part of this Contract. The established completion time for the tasks and the entire contract period shall not be extended because of any delays attributable to the Contractor, but may be extended by Owner in the event of a delay attributable to Owner, or because of unavoidable delay caused by an act of God or governmental actions or other conditions beyond the control of the Contractor. Any extension agreed upon by the parties must be in writing, signed by both parties, and incorporated as a Change Order to this Contract. When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

SECTION 3 - PAYMENTS: The Contractor agrees to perform all of the work set forth in Exhibit 1 – Scope of Work for an amount not to exceed the Contract Amount specified in Exhibit 2– Terms and Conditions hereto. Such compensation shall constitute full and complete payment for work performed and/or services rendered and for all supervision, labor, supplies, materials, equipment or use thereof, and for all other expenses and incidentals necessary to complete all of the work. It is understood that this is a fixed amount and will not be increased because of any difference between the estimated and actual costs of performing the work required by this Contract.

The basis of payments (hourly rate, lump sum, etc.) is also specified in Exhibit 2. Payments shall be made up to the Contract Amount upon receipt of invoices and progress reports prepared by the Contractor and submitted to Owner not more often than monthly for the duration of the Contract. Payment of any amounts due under the Contract shall not relieve the Contractor of the obligation to perform all the work set forth in Exhibit 1 – Scope of Work in a satisfactory manner.

Invoices must include the following information: invoice date and number; Owner's Contract number (6039); the Contract title; **14378 30th Ave NE RFCP**, Phase 1 Preconstruction Services) for which payment is requested. All payments shall be processed by Owner within thirty (30) days from date of Owner approval of a properly executed Application for Payment. Invoices shall be mailed to the attention of Owner's Project Manager as specified in Exhibit 2 hereto.

SECTION 4 - SUCCESSORS, ASSIGNS, AND SUBCONTRACTING: Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract. Neither party shall assign the Work without written consent of the other, except that Contractor may assign the Work for security purposes, to a bank or lending institution authorized to do business in the State of Washington. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract.

It is anticipated that all or a portion of this Contract may be assigned to a private for-profit limited partnership or similarly structured corporate body. Notwithstanding the previous paragraph, the Contractor hereby consents to assignment of this Contract and agrees to abide by the terms and conditions of this Contract. In the event of default by the assignee, Owner shall remain fully liable for its obligations under the Contract.

In the event that the Contractor enters into a subcontract for work or services to be provided under this Contract, the Contractor shall cause all applicable provisions of this Contract to be inserted in all its subcontracts.

SECTION 5 - SUBSTITUTIONS: The Contractor's key personnel identified in Exhibit 2 to this Contract are considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Contractor shall notify Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on this Contract. Any proposed substitute must have qualifications equal to or better than the key personnel being replaced. No diversion or substitution of such key personnel shall be made by the Contractor without the prior written consent of Owner.

SECTION 6 - DISPUTES: Any disputes or misunderstandings that may arise under this Contract concerning the Contractor's performance shall first be resolved through amicable negotiations, if possible, between the Contractor's Project Manager and Owner's Project Manager indicated in Exhibit 2, or if necessary, shall be referred to Owner's Executive Director and the Contractor's senior executive(s). If such parties do not agree upon a decision within a reasonable period of time, the parties may pursue other legal means to resolve such disputes, including but not limited to, alternate dispute resolution processes.

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington. The venue of any action brought hereunder shall be in the Superior Court for King County.

SECTION 7 - COMPLIANCE WITH LAWS: In performing the work and providing the services under this Contract, the Contractor shall comply with all applicable laws of the United States, the State of Washington; and The City of Seattle; and the applicable rules, regulations, orders and directives of their administrative agencies and officers thereof. The Contractor, at no expense to the Owner, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements. Pursuant to RCW 39.06, Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. Additional provisions include, but are not necessarily limited to:

- A. Anti-lobbying Certification: No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence any officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an officer or employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor further agrees to include the language of this certification in the award documents for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

- B. Nondiscrimination/Equality of Opportunity: The Contractor shall comply with applicable non-discrimination and equal opportunity provisions of the laws and regulations of the United States, the State of Washington, and the City of Seattle.
- C. Compliance with Federal Section 3 Requirements: In order to meet Owner's goal of economic opportunity for lower-income persons, the Contractor agrees to abide by the terms and conditions of this Section, established pursuant to the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701u (hereinafter referred to as "Section 3").
1. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by

Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this Contract shall comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
3. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in a conspicuous place at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD-assisted contracts.
7. With respect to work performed in connection with Section 3-covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

- D. Clean Air and Water: On federally-funded contracts in excess of \$150,000, consistent with the provisions of 2 CFR 200.326(g), the Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). These provisions shall also apply to any subcontract of the Contractor in excess of \$100,000.
- E. Energy Efficiency: When applicable, the Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C.6201) for the State in which the work under this Contract is performed.
- F. Americans with Disabilities Act: The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990, As Amended (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to Owner employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

SECTION 8 - EXTRA WORK: Owner may desire to have the Contractor render services in connection to this project in addition to the items specified in Exhibit 1 - Scope of Work. Such services shall be considered to be extra work and will be specified in a Change Order to this Contract, which shall set forth the nature and scope of the additional work as well as the level, maximum amount and methods of compensation to the Contractor for the additional work to be performed. Such additional services shall not be initiated until a Change Order authorizing such work is executed.

In the event that Owner may desire to have the Contractor render additional services, the Contractor shall provide supporting cost information in sufficient detail to permit Owner to analyze the reasonableness of the cost pursuant to 2 CFR 200.323 prior to the issuance of a Change Order for such services.

SECTION 9 - INDEMNIFICATION: The Contractor agrees to indemnify and hold Owner and Seattle Housing Authority, its agents, employees and Commissioners harmless from any and all suits, claims, costs, including claims for wages and employment benefits, taxes or liabilities of any sort, including costs and expense for, or on account of injuries or damages arising from the negligent acts or omissions of the Contractor committed in connection with the services to be provided pursuant to this Contract. If an action is brought against Owner or Seattle Housing Authority, which action arises from services provided pursuant to this Contract, the Contractor shall, upon notice, defend same at its sole cost. The Contractor agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents.

In any action against Owner and Seattle Housing Authority and any other entity indemnified in accordance with this section, by any employee of Contractor, its Subcontractors (the term Subcontractors as used in this Contract shall include sub-consultants and subcontractors), Sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under RCW Title 51, the Industrial Insurance Act, or any other employee benefit acts. In addition, Contractor waives immunity, as to Owner and Seattle Housing Authority only, in accordance with RCW Title 51.

SECTION 10 - INSURANCE:

Within seven (7) days from the date of the Notice of Award, and prior to commencement of the Work, Contractor shall obtain all the insurance as set forth in the Contract Documents, including Exhibit 4 Insurance & Bond Requirements attached hereunder, and provide evidence satisfactory to Owner that such insurance has been procured. Review and approval of the Contractor's insurance by Owner shall not relieve or decrease the Contractor's liability under the Construction Documents or otherwise, including the duty to indemnify.

Failure of the Contractor to fully and continuously comply with the Insurance & Bonds Requirements will be considered a material breach of contract and, at the option of Owner, is cause for such remedy or relief as may be available to Owner by law or under any provision of this Contract, including but not limited to immediate termination of the Contract, or Owner may maintain such coverage and charge the expense (including premium and claim expense) to the Contractor

SECTION 11 - NOTICE REQUIREMENTS: Any and all notices required under this Contract (each, a "Notice") shall be in writing to the addresses specified in Attachment B to this Contract or to such subsequent respective addresses as either party may hereafter designate in writing and shall be deemed delivered as follows:

- A. Three (3) Business Days after being posted by certified or registered mail to the other party's contact person.
- B. One (1) Business Day after being sent by recognized national overnight courier service to the other party's contact person.
- C. On the same Day when delivered in person to the other party's contact person.
- D. On the same Day when sent by email to the contact person at the designated email address of the party with confirmed receipt, provided the email is sent on a Business Day and prior to 3:00 pm on that Business Day, and otherwise, the Notice shall be deemed delivered one (1) Business Day after being sent by e-mail with confirmed receipt; or
- E. On the same Day when sent by facsimile to the contact person at the designated facsimile number of the party with confirmed receipt, provided the facsimile is sent on a Business Day and prior to 3:00 pm on that Business Day, and otherwise, the Notice shall be deemed delivered one (1) Business Day after being sent by facsimile with confirmed receipt.

SECTION 12 - PROJECT MANAGEMENT: This project shall be managed for Owner by the person specified in Exhibit 2 to this Contract, who shall either directly or indirectly through such others as are designated in writing by the Project Manager provide direction to the Contractor in performing the work of this Contract.

SECTION 13 - STATUS OF CONTRACTOR AND EMPLOYEES:

- A. Non-Representation: This Contract does not constitute the Contractor as the agent or legal representative of the Owner or Seattle Housing Authority for any purpose whatsoever, and the relationship of the Contractor to the Owner or Seattle Housing Authority by reason of this Contract 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 Owner or Seattle Housing Authority or to bind the Owner or Seattle Housing Authority in any manner or thing whatsoever.
- B. Involvement of Former Owner and Seattle Housing Authority Employees: The Contractor agrees to inform Owner of any former Owner or Seattle Housing Authority employee who terminated Owner or Seattle Housing Authority employment in the last twelve (12) months prior to execution of any project specific contract, and who will be working on or subcontracting for any of the work. The Contractor further agrees that no work will be done by a former Owner or Seattle Housing Authority employee who terminated Owner or Seattle Housing Authority employment in the last twelve (12) months prior to execution of any project specific contract, and who, in the course of official Owner or Seattle Housing Authority duties, was involved in, participated in or acted on any matter related to this Contract.
- C. No Conflict of Interest: The Contractor confirms that the Contractor does not have a business interest or a close family relationship with any Owner or Seattle Housing Authority employee who was, is, or will be involved in the Contractor selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance. As used in this section, the term "Contractor" shall include any employee of the Contractor who was, is, or will be involved in the negotiation, drafting, signing, administration, or performance of the Contract. As used in this section, the term "close family relationship" refers to the following: spouse or domestic partner; any dependent parent, parent-in-law, child, son-in-law, or daughter-in-law; or any parent, parent-in-law, sibling, uncle, aunt, cousin, niece or nephew residing in the household of an Owner or Seattle Housing Authority employee described above.

The Contractor hereby acknowledges the requirements of RCW 42.23.030, which prohibits anyone in the Contractor's organization who has an official relationship with Owner or Seattle Housing Authority, to receive compensation in excess of \$1,500 per month from this Contract.

SECTION 14 - TERMINATION FOR CONVENIENCE AND DEFAULT:

- A. For Cause: Either party may terminate this Contract in the event the other fails to perform its obligations as described in this Contract and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party, or if the Contractor and Owner fail to agree on a MACC that the Owner determines to be fair, reasonable and within the Owner's Budget for Construction Cost.

- B. For Reasons Beyond Control of Parties: Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to acts of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.
- C. For convenience. Owner may terminate this Contract for any reason, including, but not limited to, for its convenience, at any time by giving notice thereof, in writing and not less than five (5) days prior to the effective date of termination, to the Contractor specifying the effective termination date. If this Contract is terminated by Owner pursuant to this subsection, the Contractor will be paid an amount equal to the Contractor's expenses incurred to the date of termination less any amounts previously paid to the Contractor pursuant to this Contract; provided, however, in no event shall the amount paid exceed the not to exceed price of this Contract multiplied by the percentage of the total services actually performed.

The Contractor agrees that the payment provisions of this subsection shall fully and adequately compensate the Contractor and all subcontractors for all profits, costs, expenses, losses, liabilities, damage, taxes, and charges of any kind whatsoever (whether foreseen or unforeseen) attributable to the termination of this Contract.

- D. Notice: Notice of termination pursuant to Subsection (A) and (B) above, shall be given by the party terminating this Contract to the other not less than five (5) working days prior to the effective date of termination. Upon termination pursuant to Subsections (A) and (B) above, the Contractor shall be paid for the portion of the preconstruction and other services it has performed to the time the Work is stopped. Upon payment, the Contractor shall have no further involvement in the Project and neither Party shall have any further obligation to the other under this Contract except with respect to any unsettled obligations arising out of this Contract. At Owner's election, any Subcontracts for preconstruction services that may have been awarded by the Contractor shall be assigned to the Owner.
- E. Any disputes with regard to this Section are expressly made subject to the terms of the Disputes section of this Contract.

SECTION 15 – OWNERSHIP: All records, reports, documents and other materials produced in connection with or provided to Owner under the terms of this Contract shall become the exclusive property of Owner, and shall not be reproduced by or used by the Contractor without the express written consent of Owner.

SECTION 16 - ROYALTIES AND PATENTS: The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save Owner harmless from loss on account thereof; except that Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Project Manager. Failure to give such notice to Owner in a timely manner shall make the Contractor responsible for resultant loss.

SECTION 17 - AUDITS AND RECORDS RETENTION:

- A. Owner, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this Contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.
- B. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as in paragraph (a) above. "Subcontract," as used in this clause, excludes contracts not exceeding \$10,000.
- C. The periods of access and examination in paragraphs A and B above for records relating to litigation or settlement of claims arising from the performance of this Contract, or costs and expenses of this Contract to which Owner, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such litigation, claims, or exceptions.

SECTION 18 - RENEWALS AND EXTENSIONS: The parties may mutually agree to extend the Contract. Upon the completion of the extended date of this Contract, this Contract will expire unless the parties execute a Change Order extending the term of the Contract.

SECTION 19 - COMPLETE CONTRACT: This Contract (including Exhibits to the Contract), together with Owner's solicitation materials, and the Contractor's response to the solicitation, contain all covenants, stipulations and provisions agreed upon by the parties. In the event of inconsistencies in language between these documents, the order of precedence shall first be the Contract (including Exhibits to the Contract), then the Contractor's response to the solicitation relative to preconstruction services and finally Owner's solicitation materials relative to preconstruction services. No agent or representative of either party has authority to make, and the parties shall not be bound by or be liable for any statement, representation, promise or agreement not set forth herein. No changes, amendments, or modifications of the terms hereof shall be valid unless reduced to writing and signed by the parties as a Change Order to this Contract.

SECTION 20 - THIRD-PARTY AGREEMENTS: This Contract shall not be construed to create a contractual relationship of any kind between: Architect and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

SECTION 21 - CAPTIONS: The titles of sections of this Contract are for convenience only and do not define or limit the contents

SECTION 22 - INVALIDITY OF PARTICULAR PROVISIONS: A judicial determination that any term, provision, condition, or other portion of this Contract, or its application, is inoperative, invalid, or unenforceable shall not affect the remaining terms, provisions, conditions, or other portions of this Contract, nor shall such a determination affect the application of such term, provision, condition, or portion to persons or in circumstances other than those directly involved in the determination in which it is held to be inoperative, invalid, or unenforceable, and as to such other persons or in such other circumstances it shall continue in full force and effect.

SECTION 23 - NO WAIVER: No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default or breach of any of the terms, covenants or conditions of this Contract. The payment of compensation to the Contractor shall not be deemed a waiver of any right or the acceptance of defective performance.

SECTION 24 - EXECUTION AND ACCEPTANCE: This Contract may be simultaneously executed in several counterparts, each of which shall be deemed to be an original having identical legal effect. The Contractor does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

14378 30TH AVE NE LLLP,
a Washington Limited Liability Limited Partnership
by the Housing Authority of the City of Seattle,
a public body corporate and politic,
its General Partner
101 Elliott Ave. W., Suite 100
PO Box 79015
Seattle, WA 98119

By: _____
Signature Date

By: _____
Signature Date
Roderick C. Brandon
Executive Director

Exhibits attached

- 1 - Scope of Work
- 2 - Terms and Conditions
- 3 - Preconstruction Services Plan
- 4 – Insurance & Bonds Requirements

Exhibit 1

(Contract # 6039)

SCOPE OF WORK

During Phase 1 Preconstruction Services, the Contractor shall perform preconstruction services with respect to the “Project Title” while the parties continue to work toward negotiating and finalizing the Maximum Allowable Construction Cost (“MACC”) as set forth in the Request for Competitive Proposals for a General Contractor for the 6039 14378 30th Ave NE RFCP .

ARTICLE 1

DEFINITIONS

Except as expressly provided in this Contract, capitalized words shall have the meaning set forth in the Owner General Conditions of the Contract for Construction where the basis of percentage fee is MACC (Oct 2024) (the MACC General Conditions), Attachment C of the 6039 14378 30th Ave NE RFCP

In accordance with paragraph EE under Part 1 of the MACC General Conditions, Project includes Phase 1 Preconstruction Services and Phase 2 Construction of four buildings over 152,000 SF, type VA and VB construction with a total of 100 proposed units and a mix of two, three bed and four-bedroom flats and townhouses. Building A consists of 86 units with one level of below grade parking and amenity spaces. Building C, D and E consist of 14 total townhouses.

ARTICLE 2

ENTIRE AGREEMENT

This Contract represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representation, or agreements, either written or oral. The Contractor recognizes that this Contract to provide preconstruction services relates closely with the final Contractor Construction Contract that will be executed at the completion of Maximum Allowable Construction Cost (MACC) negotiations. The Owner’s intent is for the Contractor to seamlessly provide complete construction management services for the project under these two contracts.

ARTICLE 3

PRECONSTRUCTION SERVICES

The Contractor shall:

Execute the entire work described in Phase 1 of this Contract, except to the extent that work is specifically indicated in the Contract to be the responsibility of others. The Contractor shall provide services, including but not limited to: project scheduling; cost-estimating; document coordination review, constructability review and value analysis to identify cost saving / value added opportunities for the Project; and development of subcontractor bid packages and bid execution. Services shall be closely coordinated with the Project Design Team and Owner's representatives. The Contractor shall, coordinate Preconstruction activities, work collaboratively and proactively with the Owner and Project Design Team to proceed with the planning, design,

and development of the work in a manner which supports the Owner's efforts to establish and maintain the MACC within the Project budget.

Both the Contractors Team and the Project Design Team shall be given direction by the Owner, or the Owner's representative(s). The relationship between the Contractors Team and the Project Design Team is intended to be collaborative and proactive, both participating on the same team with the Owner.

Actively participate as a member of the project team with the Owner and the Project Design Team prior to the start of and during construction. The purpose of this consulting responsibility is to provide the expertise necessary to ensure that the MACC and project schedule are accurate and achievable, while maintaining costs within the owners budget and timeline constraints. The Contractor will work collaboratively with the Project Design Team but will provide input through the Owner's Project Manager unless otherwise authorized by the Owner.

Contractor's Project Manager or higher-level person will attend all coordination meetings and oversee the services the Contractor provides to ensure development of a high quality, functional, constructible, and cost-effective project.

The scope of services to be provided by the Contractors Team also will include development of an initial estimate based on the completed Construction Documents, value analysis to identify cost saving opportunities, constructability analysis, scheduling of preconstruction activities including a subcontractor bidding plan, identification and organization of subcontract packages, procurement strategies, and analysis of labor and material availability conditions.

A. Document Review

The Contractor shall:

1. review the provided Contact Documents as they are developed and completed. The Contractor shall also review all other documents provided by the Owner, including but not limited to the project manual design, engineering studies, associated environmental documents, all record drawings of existing facilities and all documents provided or made available as part of the RFCA solicitation process.
2. The Contract shall promptly report in writing to the Owner and Owner's Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Contract may discover, paying particular attention to coordination issues, and recommend changes and alternatives.
3. The Contractor shall advise the Owner regarding current and expect market escalation and make recommendations to the Architect changes and alternatives without assuming the Project Design Team's design responsibilities.
4. The Contractor shall conduct a timely initial review of all provided Construction Documents for constructability, package completeness, and coordination. The Contractor shall provide written review comments to the Owner within 21 calendar days from Notice to Proceed with Phase I Preconstruction Services. The Contractor will also work with the Owner and Owner's Architect to identify constructability

options to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. A primary objective of these efforts will be to assist the Owner to ensure that the GCC does not exceed the Owner's budget, and the Work is completed on time.

5. Review and comment on all project manual design or engineering studies. The Contractors Team shall cooperate in other design reviews as required by the Project Manager.

B. Preconstruction Administration and Planning

The Contractor shall:

1. Schedule and conduct weekly meetings with the Owner, Owner's Architect (and other consultant when applicable), attended by the Contractor's Project Manager or higher-level person identified in the Pre-construction Work Plan attend weekly coordination meetings, to discuss preconstruction schedule, bid strategy, value and constructability analysis, construction schedule, and other project coordination issues.
2. Prepare a detailed schedule for pre-construction services, which shall include the following: key deliverables for owner financing requirements, milestones in the bidding and award process to aid the Owner in timely decision making, and submission of the Contractor's MACC proposal.
3. Develop cost accounting and job management reporting systems to be used during construction.
4. Coordinate all labor issues, and where appropriate work with building trade unions for their constructive involvement in the Project.
5. Perform other preconstruction administration and planning services as required by the Project Manager. This includes but not limited to developing and/or compiling documents required for finance closing, develop communication protocol
6. Prior to Buyout, develop and submit for approval an updated Community Participation Plan consistent with the requirements of Article 10 of the RFCP and the Contractor's response to the RFCP. The updated Plan shall include how Contractor will address each of the elements of the Community Participation Plan requirements and shall include its goals for each element in all subcontracting bid packages.
7. The Construction Manager shall suggest to the Owner and shall perform as agreed with the Owner site investigation to assist in development of the design and construction planning, including but not limited to survey proposed and existing site conditions to coordinate with the planned Work and, when necessary and approved by Owner, will coordinate, verify and conduct testing and exploratory work.

C. Construction Schedule Development

The Contractor shall:

1. Per the table in Section 00300 RFCP Article 2. Scope and Anticipated Schedule B. Schedule, the Contractors Project Manager, no later than 21 days after NTP establish a preconstruction schedule for establishment of the MACC and GCC, consistent with Article 5 of this Exhibit 1 to this Contract.
2. Develop a bid packaging/phasing strategy and bid schedule. The schedule shall identify all long-lead procurement items.
3. Prepare and periodically update a detailed milestone schedule for the project from Phase II Notice to Proceed with construction through Substantial Completion, Final Completion, and end of Warranty Walk. The schedule shall identify critical path activities to be performed by the Project Design Team, the Contractor and the Owner including applicable reviews and inspections by regulatory agencies, outside entities, and Owner constraints. In developing the activities for this schedule, the Contractor shall consult with both the Owner and Design Team to ensure that the responsibility for and duration of these activities is accurate. The schedule shall be submitted for Owner approval within 36 calendar days of NTP for preconstruction services. The schedule shall be updated with 100% Construction Documents and at financial closing with NTP for Phase II.

Develop a procurement strategy and schedule for direct purchase of materials, furnishings, fixtures, and equipment by the Owner. The schedule shall identify all long-lead procurement items and/or associated services. For long-lead procurement items, the Contractor shall update the procurement schedule at least monthly, expedite and coordinate with ordering and delivery. The Contractor shall adjust construction schedule accordingly.

4. Monitor and track schedule modifications, risks and issues and update the schedule monthly. Discuss the need for corrective action with the Project Manager and the Project Design Team in weekly coordination meetings.

D. Budget

The Contractor shall:

1. collaborate with the Owner and Owner's Architect on cost estimate throughout the preconstruction phase, including estimates at the following three design milestones: completion of the Design Development phase (Initial Cost Estimate), when Construction Documents are 50% complete, and 100% complete. As Owner's Architect progresses with the preparation of design documents, the Contractor shall track all costs and prepare and update at each phase or at appropriate intervals agreed to by the Owner, Owner's Architect and the Contractor the estimates.

2. Provide an Initial Cost Estimate for the Project using the 100% Design Development Documents provided in the RFCP 6039 (Pre-Construction Services). The Contractor shall identify the margin of accuracy of their estimate and identify appropriate contingencies and allowances to cover anticipated scopes. The Contractor's estimate shall employ a CSI system and anticipated Bid Package format so the bids can be compared to the estimates schedule of values. SOV formats will be coordinated with those being used by Project Design Team and Owner. The Contractor shall use the budget in [fill in the cost estimate] as a basis for cost through the bid process. The estimate shall be monitored and updated until a Final MACC is accepted by the Owner. The Initial Cost Estimate shall be submitted for Owner approval within 30 calendar days of notice to proceed for preconstruction services.
3. Provide value analysis ("VA") alternatives and cost reduction suggestions to the Project Design Team and Project Manager, such that the implementation of the proposed measures would maintain the design within budget without compromising the Owner's basic needs. Review the drawings and specifications for viable VA recommendations. The Contractor shall create a value analysis log which identifies each VA proposal, provides a cost estimate of the savings and/or explanation of added value to the Project if the proposal is accepted, indicates the date by which a decision must be made to incorporate the VA proposal, indicates the current status of the VA proposal and the team member with current action, and the date the proposal was accepted or rejected. Owner may request material or vendor quotes as part of this exercise. If changes are accepted, the Contractor and Architect shall verify that the changes will be incorporated into the contract documents and are tracked with change request proposals to be submitted after financial closing and Full Notice to Proceed.
4. Evaluate the availability and supply of labor and materials and the effect of market conditions on the budget.
5. Compile a long-lead items log and potential impacted scope list and prepare procurement documents for long lead-time materials as necessary, including a specific budget for long-lead item.
6. At completion of the bid process provide a final MACC proposal to be reviewed by the Owner and negotiated prior to Full Notice to Proceed with Phase II construction of the Project.

E. Bid Preparation and Execution

1. Prior to subcontractor bidding, the Contractor shall review record documents and drawings and investigate the existing conditions at the Project site to ensure that the Construction Documents reflect the existing conditions.
2. Prior to the conclusion of 100% Construction Document phase, the Contractor shall develop a Subcontractor Bidding Plan and bid schedule that shall, with respect to all portions of the Work: (a) segregate the Work into logical, detailed and distinct packages that do not overlap and do not create gaps of Work that are not included within any package; (b) identify the applicable Drawings and Specification for each package, and identify the timing of solicitation of bids or proposals for each package

to meet the construction schedule; (c) provide an estimate of the probable cost for each package; (d) correlate those packages to the construction cost estimate (or MACC estimate already established) and master critical path schedule. The Contractor shall secure the Owner's approval of its Subcontract Bidding Plan, (e) identify those upon which the Contractor or its affiliates intend to bid; and (f) means to enhance the opportunity for WMBE and other business and enterprises identified in the Community Participation Plan to participate in performing the Work.

3. Identify and estimate the value of any items that require off-site storage together with proposed locations for storage during the course of the Work acceptable to the Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.
4. Determine subcontract bid packages and material procurement packages are consistent with the 100% Construction Documents.
5. The Contractor shall use its best efforts to develop the interest of subcontractor bidders in the Project. The Contractor shall furnish to the Owner and Owner's Architect a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposal will be requested for each principal portion of the Work. The Owner will promptly reply in writing to the Contractor if the Owner or Owner's Architect know of any objection to such proposed subcontractors or suppliers. The receipt of such list shall not require the Owner or Owner's Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it or the lack of any objection waive the right of the Owner or Owner's Architect later to object to or reject any proposed subcontractor or supplier.
6. The Contractor shall manage and administer the implementation of the Subcontractor Bidding Plan, including the engagement of all subcontractors. Unless otherwise agreed to by the Owner, the Contractor shall receive at least three (3) bids or proposals for each subcontract bid package. All bids and proposals shall be provided to the Owner upon request. All authorized subcontracts or procurements will be moved into the Contractor Construction Contract by change order at financial closing after the Contractor Construction Contract is signed.
7. Identify and estimate the value of any items that require off-site storage together with proposed locations for storage during the course of the Work acceptable to the Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.

ARTICLE 4

RELATIONSHIP OF THE PARTIES

The Contractors Team accepts the relationship of trust and confidence established by this Contract and covenants with the Owner to cooperate with the Project Design Team and Owner through every phase of the work and utilize the Contractor's Team'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 Contractors Team 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 this Contract. The Contractors Team recognizes that the Owner has a separate agreement with the Project 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 Contractors Team further recognizes that in order for the Project to be completed on time and within the GCC, the Contractors Team and the Project Design Team and the Owner will have to closely cooperate on a regular basis to revise plans, drawings, specifications, materials, methods, estimates and budgets as necessary to meet the Owner's financial constraints.

ARTICLE 5

GUARANTEED CONTRACT COST NEGOTIATION

The Guaranteed Contract Cost (GCC) will be determined through a negotiation of the MACC conducted prior to the execution of the Notice to Proceed with Phase II. MACC negotiations will take place prior to the execution of the contractor Phase II Construction Contract. The Contractor shall submit the initial MACC estimate within 36 calendar days of Notice to Proceed for Preconstruction based on the provided Construction Documents. MACC negotiations, including the MACC construction schedule, will be completed concurrent with subcontractor bidding. Preconstruction costs and project markups have been established with the submitted ATTACHMENT A Part 1: Cost Proposal Form. The Contractor shall not be reimbursed for costs associated with MACC negotiations, including preparation of the MACC estimate. If the Owner and the Contractor fail to negotiate a MACC, the negotiation process may be terminated.

Upon completion of the subcontractor bid analysis and scope verification; the contractor will prepare the proposed MACC for final negotiations with Owner. If the proposed MACC exceeds the Owner's financial constraints, the contractor will review the cost proposal line by line to identify cost issues and develop potential solutions.

Exhibit 2

(Contract No. 6039)

TERMS AND CONDITIONS

Preconstruction Completion Date (Section 2 of the Contract): Est	Contract Amount (Section 3 of Contract): NTE
Basis of Payment (hourly rate, lump sum, etc.) (Section 3 of Contract): The Contractor, on a monthly basis, may invoice the Owner for work performed in the prior month. The Contractor shall be paid on the hourly basis not to exceed the Contract Amount outlined in Exhibit 3, the approved Preconstruction Services Plan.	
Subcontractors or Sub-consultants Authorized (Section 4 of Contract): 	
Name of Contractor's Key Personnel Essential to the Work (Section 5 of Contract): 	
Name and Address of Owner's Project Manager (Sections 6 and 12 of the Contract): Lori Stehlik PO Box 79015 Seattle WA 98119	
Contractor's Name and Address for Delivery of Notices (Section 11 of the Contract)	Owner's Name and Address for Delivery of Notices (Section 11 of the Contract) Seattle Housing Authority Attn: Project Manager PO Box 79015 Seattle WA 98119

Exhibit 3

(Contract #6039)

Preconstruction Services Plan

Exhibit 4

(Contract # 6039)

Insurance & Bonds Requirements

1.01 CONTRACTOR'S LIABILITY INSURANCE

A. General Requirements:

1. Prior to undertaking any work under this Contract and for the duration of this Contract, Contractor will procure and continuously maintain at its own expense, insurance coverage as specified in this section, covering performance of the Work under this Contract by Contractor and its agents, representatives, employees and/or Subcontractors.

2. Contractor's insurance will be primary and non-contributory as respects any insurance or self-insurance maintained by Owner, and will include a severability of interests clause for applicable coverages.

3. Owner reserves the right to waive or modify any of the insurance requirements of this contract at its sole discretion, or as may be required by Owner transactional or financial partners.

4. Coverage will be placed with financially sound and responsible companies acceptable to Owner which are authorized to do business in the state of Washington.

5. Contractor's policies will provide waivers of subrogation by endorsement or otherwise when applicable.

B. Required and Optional Insurance Coverage. Contractor will maintain and provide evidence of insurance in the following types and amounts:

1. **Commercial General Liability Insurance.** A policy of Commercial General Liability insurance and if necessary, commercial umbrella insurance including bodily injury, property damage, and products/completed operations, written on an industry standard form (GC 0001 or equivalent) occurrence form, with limits of at least \$5,000,000 each occurrence, and \$5,000,000 in the aggregate.

Coverage will extend to cover the use of any mobile equipment on the site or sites of the work of this contract.

2. **Employers Liability or Washington Stop Gap Liability.** A policy of Employers Liability, or a Washington Stop Gap Liability insurance, and, if necessary, commercial umbrella insurance, with limits of at least \$1,000,000 each accident/occupational disease.

3. Commercial Business Auto Coverage. A policy of Commercial Business Auto Coverage, and if necessary, commercial umbrella insurance, including coverage for on owned, non-owned, leased, or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, with limits of at least \$2,000,000 per accident.

4. Workers Compensation. Contractor will provide coverage in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW).

5. Professional Liability/Errors and Omissions Insurance. If required by Owner a policy of Errors and Omissions or Professional Liability insurance appropriate to the Contractor's licensed profession with limits of at least \$5,000,000 per occurrence and in the aggregate.

C. Proof of Insurance and Insurance Expiration:

1. Contractor will furnish certificates of insurance (and policy endorsements if needed) as evidence of compliance with the insurance requirements of the order. All certificates shall reference Owner's project number and title.

2. SHA, any limited liability partnership for which SHA serves as managing agent, and any project investors will be named as Additional Insureds on all liability policies of the Consultant other than professional liability policies.

3. Owner reserves the right to request complete copies of all required insurance policies at any time during the term of the contract.

4. If subcontractors will perform work under this contract, Contractor will:

a. Include all subcontractors at any tier as insureds, and ensure that the Contractor's coverage of subcontractors under the Contractor's policies is not excluded by any policy provision or endorsement, or, alternatively,

b. Obtain from each subcontractor not insured under the Contractor's policy or policies of insurance, evidence of insurance meeting all the requirements of this order and maintain such evidence on file for a period of one year after the completion of this order and, upon request, submit such evidence to Owner for examination.

5. The Contractor's insurance will not be reduced or canceled without forty-five (45) days prior written notice to Owner.

1.02 PAYMENT AND PERFORMANCE BONDS

A. Payment and performance bonds for 100% of the Contract Sum, including all Change Orders and state sales tax, shall be furnished for the Work, and shall be in a form acceptable to the Owner.

B. Prior to Contract execution, Contractor shall provide provisional Payment and Performance bonds to Owner for review and approval along with the Contract bearing Contractor's signature.

C. Within seven (7) calendar days of Contract execution, Contractor shall deliver originals of the approved Payment and Performance bonds to Owner. An extended period for delivery of the original bonds may be granted by Owner based upon reasons determined adequate by Owner at its sole discretion.

D. Failure to furnish original Payment and Performance bonds within the time specified after Contract execution may render Contractor ineligible for award. Owner may then either award the contract to the next lowest responsible bidder or re-solicit for bids. Owner may retain the ineligible bidder's bid bond.

E. The Contractor will be required to add the Limited Partnership of which SHA is the managing partner, and any affiliate partners, as mutual obligees per the funding agreements for the project.

1.03 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:

A. Owner has a reasonable objection to the surety; or

B. Any surety fails to furnish reports on its financial condition if requested by Owner.

Construction Contract

In consideration of the mutual covenants and agreements of the parties herein contained, 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 following amounts:

Description	Phase I	Phase 2
Pre-Construction (complete)		
Hard Construction Cost (MACC)		
Fee (As Bid Not to Exceed 6%)		
Overhead (As Bid Not to Exceed 2%)		
Fixed Amount for Specified General Conditions (As Bid Not to Exceed 6%)		
Negotiated General Conditions		
Sales tax on labor and materials per City of Seattle rates		
Total (GCC)		

ARTICLE 1 **DEFINITIONS**

Except as provided in this Article 1, capitalized terms shall have the meaning set forth in the Housing Authority of the City of Seattle General Conditions, Attachment C of the SHA Request for Competitive Proposals # as fully attached to this Contract as Attachment C.

- 1.01 "Buyout" The cost of the awarded subcontractor bid for a particular bid package.
- 1.02 "Buyout Savings" The total approved Subcontract Plan bid package estimates minus the cost of the awarded subcontracts for the bid packages in the approved Subcontract Plan.
- 1.03 "Contract Documents" This Contract and all documents listed in Article 7 Miscellaneous Provisions.
- 1.04 "Contract Sum" - The Contract Sum set forth in the General Conditions, Exhibit C to this Contract and the Guaranteed Contract Cost.
- 1.05 "Guaranteed Contract Cost" ("GCC") The sum of the MACC + Contractor's Fee + Overhead + Fixed Amount for Specified General Conditions + Negotiated General Conditions + Washington State Sales Tax on Materials Only.
- 1.06 "Maximum Allowable Construction Cost" ("MACC") The amount required to complete all Work as described in the Contract Documents, but excluding the Preconstruction Work, Contractor's Fee, Overhead, Fixed Amount for Specified General Conditions work, Negotiated General Conditions, and applicable Washington State Sales Tax on Materials Only.
- 1.07 "MACC Contingency Account" The amount funded from Buyout Savings and savings from the Negotiated General Conditions. In the amount not to exceed 3% of the MACC excluding the Negotiated General Conditions

- 1.08 "Owner's Project Manager" The individual designated by the Owner to oversee the Work, administer this contract and /or terminate the Work in accordance with the Contract Documents and make all the required determinations and findings.
- 1.9 "Project" All work on the Yesler Terrace Phase V Housing Construction Project. Construction Project as described in the Contract Documents.
- 1.10 "Contractor's Fee" means: All profit of the Contractor for this Project, and all regional and home office overhead expenses, including labor and materials, travel, phone, cellular phone, facsimile, postage and other incidental office expenses attributable to work on this Project that is not specifically identified in the Specified General Conditions work.
- 1.11 "Contractor's Overhead" means: All expenses of the Contractor whether direct or through consultants, for participation in and support of the subcontractor bidding process of the Project that are not paid for as Specified General Conditions work, all taxes, including B&O, owed by the Contractor except retail sales tax on the Work, and All insurance required of the Contractor under the Contract.
- 1.12 "Specified General Conditions" means: the cost of all personnel, equipment, facilities, supplies, as well as performance and payment bonds, which are identified in the General Conditions and this Construction Contract required to successfully carry out all of the construction management and general contracting responsibilities of the Contractor during construction, which management and administration responsibilities include, without limitation, those more particularly identified in the Construction Documents.
- 1.13 Negotiated General Conditions Any other general conditions required to execute the Work outside of the Specified General Conditions, shall be identified and budgeted for by the General Contractor as Negotiated General Conditions outside of the direct costs and Division 01 specifications. These conditions shall not include any General Contractor overhead, markup or fee.
- 1.14 MACC General Conditions Any support outside of Specified General Conditions and Negotiated General Conditions shall be considered part of the work and included in the MACC estimate as MACC General Conditions.

ARTICLE 2

THE CONTRACT DOCUMENTS

The Contract Documents constitute the Contract, which represents the entire and integrated agreement between the parties and supersedes prior negotiations, representation or agreements, either written or oral, except for the separately executed contract for Preconstruction Services between the parties. The order of precedence of the Contract Documents shall be as stated in section 1.02 of the General Conditions, Exhibit C to this Contract.

ARTICLE 3

WORK OF THIS CONTRACT

- 3.1 General. The Contractor shall perform and complete the entire work described in the Contract Documents, except to the extent that work is 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: assistance in planning and design, and life cycle cost-engineering; scheduling; cost-estimating; determining constructability; assessing alternative construction options for cost savings including assistance to the Owner with development tasks necessary to support the construction effort; and preparation of subcontractor bid packages. CM services shall be provided throughout the Project under both the Preconstruction Services Contract and this Contract, and shall be closely coordinated with the Architects, Engineers, Design Team and Owner's Project Manager. The Contractor shall provide full general contracting services for construction of the Project. The Contractor shall work collaboratively and proactively with the Owner's Project Manager, Architect, Engineers and Design Team on the planning, design, and development of the work. The entire cost of providing Construction Management and General Contracting services under this Contract are included in the Fixed Amount for Specified General Conditions.

- 3.2 Supplemental Contract Documents. The Contractor acknowledges that the Contract Documents may not be fully completed or developed when this Contract is executed. The Contractor will cooperate with the Owner and the Architect to satisfy the Owner's requirements for the Project and to include in the Contract Documents to be completed or developed hereafter, all the work needed to complete the Project. The Contractor and the Owner recognize that construction may commence on the basis of incomplete Contract Documents, and in such event, 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. In signing this Contract, the Contractor represents to the Owner that the Contract Documents available at the time of execution of this Contract are sufficiently complete to enable the Contractor to commit to performing the Work for the Guaranteed Construction Cost, and additions or modifications to the Contract Documents will not affect the GCC unless there is a change in the scope of the work. Inference to complete the Work and provide a complete GCC is expected. Work described in modifications to the Contract Documents shall not be construed to be a change in the scope of the work if the work described in the modification was necessary or appropriate under the Contract Documents in existence at the time of execution of this Contract, or was reasonably foreseeable by a prudent contractor. During performance of the work the Contractor will use its best efforts, and exercise its best judgment, to accomplish the work in conformance with, and as required or described by, the Contract Documents.

The relationship between the Contractor, the Architect and the Owner's Project Manager shall be collaborative and proactive.

3.3 Construction.

A. Construction Administration and Management

The Contractor shall:

1. The Contractor shall provide all services required of a general contractor to manage all aspects of the Project. Specific details of the Work are provided below but they shall in no way limit the Contractor's overall duty to provide Contractor services. The scope of services to be provided may include soil remediation and legal disposal of contaminated soil, construction if found during excavation and foundation work, construction management, procurement, fit out, QA/QC coordination, commissioning support, coordination of as-built drawings, and related activities.
2. Coordinate all on-site activities. The Contractor shall plan, order, prepare and coordinate all necessary on-site support staff, services, and equipment, and shall manage, direct, oversee and coordinate the work of the subcontractors and suppliers who perform the Work specified in the Contract documents and in accordance with the approved schedule. The Contractor shall; provide on-going coordination between crafts, quality control, settle disputes between subcontractors, negotiate any change order proposals with the subcontractors, negotiate change order proposals with the Owner, revise and forward submittals and RFI's to the Owner's Project Manager/Architect for action, and respond to all correspondence related to the effort required for any procurement activities that arise from a subcontractor's inability or unwillingness to perform. The Contractor shall also negotiate with subcontractors but Owner reserves the right to reject any subcontractor proposal.
3. Minimize disruption and control construction: The Contractor shall plan, coordinate and sequence the Work to minimize disruption to adjacent properties through careful planning and control of construction activities in all areas. The Contractor shall control construction activities such that construction activity is performed only according to the approved Progress Schedule, unless authorization to vary from the Progress Schedule is reviewed with and approved in writing by the Owner's Project Manager.

4. Hold regular meetings and conduct tours. The Contractor shall attend construction oversight meetings with representatives from the Owner and the Design Team as required, conduct weekly progress meeting(s) between the Owner, Architect and Contractor(OAC) and weekly subcontractor meeting(s), and keep and maintain adequate minutes for all meetings. The Contractor shall conduct site tours for the Owner and other officials as requested by Owner.
5. Coordinate general layout, including layout work provided by separate trades for their own work, to insure that there is no conflict with or between the trades using required software Autodesk BIM 2018.
6. Implement the approved Community Participation Plan, attached hereto as Attachment D. The approved Community Participation Plan will reflect any updates made to the Contractor's original Community Participation Plan submitted in response to the RFCP. Such updates shall include, but not be limited to, projected number of Section 3 hours, women and minority workforce goals, and restatement of commitments regarding 14% women and minority (WMBE) subcontracting goal, 10% Section 3 Business subcontracting goal, and 15% apprenticeship goal, and details concerning application of the Community Participation Plan to any subcontracts awarded. Prepare and submit monthly reports related to the implementation of the Plan and attend monthly or quarterly Section 3 Advisory Committee meetings.
7. Develop a site safety plan, including SDOT approved traffic control plans (TCP's) site security, and manage jobsite safety. The Contractor shall have complete responsibility for jobsite safety and security. At Owner's request, the Contractor shall provide the Owner a copy of the security and site safety plan.
8. Provide sufficient project managers, field engineers, superintendents, engineers, construction quality control representatives, testing engineers, scheduling engineers, cost engineers, clerical and accounting personnel, and related personnel to ensure that:
 - a. Change order proposals are submitted to the Owner/Architect within ten (10) working days of receipt of the subcontractor's proposal by the Contractor. Only those change order proposals result from negotiations between Contractor and subcontractor(s) shall be submitted to the Owner.
 - b. RFIs are reviewed and forwarded to the Owner's Project Manager/Architect within five (5) working days of receipt, unless a shorter period of review is required to avoid delay.
 - c. Submittals are reviewed for completeness and forwarded to the Owner's Project Manager/Architect within five (5) working days of receipt.
 - d. Replies to correspondence from subcontractors, Owner/Architect, and other outside agencies are provided within five (5) working days.
 - e. Daily project reports are completed and submitted in an Owner approved format on a daily basis.
 - f. After substantial completion, staff, authorized to act on behalf of their firms, remain engaged with the Owners Representative to coordinate and ensure that any outstanding work items, punchlists, testing and commissioning are completed, and warranty issues are addressed in a timely manner at no additional cost to the Owner.
9. Administer all construction correspondence and maintain a document tracking and filing system for the Project.
10. Notify, inform, coordinate and plan, with adjacent property owners and Seattle Housing Authority staff, to minimize and mitigate the impacts due to the Contractor's operations. Participate in community meetings, meetings with regulatory agencies, Seattle Housing Authority Board of Commissioners and other meetings as requested.

11. Coordinate construction-related permit conditions and special inspections. The Contractor shall perform all work required to make permit changes and updates.

B. Subcontract Bidding

1. The Contractor shall organize and solicit bids for subcontractors to complete the Work in the most efficient and cost-effective manner possible. The Contractor may not use any alternates that are inconsistent with the Contract Documents without the prior, written approval of the Owner.
2. The Contractor shall be responsible for issuing bid packages that segregate the Work into logical and distinct packages that do not overlap and do not create gaps in the Work that are not included within any package. By issuing a bid package, the Contractor assumes responsibility for the package costs being within the MACC. If any package cost causes total Project costs to exceed the MACC, the Contractor shall bear the added cost, and no additional compensation shall be sought from, or provided by, the Owner.
3. The Contractor shall conduct the solicitation of bids and public bid openings, evaluate bids, and conduct and/or coordinate hearings of any bid protests. The Contractor shall be responsible for all costs associated with the subcontracting process including, but not limited to:
 - a. Developing solicitations for Subcontract packages.
 - b. Reproduction of bid documents.
 - c. Up to 4 Site tours.
 - d. Responding to questions from bidders.
 - e. Providing bid opening facility.
 - f. Contract award.
4. The Contractor shall include the language of subcontractor responsibility criteria in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. Upon request of the Owner, the Contractor shall promptly provide documentation to the Owner demonstrating that the subcontractor meets the subcontractor responsibility criteria below. The requirements of this section apply to all subcontractors regardless of tier.

At the time of subcontract execution, the Contractor shall verify that each of its first-tier subcontractors meet the following bidder responsibility criteria:

 - a. At the time of subcontract bid submittal, have a current certificate of registration in compliance with chapter 18.27 RCW, which must be in effect at the time of the bid submittal;
 - b. Have a current Washington Unified Business Identifier (UBI) number;
 - c. If applicable:
 - Have Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required in Title 51 RCW;
 - Have a Washington Employment Security Department number, as required in Title 50 RCW;
 - Have a Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - Electrical Contractor License, if required by Chapter 19.28 RCW
 - Elevator Contractor License, if required by Chapter 70.87 RCW
 - d. Not be disqualified from bidding on any public works contract under RCW 39.06.01 or RCW 39.12.065(3);

- e. Has not more than one violation of the off-Site prefabricated non-standard, project specific Items reporting requirements of RCW 39.04.370 (Applicable until December 31, 2013);
 - f. Has not been debarred, suspended, or otherwise ineligible to contract with SHA and is not included on the Excluded Parties List System (EPLS) on GSA's SAM (System for Award Management) <https://www.sam.gov/portal/public/SAM/> or the Department of Housing and Urban Development's "Limited Denial of Participation" list;
 - g. Have completed training requirements under RCW 39.04.350 before bidding on public works projects as determined by the Washington State Department of Industries OR are exempt from the training requirements under RCW 39.04.350;
 - h. Within the three-year period immediately preceding the date of the proposal submittal, has not have been determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW.
5. Approval of Sub-Contractors: Seattle Housing Authority retains the right of final approval of any subcontractor of the selected General Contractor. The General Contractor shall inform all sub-contractors of this provision.

C. Cost Reporting.

The Contractor has:

- 1. Prepared a detailed construction budget for the Project known as the MACC Report. The Contractor shall update the budget each month, showing a complete, detailed, and current accounting for the cost of the work including subcontractor buyout versus the approved Subcontract Plan for each bid package, the actual costs versus Negotiated General Conditions costs and actual costs versus allowances.
- 2. Prepare a monthly progress report narrative including construction activity summary, progress schedule update, and community participation plan status.
- 3. Establish pay request procedures and prepare and submit monthly pay requests.
- 4. Prepare independent cost estimates for subcontractor change orders and document and track all change order payments.
- 5. Resolve subcontractor claim issues.
- 6. At the conclusion of the Project, prepare a final accounting for the Project including subcontractor buyout, and prepare and submit a final payment request; provided that, except as provided for in negotiated and executed change orders to this Contract, the Owner shall not pay the Contractor more than the Guaranteed Contract Cost established in this Contract.

D. Schedule.

The Contractor shall:

- 1. Develop and maintain an up-to-date, detailed master critical path construction Progress Schedule (tracking Gantt), in industry standard project scheduling software, for the Project that includes concurrent design, permitting, procurement, and construction activities.
- 2. Monitor construction progress and update the Progress Schedule every week, prepare a three-week look-ahead schedule every week, and discuss any need for delay mitigation with the Owner's Project Manager in the weekly coordination meetings.

3. Provide project progress schedules showing daily activities occurring on the site. Schedules shall be updated weekly and provided to the Owner at the weekly coordination meeting.
4. Prepare a monthly tracking schedule with the monthly progress report.

E. Quality Control/Quality Assurance.

1. Special inspections required by the appropriate permitting officials, regulatory agencies, and lenders will be provided by the Owner and coordinated by the Contractor. The Contractor shall ensure that the Owner's inspectors and other officials are given notice and are afforded timely and appropriate access to the work as needed.
2. Prior to the commencement of construction, the Contractor shall develop and submit a QA/QC plan for the Project to complement the Owner's Project Manager's independent testing and inspection. The QA/QC plan shall be approved by the Owner's Project Manager. Approval of the plan does not relieve the Contractor of its responsibility for complying with all requirements of the Contract Documents. QA/QC shall be conducted as further described in Division 1 and the Contract Documents.
3. The Contractor shall review the Owner's Special Inspectors testing and inspection reports, log and track issues and, where required, take appropriate remedial actions. The Design Team will also review reports and advise accordingly the Owner and Contractor.
4. The Contractor shall, in cooperation with the Owner's Project Manager and Architect, develop a system for reporting and correcting deficiencies in the work.

F. Commissioning, Substantial Completion, and Close Out.

Substantial Completion, for purposes of Section 6.07 of the General Conditions, Exhibit C, and Article 5 of this Contract, is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, includes those commissioning activities outlined in the Commissioning Plan necessary to obtain regulatory approvals and fully operational use of all systems and areas of the Project so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punch list work shall have been completed. Substantial Completion shall not have been achieved if: all systems and parts are not functional, **including systems and parts not required by code**; utilities are not connected, tested and operating normally; all required occupancy permits have not been issued; or the Work is not accessible by normal vehicular and pedestrian traffic routes. A Temporary Certificate of Occupancy or Full Certificate of Occupancy is not by itself evidence of Substantial Completion. The date Substantial Completion is achieved shall be established in writing by Owner. Contractor may request an early date of Substantial Completion which must be approved by Change Order. Owner's occupancy of the Work or designated portion thereof does not necessarily indicate that Substantial Completion has been achieved.

1. The Contractor shall assist the Owner in obtaining regulatory approvals and the required permits necessary for the Owner to beneficially use and/or occupy the facilities improved in this Project.
2. The Contractor shall prepare and/or coordinate all requirements for turning building systems and areas over to the Owner on completion of the work. Working in conjunction with Owner's personnel, the Contractor shall direct the checkout of utilities, operations systems, and equipment.
3. The Contractor shall schedule, video tape and conduct training sessions for all operations personnel as needed.
4. The Contractor shall prepare and/or coordinate the preparation of all operations and maintenance manuals.

5. The Contractor shall assemble and coordinate all vendor manuals, warranties, guarantees, affidavits, releases, bonds waivers, regulatory approvals, and related documents.
6. The Contractor shall administer and coordinate preparation of all vendor shop drawings.
7. Working in conjunction with Architect's field staff and the Owner's Project Manager, the Contractor shall develop a protocol for preparing as-built drawings in accordance with the requirements of Exhibit C General Conditions.
8. The Contractor shall coordinate timely completion of punch list work. Contractor acknowledges that the Construction Work is likely to be completed in phases requiring phased punch lists and phased acceptance of portions of the work.
9. The Contractor shall prepare close-out documentation acceptable to the Owner's Project Manager.

ARTICLE 4

RELATIONSHIP OF THE PARTIES

- 4.1 General. The Contractor acknowledges that a relationship of trust and confidence is to be established and maintained under this Contract and covenants with the Owner to cooperate with the Architect and Owner through every phase of the Work; to 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 most expeditious and economical, and cost effective manner. The Owner agrees to exercise best efforts to help the Contractor perform the Work in the most expeditious, economical and cost-effective manner by timely furnishing and approving information required by the Contractor and by making payments to the Contractor in accordance with the requirements of the Contract Documents. The Contractor acknowledges that the Owner has a separate agreement with the Architect 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 acknowledges that, for the Project to be completed on time and within the GCC, the Contractor, the Architect and the Owner must closely cooperate on a regular basis to revise plans, drawings, specifications, materials, methods, estimates and budgets as necessary to meet the Owner's objectives and financial constraints as established in the GCC.
- 4.2 Non-Representation: The relationship between the Contractor and the Owner by reason of this Contract shall be that of independent contractor, and the Contractor shall not be the agent or legal representative of the Owner for any purpose whatsoever. 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 Owner or to bind the Owner in any manner whatsoever.
- 4.3 Authority of Owner's Project Manager:
 - A. Owner's Project Manager. The Owner's Project Manager is authorized to act on behalf of the Owner in all matters pertaining to the Work and the Contract Documents. The Owner's Project Manager may delegate all or part of this authority to others and will communicate this authorization in writing. No representative or employee of the Owner, other than the Owner's Project Manager, shall have authority to obligate the Owner for any purpose unless authorized in writing to do so by the Owner's Project Manager. The Owner's Project Manager shall have the authority to reject defective material and suspend work that is not consistent with the Contract Documents.

For all purposes under this Contract, the decision of the Owner's Project Manager shall be final, except for those matters requiring execution a Change Order, in which case the final decision shall be made by SHA's Executive Director. The Owner's decisions, as delegated to Owner's Project Manager shall be final on all issues including, but not limited to, the following:

 1. Quality and acceptability of materials and Work, as specified by the Contract Documents.

2. Measurement of unit price work.
 3. Acceptability of rates of progress on the Work.
 4. Interpretation of Drawings and Specifications.
 5. Determination as to the existence of changed or differing site conditions.
 6. Fulfillment of the Contract by the General Contractor.
 7. Payments under the Contract.
 8. Issuance of a Change Order; and,
 9. Substantial Completion and Final Acceptance
- B. Approval of Owner's Project Manager. The Owner's Project Manager has no obligation to provide the Contractor with direction or advice on how to do the Work. Although an Owner's Project Manager may inform the Contractor of any faulty work or materials, or infringements of the terms of the Contract Documents, failure of the Owner's Project Manager to do so shall not constitute acceptance or approval of any faulty or defective work or materials. If the Owner's Project Manager approves or recommends any method or manner for doing the Work or producing materials, the approval or recommendation shall not:
1. Constitute a representation that following the method or manner employed by Contractor will result in compliance with the Contract.
 2. Relieve the Contractor of any risks or obligations under the Contract, or,
 3. Create any liability for the Owner.
- C. Inspectors and Consultants. The Owner may appoint inspectors, or designate Consultants, to assist in determining whether work performed, and materials furnished comply with the Contract Documents. Designated Inspectors and Consultants may exercise only such authority as may be delegated to them in writing by the Owner's Project Manager. Inspectors and Consultants are not authorized to approve or accept any Work or materials, or to issue instructions or advice except as specifically authorized by the Contract Documents or the Owner's Project Manager in writing. In the event of a conflict between the Owner's Project Manager and any Inspector or Consultant, the Owner's Project Manager's decision shall be the final decision of the Owner and binding on the Contractor.

ARTICLE 5

DATE OF COMMENCEMENT, TIME OF COMPLETION, INCENTIVE, AND LIQUIDATED DAMAGES

- 5.1 Time is of the Essence. It is understood that time is of the essence in performing the Work, and the Contractor shall provide the necessary equipment, personnel and services to commence the Work on the date this Contract is executed and be substantially complete within the applicable time established with this Contract set forth as ATTACHMENT I. MACC Construction Schedule.
- 5.2 Date of Commencement. The date of commencement of work to be performed under this Contract, other than Construction Work, shall be the date this Contract is signed by both parties. Any work performed by the Contractor prior to execution of this Contract, other than the Preconstruction Work described in the separate Preconstruction Services Contract shall be at the Contractor's sole risk and expense unless the Owner has directed the Contractor, by change order to the Preconstruction Services Contract, to proceed with preparation of selected subcontractor packages, material procurement or limited scope released.

The date of commencement of the Construction Work shall be established by issuance of the Notice to Proceed for the Construction Work. If the Notice to Proceed for part or all of the Construction Work is not issued, work reasonably performed by the Contractor in connection with preparation and bidding of authorized subcontractor packages as described in this Contract, shall be at Owner's expense. Any Construction Work performed prior to issuance of the Notice to Proceed for construction shall be at the Contractor's sole risk and expense.

Notwithstanding anything to the contrary in the Contract Documents, if a Notice to Proceed for construction is not issued by the Owner for all or any part of the Project, the Contractor's damages shall be limited to authorized costs actually incurred by the Contractor, plus the percentage for the Contractor's Profit shown in the Table on page 1 of this Contract, on those costs.

5.3 Substantial Completion and Final Acceptance.

The following is the date by which the parties agree that Substantial Completion and Final Acceptance of all elements of the Project will occur:

Substantial Completion will be achieved by: TBD

Final Acceptance will be achieved by: within 90 days of Substantial Completion

5.4 Liquidated Damages. Timely performance and completion of the Work is essential to the Owner and time limits are of the essence. See General Conditions Exhibit C Section 3.07.

5.5 Incentives. Incentives shall be paid only with funds from the MACC/Contractor Buyout Contingency Account established in **6.2.3**. Incentives will be paid from the Incentive Pool. The Incentive Pool shall be an amount not to exceed 1% of the MACC funded from the amount available in the MACC Contingency Account at Substantial Completion. All funds in the MACC Contingency Account at Substantial Completion that are not earned by the Contractor as incentives will be returned to the Owner through a Change Order. Incentives will be paid for meeting established objectives in four categories:

Management Incentive-The Contractor will receive the incentive for superior management of the project. The Contractor's Project Management will be evaluated for each of the periods listed below. Incentive periods will be intervals equally spaced within the project scheduled duration.

Period	Percent of Incentive
1: at 50% Complete	25%
2: at Final Completion	75%

1. The Contractor's performance will be evaluated for incentive fee purposes based upon the criteria listed below (Incentive Evaluation Criteria), and no others. The Incentive Evaluation Criteria are:
 - A. The effectiveness of the Contractor's efforts in implementing its Community Participation Plan and achieving its commitment goals as stated in its Plan
 - B. The effectiveness of the Contractor's management of costs.
 - C. The effectiveness of the Contractor's team-building efforts.
 - D. The effectiveness of the Contractor's management of the construction schedule.
2. The Owner will establish an incentive fee evaluation committee (Committee) consisting of the Senior Development Project Manager, the Purchasing Manager, Labor Compliance, the Construction Manager. The Committee will evaluate the Contractor's performance during each period. Within ten (10) calendar days after the end of an evaluation period, the Contractor and the Owner's Project Manager each shall separately prepare and submit to the Committee the incentive evaluation form evaluating the Contractor's performance during the period based upon the Incentive Evaluation Criteria. The committee may invite, or, upon request by either the Contractor or the Owner, allow the Contractor and the Owner each to make an oral presentation of a limited duration determined by the Committee. After receiving the evaluation forms and hearing any oral presentations, the Committee will evaluate the Contractor's performance based upon the Incentive Evaluation Criteria, and will make written determination of the amount of the available incentive fee the Contractor is to receive for the evaluation period in question. The Committee's determination shall be made within thirty (30) calendar days after the end of the evaluation period and shall be in writing and set forth the reasons for the determination.

3. The Incentive Evaluation Criteria by which the Contractor will be evaluated by the Committee for as stated in paragraph 5.5 A., B., C and D. shall use the following scoring and weighting system:
 - A. The effectiveness of the Contractor's efforts to implement and achieve commitment goals stated in the Community Participation Plan a
 1. Section 3 hiring program.
 2. Apprenticeship utilization.
 3. WMBE business utilization.
 5. Section 3 business utilization
 4. Women and Minority employment program.
 - B. The effectiveness of the Contractor's management of costs:
 1. Timely/cost effective resolution of changes.
 2. Proactive identification of cost issues.
 3. Accurate cost to complete forecasting.
 4. Integrity of accounting and cost control processes, and,
 5. Proactive Construction Cost avoidance.
 - C. The effectiveness of the Contractor's team-building efforts:
 1. Focus on a non-adversarial and open environment.
 2. Enforcement of values of trust, respect and honesty.
 3. Dispute resolution.
 4. Maintaining clear lines of communication and decision making within levels of team.
 5. Forecasting and reinforcement of project goals, and,
 6. Retention of key Contractor personnel
 - D. The effectiveness of the Contractor's management of the construction schedule:
 1. Schedule updating and maintenance.
 2. Schedule communication.
 3. Schedule decision making.
 4. Performance to critical milestones.
 5. Final Close Out and Submittal of Project Record Documents and As build drawings per Contract.
4. The following weighting of scores will be used to evaluate each of the evaluation criteria and their respective score will be used:
 - A. Excellent – Regularly exceeds requirements, initiates improvements, excels in specific objectives, and goals.
 - B. Good – Usually exceeds requirements and performance standards.
 - C. Fair – Meets all normal requirements and performance standards.
 - D. Poor – Fails to meet performance standards.
5. The intent of this incentive is to reward to the contractor for performance in excess of the minimum requirements, not to pay for performance that only meets the minimum requirements. Accordingly, a score of "Fair" in any particular area means that no incentive will be paid for that area. In addition, a score of "Poor" in any area shall terminate the evaluation for that time period, for all areas. No fee shall be paid. A rating of "Excellent" shall entitle the contractor to 100% of the available amount. A rating of "Good" shall entitle the contractor to 50% of the available amount.
6. The Committee's determinations of incentive fees shall be based upon good faith and consideration of the facts presented. However, the determinations within, are wholly discretionary and not subject to challenge. The Contractor hereby expressly waives its right to seek judicial review of a determination by the Committee. The Committee's determinations are not subject to the dispute resolution provisions of this Contract.

ARTICLE 6

GUARANTEED CONTRACT COST

6.1 Determination. The Guaranteed Contract Cost (GCC) has been determined through a negotiation of the MACC conducted prior to the execution of this Contract, and is set forth in the table on page 1 of this Contract. The MACC negotiations are separate from Preconstruction Work that is the subject of a separate contract between the Contractor and the Owner. By executing this Contract, the Contractor represents and acknowledges that the GCC is reasonable compensation for all the Work of this Contract; that the Contract Time and schedule is adequate for the performance of the Work; and that it has carefully examined the Contract Documents and the Project sites, including any existing structures, and has satisfied itself as to the nature, location, character, quality and quantity of the Work, 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 pre-existing surface conditions and subsurface conditions from reports provided by Owner and other matters that may be encountered at the Project sites or 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 sites and the surrounding locality; topography; and equipment and facilities needed preliminary to and at all times during the performance of the Work.

6.2 Maximum Allowable Construction Cost.

6.2.1 The MACC is the amount mutually agreed to between the Owner and Contractor 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:

1. Preconstruction Services.
2. Overhead %.
3. Contractor Fee %.
4. Fixed Amount for Specified General Conditions including bond and insurance %.
5. WA State Sales Tax

6.2.2 The Contractor shall be responsible for all costs related to subcontractor claims or charges that result from:

- 1) Mistakes or omissions in Subcontractor bid packages or in the Negotiated General Conditions.
- 2) Coordination errors and omissions in the Construction Documents which the Contractor reasonably should have inferred.
- 3) Conflicts of any nature and kind between subcontractors and the Contractor or between subcontractors and other subcontractors.
- 4) All risk and/or cost overruns occasioned by a subcontractor's inability to perform or a subcontractor's cost overruns.

The Contractor may use funds in the MACC/Contractor Contingency Account established in paragraph 6.2.3 to pay for such charges/claims arising from the circumstances specified in this paragraph 6.2.2.

6.2.3 "MACC Contingency Account." The Contractor risk contingency in an amount not to exceed 3% of the Direct Costs from the MACC excluding the Negotiated General Conditions. The MACC Contingency Account is funded solely from Buyout Savings and savings in the Negotiated General Conditions, up to a maximum funding of 3% of the MACC. Any Buyout savings or Negotiated General Conditions savings in excess of the total limit of 3% of the MACC shall be utilized to fund additional scope as directed by the owner or shall be returned to the Owner.

- a) MACC Contingency Account authorized uses.

Funds from the MACC Contingency Account may be used to pay for charges/claims arising from the circumstances specified in paragraph 6.2.2. The Owner must approve the Contractor's use of the MACC Contingency Account prior to the Contractor's use of the funds. The Contractor shall provide the Owner with monthly updates of the MACC Contingency Account use. No Contractor overhead, profit or any other mark ups are allowed on work funded from the MACC Contingency Account.

If funds are available in the MACC Contingency Account at the time of Final Completion, they may be used for the awarded incentive payments to the Contractor or returned to the Owner as described in paragraph 5.5.

b.) MACC Contingency Account sources of funds.

1. Buy out savings. If the Contractor is successful in awarding contracts for all the approved Subcontracts in the Plan, in the amount less than the MACC minus the General Conditions, the saving shall be used as specified in paragraph 6.2. Contractor shall transfer 100% of buyout saving to a line in the MACC Report and will be shown in the Change Log throughout the project once the project is 90% bought out.

c.) Negotiated General Conditions Savings. If the Contractor provides Negotiated General Conditions services and facilities for an amount less than the Negotiated General Conditions identified in the MACC, then with the Owner's approval, the Contractor may use the savings but only as specified in paragraph 6.2.2 for the MACC Contingency Account.

6.2.4 Negotiated General Conditions. The Contractor shall provide services and facilities which are not covered in Division 01 that logistically support the construction of the Work. These services and facilities shall be identified and provided with the MACC as the Negotiated General Conditions. The Contractor shall submit a SOV and budget of all Negotiated General Conditions estimated for the project. Provide monthly updates tracking actual use of such services, including invoices of expenses.

6.3 [Reserved.]

6.4 Subcontract Bidding Procedure.

6.4.1 Prior to subcontract bidding, Contractor shall submit and the Owner shall approve the Subcontract Plan. During subcontract bidding, the Contractor may request a change in its Bidding Plan and the Owner will not unreasonably withhold approval. The Owner shall not pay the Contractor for any costs incurred in excess of the MACC, even if the final bid package estimates in the approved Subcontract Plan and Negotiated General Conditions exceed the MACC.

6.5 Contractor Subcontract Buyout Cost Accounting MACC Report and Template

6.5.1 Starting with the award of the first bid package, the Contractor shall provide a monthly MACC report to the Owner for review of expenditures, tracking of subcontractor buyout, and contract changes. The format of the report shall be developed by the Contractor and reviewed and approved by the Owner's Project Manager. It shall contain columns which include the following information:

1. FINAL MACC ESTIMATE. Once the Final Bid Package Estimate is agreed to, these values, as shown in the designated column on the monthly report do not change. At an appropriate point in the Project, with approval of the Owner's Project Manager, this column need not be printed in each monthly report. This column must, however, be maintained and be available upon the Owner's request.
2. FINAL MACC PACKAGE ESTIMATE ADJUSTMENTS. To be used to record adjustments in the Final Bid Package Estimate.

3. REVISED MACC ESTIMATE. The sum of the "Final MACC Estimate" and "Adjustments"
4. SUBCONTRACT. This column shall reflect the amounts encumbered less change orders.
5. CHANGE ORDER. (Two columns) One column shall reflect the value of Change Orders paid from the MACC Contingency Account and one column shall reflect the value of change orders paid from the Owner's contingency.
6. REVISED SUBCONTRACT AMOUNT. This column shall reflect the total of "Subcontracts" and "Change Orders."
7. BUYOUT VARIANCE. This column shall reflect the revised bid package estimate less the subcontract, less change orders.
8. EXPENDED TO DATE. This column shall reflect the amount paid to the Contractor from the Owner.
9. EXPENDED PRIOR PERIOD. This column shall reflect the amount recorded in the month report immediately preceding the current report as "EXPENDED TO DATE."
10. EXPENDED THIS PERIOD. This column shall reflect the amount expended to date less the amount reported in all previous periods.
11. PERCENT OF BUDGET. This column shall reflect the amount of the MACC that has been expended and is the amount "Expended to Date" divided by the sum of "Revised Bid Package Estimates" and "Change Orders" expressed as a percentage.
12. ANTICIPATED COST TO COMPLETE. This column shall reflect the amount the Contractor believes shall be required to finish the work.
13. BALANCE. This column shall reflect the difference between the sum of the amount "Expended to Date" and the "Anticipated Cost to Complete" and the budget as adjusted

6.5.2. The Owner and the Contractor, at monthly construction oversight meetings, shall review the monthly report. Proposed bid package revisions and MACC Contingency Account expenditures must be approved by the Owner prior to implementation. Notwithstanding the Owner's approval of any revisions of bid packages, the Contractor is responsible for ensuring that the MACC is not exceeded, and any costs in excess of the MACC shall be the sole responsibility of the Contractor.

Contractor shall transfer 100% of buyout saving to a line in the MACC Report once the project is 90% bought out. Savings can only be used pursuant to Article 6.2.

ARTICLE 7

MISCELLANEOUS PROVISIONS

- 7.1. Contractor's Liability for Damages and Injury. The Contractor shall defend, indemnify, and hold the Owner, its commissioners, officers, agents and employees harmless from all claims as set forth in Sections 5.03 and 5.22 of the General Conditions - Exhibit C.
- 7.2. Insurance. The Contractor shall provide to the Owner, in accordance with Part 2 of the General Conditions – Exhibit C, or unless modified by 00800 Supplementary Conditions, proof of required insurance.

- 7.3 Performance and Payment Bonds: Prior to the signing of this Contract and within 7 days of Owner's request, the Contractor shall deliver to the Owner Performance and Payment bonds for the full GCC, in a form acceptable to the Owner. The costs of such bonds shall be included in the costs for Fixed Amount for Specified General Conditions as set forth in Subsection 6.3.2.
- 7.4 Governing Law and Venue. This contract shall be governed in all respects by the laws of the State of Washington. Venue for any action filed under this contract shall be limited to King County, Washington at Seattle or the Western District of Washington at Seattle.
- 7.5 Notices and Substitutions: Any and all notices required under this Contract (each, a "Notice") shall be in writing to the addresses specified below and shall be delivered per see General Conditions Section 10.10.

If to the Owner:
Seattle Housing Authority
101 Elliott Ave. W Suite 100
PO Box 79015
Seattle, WA 98119
Attention: TBD
Email: TBD@seattlehousing.org
Fax: (206) 615-xxxx

If to the Contractor:
Contractor's Name _____
Address: _____

Attention: _____
Email: _____
Fax _____

- 7.6 Assignment: It is anticipated that a portion of this Contract may be assigned to a private for-profit limited partnership or similarly structured corporate body. The Contractor hereby consents to assignment of this Contract, and agrees to abide by the terms and conditions of this Contract. In the event of default by the assignee, Owner shall remain fully liable for its obligations under the Contract.
- 7.7 MACC Cost Documentation: Attached hereto as **Attachment A** is the MACC Cost Estimate.
- 7.8 MACC Cost Log: Attached hereto as **Attachment B**. MACC Cost Log.
- 7.9 General Conditions 08000: Attached hereto as **Attachment C** are the General Conditions of the Construction Contract.
- 7.10 Supplementary Conditions: Attached hereto as **Attachment C.1** are the Supplemental Conditions
- 7.11 Community Participation Plan: Attached hereto as **Attachment D** is the Community Participation Plan.
- 7.12 Contractor Evaluation Program and Form: Attached hereto as **Attachment E** is the Contractor Evaluation Program and Form.
- 7.13 Prevailing Wage Rate Schedules: Attached hereto as **Attachment F** is the Prevailing Wage Decision.
- 7.14 List of 100% Construction Documents: Attached hereto as **Attachment G** is the 100% Construction Document List.
- 7.15 Key Personnel: Attached hereto as **Attachment H** is the list of Contractor Key Personnel. The Contractor's key personnel is considered to be essential to the work effort. Prior to diverting or substituting any of the specified individuals, the Contractor shall notify the Owner reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on this Contract. Any proposed substitute must have qualifications equal to or better than the key personnel being replaced. No diversion or substitution of such key personnel shall be made by the Contractor without the prior written consent of the Owner

7.16 MACC Construction Schedule: Attached hereto as **Attachment I** is the MACC Construction schedule.
This schedule start date to coincide with the projects finance closing date.

7.17 Building Permit: Attached hereto as **Attachment J** Building Permit number.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

Contractor Information

Name:

Mailing Address:

State, Zip Code:

By _____ Date _____

Print Name _____

Title _____

Housing Authority of the City of Seattle
101 Elliott Ave. W Suite 100
PO Box 79015
Seattle, WA 98119

By: _____ Date _____

Rodrick C. Brandon
Executive Director

Housing Authority of the City of Seattle
101 Elliott Ave. W Suite 100
PO Box 79015
Seattle, WA 98119

By: _____ Date _____

Rodrick C. Brandon
Executive Director

Attachments:

1. ATTACHMENT A. MACC Estimate
2. ATTACHMENT B. MACC Cost Log
- ATTACHMENT C 00700 General Conditions of the Contract for Construction Where the basis of percent fee is MACC
3. ATTACHMENT C.1 00800 Supplementary Conditions
4. ATTACHMENT D. Community Participation Plan
5. ATTACHMENT E. Contractor Evaluation Program and Form
6. ATTACHMENT F. Prevailing Wage Rates
7. ATTACHMENT G. 100% Construction Document List
8. ATTACHMENT H. Key Personnel
9. ATTACHMENT I. MACC Construction Schedule NTP
10. ATTACHMENT J. SDCI Building Permit #

(End of Construction Contract #6039)

CONTRACT FORMS

Note: The contracts attached here are subject to updates for project scope and dollar amounts.

END OF SECTION 00500



HOUSING AUTHORITY OF THE CITY OF SEATTLE
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

Where the basis of percent fee is MACC

October 20, 2024

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PART 1 - GENERAL PROVISIONS

1.01 DEFINITIONS

- A. "Advertisement for Bids" means a public notice published in the official newspaper, designated by the Owner, and/or on the internet, soliciting bids for the Work.
- B. "Addendum" or "Addenda" means alteration or clarification of the plans or specifications provided to bidders or proposers by the Owner prior to bid or proposal time, which becomes part of the Contract Documents when the Contract is executed.
- C. "Application for Payment" means a written request submitted by Contractor to Owner for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by substantiating data as Owner requires.
- D. "Architect," "Engineer," or "A/E" means a person or entity lawfully entitled to practice architecture or engineering, representing the Owner within the limits of its delegated authority.
- E. "Bid Documents" means the component parts of the proposed Contract which may include the Advertisement for Bids, Bid Form, Agreement Form, Project Manual, Drawings, Addenda and any other documents incorporated into the Contract by reference.
- F. "Change Order" means a written instrument signed by Owner and Contractor stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any, and (3) the extent of the adjustment in the Contract Time, if any.
- G. "Claim" means Contractor's exclusive remedy for resolving disputes with Owner arising from the Contract documents (including disputes regarding the terms of a Change Order or a request for equitable adjustment), as more fully set forth in part 8.
- H. "Contract" means the written agreement between the Owner and the Contractor; which includes the signed Agreement Form, Bid Form, Contract provisions, Drawings, Addenda, certifications, supplemental agreements, Change Orders and all other documents specifically incorporated by reference that comprise the Contract.
- I. "Contract Documents" mean the Advertisement for Bids or Proposals, Instructions for Bidders or Proposers, completed Bid or Proposal Form, General Conditions, Supplementary Conditions, Public Works Contract, Addenda, other Special Forms, Drawings and Specifications, (and, for federally-funded projects, the applicable wage rate determinations from either the U.S. Department of Labor or Housing and Urban Development), and all addenda and modifications thereof.

- J. "Contract Sum" or "Guaranteed Contract Cost" (GCC) is the total amount payable by Owner to Contractor for performance of the Work in accordance with the Contract Documents.

GCC is the sum of the MACC + Contractor's Fee + Contractor's Overhead + Fixed Amount for Specified General Conditions + Negotiated General Conditions + Washington State Sales Tax on Materials Only.

"Maximum Allowable Construction Cost" ("MACC") is the amount required to complete all Work as described in the Contract Documents, but excluding the Preconstruction Work, Contractor's Fee, Overhead, Fixed Amount for Specified General Conditions work, Negotiated General Conditions, and applicable Washington State Sales Tax on Materials Only.

"Contractor's Fee" means all profit of the Contractor for this Project, and all regional and home office overhead expenses, including labor and materials, travel, phone, cellular phone, facsimile, postage and other incidental office expenses attributable to work on this Project that is not specifically identified in the Specified General Conditions work.

"Contractor's Overhead" means all expenses of the Contractor whether direct or through consultants, for participation in and support of the subcontractor bidding process of the Project that are not paid for as Specified General Conditions work, all taxes, including B&O, owed by the Contractor except retail sales tax on the Work, and All insurance required of the Contractor under the Contract.

"Specified General Conditions" means the cost of all personnel, equipment, facilities, supplies, as well as performance and payment bonds, which are identified in the General Conditions and this Construction Contract required to successfully carry out all of the construction management and general contracting responsibilities of the Contractor during construction, which management and administration responsibilities include, without limitation, those more particularly identified in the Construction Documents.

Table Two in the Construction Contract between Owner and Contractor for the Project shall define which costs are covered by Contractor's Fee, Contractor's Overhead, Fixed Amount for Specified General Conditions, Negotiated General Conditions and MACC.

- K. "Contract Time" is the number of Days allotted in the Contract Documents for achieving Substantial Completion of the Work.
- L. "Contractor" means the person or entity who has agreed via contract with Owner to perform the Work in accordance with the Contract Documents.
- M. "Critical Path" means the longest, continuous sequence of interrelated activities of the Work that begins at the start of the Project with the Notice to Proceed and extends through Substantial Completion of the Project. These activities are critical because delay to an activity on this path will extend Contract Time.

- N. "Day" means calendar day, unless otherwise specified. See *also* section 10.06.
- O. "Drawings" mean the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, and may include plans, elevations, sections, details, schedules, and diagrams.
- P. "Excavation" means an operation in which earth, rock, or other material on or below the existing grade is moved or otherwise displaced by any means, except the tilling of soil less than 12 inches in depth for agricultural purposes, or road ditch maintenance that does not change the original road grade or ditch flow line.
- Q. "Field Directive" means a written document titled Field Directive, prepared by the Owner (or, prepared by Owner's Architect and signed by Owner) directing the Contractor to proceed diligently with specific work and shall not, in and of itself, constitute a Change Order or entitlement to an adjustment in Contract Time and/or Contract Sum, as more fully set forth in paragraph 7.01 F.
- R. "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract.
- S. "Final Acceptance" means the written acceptance issued to Contractor by Owner after Contractor has completed the requirements of the Contract Documents.
- T. "Final Completion" means the Work is fully and finally completed in accordance with the Contract Documents. Achieving Final Completion and the issuance of a written Final Completion by Owner to Contractor do not constitute Final Acceptance.
- U. "Force Majeure" means those acts entitling Contractor to request an equitable adjustment in the Contract Time, as more fully set forth in paragraph 3.05 A.
- V. "Minority-owned Business Enterprise" or "MBE" means a self-identified business or a business certified by the state of Washington to be at least fifty-one percent owned by a minority (including, but not limited to, African Americans, Native Americans, Asians, Hispanics, and Hasidic Jews) group members.
- W. "Minority-owned Women Business Enterprise" or "MWBE" means a self-identified business or a business certified by the state of Washington to be at least fifty-one percent owned by a minority woman.
- X. "Notice" means a written notice which has been delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended or, if delivered or sent by registered or certified mail, to the last business address known to the party giving notice.

- Y. "Notice to Proceed" means a notice from Owner to Contractor that defines the date on which the Contract Time begins to run.
- Z. "Overhead" means charges that may be incurred or allocated in support of the Contract but are not part of the cost of directly performing the Work. Overhead includes site or field Overhead and home office Overhead.
- AA. "Owner" or "SHA" means the Housing Authority of the City of Seattle. For purposes of sections 5.03 and 5.22, "Owner" also includes all commissioners, officers, agents, and employees of the Housing Authority of the City of Seattle.
- BB. "Performance and Payment Bonds" means the approved form of security furnished by the Contractor and the Contractor's Surety or Sureties guaranteeing completion of the Work required by the Contractor Construction Contract and these General Conditions and payment to persons supplying labor and materials in the prosecution of the Work, in accordance with the terms and conditions of the Contract Documents.
- CC. "Prior Occupancy" means Owner's use of all or parts of the Project before Substantial Completion.
- DD. "Progress Schedule" means a schedule of the Work, in a form satisfactory to Owner, as further set forth in section 3.02.
- "MACC Construction Schedule" is Attachment I of the Construction Contract between Owner and Contractor for the Project. This schedule start date to coincide with the projects finance closing date.
- EE. "Project" means the total construction of which the Work is performed in accordance with the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.
- FF. "Project Manual" means the volume assembled for the Work, which may include the bidding requirements, sample forms, specifications, General Conditions, Supplementary Conditions, and other Contract Documents.
- GG. "Project Record" means the separate set of Drawings and Specifications as further set forth in paragraph 4.02A.
- HH. "Request for Competitive Proposal" means a formally advertised and competitive selection process used for obtaining construction services that will cost more than \$250,000, in which the evaluation and selection of a Contractor cannot be based on price alone, but is based on established criteria that include price and other factors.
- II. "Request for Information" means a written submission from the Contractor seeking additional information regarding the prosecution of the Work and/or the Contract Documents governing the Work.

- JJ. "Schedule of Values" means a written breakdown allocating the total Contract Sum to each principal category of Work, in such detail as requested by Owner.
- KK. "Section 3" means Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations set forth at 24 CFR 75 (as each of the same has been or may be amended, modified, or replaced from time to time, and including any successor statutes or regulations).
- LL. "Shop Drawings" means documents and other information required to be submitted to Owner by Contractor pursuant to the Contract Documents, showing in detail: the proposed fabrication and assembly of structural elements; and the installation (i.e. form, fit, and attachment details) of materials and equipment. Shop Drawings include, but are not limited to, drawings, erection drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, samples, and similar materials furnished by Contractor to explain in detail specific portions of the Work required by the Contract Documents.
- MM. "Specifications" mean the portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- NN. "Subcontract" means a contract entered into by a Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind for or in connection with the Work.
- OO. "Subcontractor" means any person, other than Contractor, who agrees to furnish or furnishes any supplies, materials, equipment, or services of any kind in connection with the Work.
- PP. "Substantial Completion" means that stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities for the purposes intended, as more fully set forth in section 6.07.
- QQ. "Temporary Certificate of Occupancy" means the document issued to allow partial and phased occupancy of buildings being newly constructed, and to continue partial occupancy in existing buildings undergoing remodel per requirements of City of Seattle Joint Ruling SDCI Director's Rule 19-2017 SFD Administrative Rule 9.07.17.
- RR. "Work" means the construction and services required by the Contract Documents, and includes, but is not limited to, labor, materials, supplies, equipment, services, permits, and the manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.
- SS. "Authorities Having Jurisdiction" means all federal, state, and local government agencies having jurisdiction or approval authority over any aspect of the Work.

TT. "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to Owner, which includes assistance in financing the work to be performed under this contract. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

UU. "Buyout" is the cost of the awarded subcontractor bid for a particular bid package.

VV. "Buyout Savings" is the total approved Subcontract Plan bid package estimates minus the cost of the awarded subcontracts for the bid packages in the approved Subcontract Plan.

WW. "MACC Contingency Account" is the amount funded from Buyout Savings and savings from the Negotiated General Conditions. In the amount not to exceed 3% of the MACC excluding the Negotiated General Conditions

1.02 ORDER OF PRECEDENCE

Any conflict or inconsistency in the Contract Documents shall be resolved by giving the documents precedence in the following order:

- A. Signed Public Works Contract, including any Change Orders and Addenda.
- B. Supplementary Conditions.
- C. General Conditions.
- D. Specifications-as modified by Addenda or Change Orders. Provisions in Division 1 shall take precedence over provisions of any other Division.
- E. Drawings and details as modified by Addenda or Change Orders. In case of conflict within the Drawings, large-scale drawings shall take precedence over small-scale drawings or details.
- F. Signed and Completed Form of Bid or Proposal.
- G. Instructions to Bidders.
- H. Advertisement for Bids.
- I. Clarification of Drawings and Detail Drawings, subject to the following terms:
 - 1. Where on any drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply also to other similar portions of the Work. Where ornament or other detail is indicated by starting only, such detail

shall be continued throughout the courses or parts in which it occurs and shall apply to all other similar parts of the Work, unless otherwise indicated.

2. With regard to Drawings, the following shall apply:
 - a. Written dimensions shall be followed; drawings may not be to scale.
 - b. Figure dimensions on drawings shall govern of scale dimensions; and detail drawings shall govern over general drawings.

1.03 EXECUTION AND INTENT

Contractor makes the following representations to Owner:

- A. The Contract Sum is reasonable compensation for the Work and the Contract Time is adequate for the performance of the Work, as represented by the Contract Documents;
- B. Contractor has carefully reviewed the Contract Documents, visited, or had an opportunity to visit and examine the Project site, become familiar with the local conditions in which the Work is to be performed, and satisfied itself as to the nature, location, character, quality and quantity of the Work, 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, subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of this Contract, and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof;
- C. Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required by the Contract Documents; and
- D. Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work, and to perform the obligations required by the Contract Documents and has sufficient experience and competence to do so.

PART 2 - INSURANCE AND BONDS

Contractor shall obtain and maintain all the insurance, bonds and other security, and criminal background check as required by the Supplementary Conditions (the "Insurance & Bonds Requirements").

The Owner's specification or approval of the Contractor's insurance shall not relieve or decrease the Contractor's liability under the Construction Documents or otherwise, including the duty to indemnify. In specifying minimum insurance requirements, Owner does not recommend this insurance as adequate to protect Contractor's interest. Insurance coverage in the minimum amounts required shall not be construed to relieve the Contractor for liability in excess of such coverage. To the extent the Contractor maintains insurance greater than these minimum requirements, the Contractor agrees that such insurance shall be applicable to any of the Contractor's obligations under the Contract.

Failure to continuously satisfy the Insurance & Bonds Requirements as provided in the Supplementary Conditions is a material breach of contract and, at the option of Owner, is cause for such remedy or relief as may be available to Owner by law or under any provision of this Contract, including but not limited to immediate termination of the Contract or Owner may maintain such coverage and charge the expense (including premium and claim expense) to the Contractor.

PART 3 - TIME AND SCHEDULE

3.01 PROGRESS AND COMPLETION

Contractor shall diligently plan, coordinate, and prosecute the Work, with an adequate number of qualified personnel to achieve Substantial Completion within the Contract Time, and achieve Final Completion within 90 days thereafter, but for extenuating circumstances fully documented in a timely manner and confirmed by Owner.

3.02 PROJECT SCHEDULE

- A. Within ten Days of contract execution, and prior to the commencement of work, unless otherwise stipulated in the Notice to Proceed, the Contractor shall attend an Owner initiated and facilitated preconstruction conference with representatives of Owner, its Architect, and all other pertinent Subcontractors of the Contractor and other interested parties. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. Owner will provide the Contractor with the date, time, and place of the conference.

The aforementioned preconstruction conference is not intended to replace any additional preconstruction conferences deemed necessary by any and all Authorities Having Jurisdiction in conjunction with the Work.

- B. Unless otherwise provided in Division 1, Contractor shall, within ten (10), unless otherwise indicated here [____] Days after issuance of the Notice to Proceed, submit a preliminary Progress Schedule. 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. The schedule shall also indicate

dates for shop drawings and other submittals, commissioning, confidence testing, dates for acquiring materials and equipment, and any other items required by Owner.

- C. The Preliminary Progress Schedule shall be in the form of a critical path method analysis. The Preliminary Progress Schedule must show the major portions of the Work, indicating the start and finish dates, Substantial and Final completion dates, and the proposed progression of the Work.
- D. Owner shall return comments on the preliminary Progress Schedule to Contractor within fourteen (14) Days of receipt. 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. Failure by the Owner to indicate items on the schedule that do not conform to Contract requirements shall not alter or waive Contractor's obligation to comply with all Contract Requirements. Contractor shall revise and resubmit its schedule, as deemed necessary by Owner. Owner may withhold a portion of progress payments until a Progress Schedule has been submitted which meets the requirements of this section.
- E. To its fullest extent, Contractor shall utilize and comply with the Progress Schedule. On a monthly basis, or as otherwise directed by Owner, Contractor shall, at its own expense, submit an updated Progress Schedule to Owner indicating actual progress. If, in the opinion of Owner, Contractor is not in conformance with the Progress Schedule for reasons other than Force Majeure as identified in section 3.05, the Contractor shall take such steps as are necessary to bring the actual completion dates of the Work into conformance with the Progress Schedule. This shall include, but not be limited to: increasing the number of shifts, overtime operations, and/or days of work, whether on or off the Site, and submitting for acceptance any supplementary schedule or schedules as the Owner deems necessary to demonstrate how completion dates of the Work will be brought into conformance with the Progress Schedule.

Failure of the Contractor to comply with the requirements under these provisions shall be grounds for a determination by the Owner that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Owner may pursue any right or remedies it has under the Contract or in law.

- F. 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 to be taken to correct the problem or eliminate the delay. Provision of such notice does not relieve Contractor of its obligation to complete the Work within the Contract Time.
- G. Float in the project Schedule shall be defined as the period of time measured by the number of days each non-critical path activity may be delayed before it and its succeeding activities become part of the Critical Path. Unless indicated otherwise, Float

belongs to the Project, and Contractor and Owner may both utilize Float to offset delays to the Work.

3.03 OWNER'S RIGHT TO SUSPEND THE WORK FOR CONVENIENCE

- A. Owner may, at its sole discretion, in writing, order Contractor to suspend all or any part of the Work for such period as Owner deems necessary.
- B. Upon receipt of a written Notice suspending the Work, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost of performance directly attributable to such suspension. Within a period up to 90 Days after the notice is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, Owner shall either:
 - 1. Cancel the Notice suspending the Work; or
 - 2. Terminate the Work covered by the notice as provided in the termination provisions of part 9.
- C. If a Notice suspending the Work is cancelled or the period of the notice or any extension thereof expires, Contractor shall resume Work.
- D. Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for increases in the time or cost of performance directly attributable to such suspension. Contractor shall keep all costs and records related to the construction suspension separately from normal project costs and shall comply with all requirements as more fully described and set forth in Part 7.

3.04 OWNER'S RIGHT TO STOP THE WORK FOR CAUSE

- A. If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Contractor, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken.
- B. Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform the Work or from any reasonable remedial action taken by Owner based upon such failure.

3.05 DELAY

- A. Any delay in or failure of performance by Owner or Contractor, other than the payment of money, shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:

1. Acts of God or the public enemy;
 2. Acts or omissions of any government or City entity;
 3. Fire or other casualty for which Contractor is not responsible;
 4. Quarantine or epidemic;
 5. Strike or defensive lockout;
 6. Unusually severe weather conditions that poses risks to life or property or requires the intervention of authorities and which could not have been reasonably anticipated; and
 7. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Owner was available.
- B. Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to an act of Force Majeure, provided it makes a request for equitable adjustment according to section 7.03. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure, though such adjustment may be mutually agreed by Owner and Contractor, at Owner's sole discretion.
- C. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of Contractor's performance is changed due to the fault or negligence of Owner, provided the Contractor makes a request according to sections 7.02 and 7.03.
- D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused by Contractor or anyone for whose acts Contractor is responsible.
- E. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided Contractor makes a request for equitable adjustment according to section 7.03, but shall not be entitled to an adjustment in Contract Sum.
- F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.
- G. Contractor shall not be entitled to an adjustment in Contract Time if the act of Force Majeure did not impact progress of the Work on the Critical Path and prevent the Contractor from completing Contract Work within the Contract Time.

3.06 NOTICE TO OWNER OF LABOR DISPUTES

- A. If Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Contractor shall immediately give written notice, including all relevant information, to Owner.
- B. Contractor agrees to insert a provision in its Subcontracts and to require insertion in subcontracts of all tiers, that in the event timely performance of any such contract is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractors shall immediately notify the next higher tier Subcontractor or Contractor, as the case may be, of all relevant information concerning the dispute.

3.07 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

A. Liquidated Damages

- 1. Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract are of the essence. Owner will incur serious and substantial damages if Substantial Completion and Final Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, liquidated damages of _____ **[\$150.00 per calendar day unless otherwise specified in the Supplementary Conditions]** will be assessed.
- 2. The liquidated damage amounts set forth above will be assessed not as a penalty, but as damages for breach of this Contract. This amount is fixed and agreed upon by and between the Contractor and Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain. This amount shall be construed as the actual amount of damages sustained by the Owner, and may be retained by the Owner and deducted from any payments to the Contractor.
- 3. Assessment of liquidated damages shall not release Contractor from any further obligations or liabilities pursuant to the Contract Documents.
- 4. If different completion dates are specified in the contract for separate parts, phases, or stages of the work, the amount of liquidated damages shall be assessed only on those relevant parts or stages which are immediately delayed.

B. Actual Damages

Actual damages will be assessed for failure to achieve Final Completion within the time provided. Actual damages will be calculated on the basis of direct architectural, administrative, and other related costs attributable to the Project from the date when Final Completion should have been achieved, based on the date Substantial

Completion is actually achieved, to the date Final Completion is actually achieved. Owner may offset these costs against any payment due Contractor.

PART 4 - SPECIFICATIONS, DRAWINGS, DETAILS AND OTHER DOCUMENTS

4.01 DISCREPANCIES AND DUTY TO REVIEW CONTRACT DOCUMENTS

- A. The intent of the Specifications, Drawings and Details is to describe and depict the complete Project to be constructed in accordance with the Contract Documents. Contractor shall furnish all labor, materials, equipment, tools, transportation, permits, and supplies, and perform the Work required in accordance with the Drawings, Details, Specifications, and other provisions of the Contract Documents, unless otherwise noted.
- B. The Contract Documents are complementary. What is required or shown in one part of the Contract Documents shall be binding as if required and shown in all parts. Anything mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. Anything shown in one section of the drawings and not shown in another section of the drawings of which implies the elements are to be coordinated, shall be as if shown in both sections. The organization of the specification into divisions, provisions and parts and the organization of the drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.
- C. Contractor shall carefully study, compare, and reconcile the Contract Documents with each other and shall confer and coordinate with each sub-contractor. If, during the performance of the Work, Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, it shall promptly, and before proceeding with the Work affected thereby, report such conflict, error, inconsistency, or omission to Owner in writing.
- D. Contractor shall do no Work without consulting applicable Drawings, Details, Specifications, or written modifications, or Shop Drawings where required, unless instructed to do so in writing by Owner. If Contractor performs any construction activity that it knows or should have known is in conflict with Drawings, Details, Specifications, or written modifications, or Shop Drawings or is based upon an error, inconsistency, or omission in Drawings, Details, Specifications, or written modifications, or Shop Drawings, Contractor shall be responsible for the cost of performance and shall bear the cost for its correction.
- E. Contractor shall provide any work or materials the provision of which is clearly implied and is within the scope of the Contract Documents even if the Contract Documents do not mention them specifically.

- F. Questions regarding interpretation of the requirements of the Contract Documents shall be submitted to the Owner.

4.02 PROJECT RECORD

- A. Contractor shall legibly mark 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, locations of all ducting, HVAC, mechanical, electrical, and any systems not visible in walls, floors, and ceilings, field changes of dimensions and details, actual suppliers, manufacturers and trade names, models of installed equipment, the maintenance manuals (including manual for preventative measures) and Change Order proposals. This separate set of Drawings and Specifications shall be known as the "Project Record."
- C. 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 as changes occur, and at least weekly, noting all current changes and shall be available for review by Owner at all times. At the time of Substantial Completion, the Contractor shall submit to the Owner's A/E, three (3) draft copies of the project record for review and comment. The Contractor shall make all noted corrections per the comments and resubmit to A/E for final review and acceptance. Review costs incurred for additional review cycles if required, shall be at the sole expense of the Contractor.
- C. The Contractor shall indicate on the Project Record any unforeseen items that may remain on site. Whether or not the unforeseen items can remain will be determined by the Owner.
- D. Contractor shall submit the completed and finalized conformed Project Record documents with all pages of the same size, with all pages marked "Project Record" along with three (3) physical copies of the same and a copy in digital format to Owner prior to Final Acceptance.

4.03 SHOP DRAWINGS

- A. Owner may duplicate, use, and disclose Shop Drawings provided in accordance with the Contract Documents. For materials and equipment to be incorporated into the Work, Contractor submittal shall include the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the item. When directed, Contractor shall submit all samples at its own expense.
- B. Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with the Contract Documents and shall indicate its approval thereon with a stamped date and authorized signature as evidence of such coordination and review prior to submitting them to the Owner for its review. Where required by law, Shop Drawings shall be stamped by an appropriate professional

licensed by the state of Washington. Shop Drawings submitted to Owner without evidence of Contractor's approval shall be returned for resubmission. Additional review costs incurred by the Owner resulting from incomplete submissions of Shop Drawings will be at the sole expense of the Contractor. Contractor shall review, approve, and submit Shop Drawings with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of Owner or separate contractors. Contractor's submittal schedule shall allow a reasonable time for A/E review. Owner will review, approve, or take other appropriate action on the Shop Drawings. Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings until the respective full submittal has been reviewed and the Owner has accepted or taken other appropriate action. Owner shall respond to Shop Drawing submittals with reasonable promptness. Any Work by Contractor shall be in accordance with the final reviewed Shop Drawings. Submittals made by Contractor which are not required by the Contract Documents will be returned without action.

- C. Review and acceptance or other appropriate action with regard to Shop Drawings by Owner or A/E shall not relieve Contractor of responsibility for any errors or omissions in such Shop Drawings, nor from responsibility for compliance with the requirements of the Contract Documents. Unless specified in the Contract Documents, review by Owner or A/E shall not constitute an approval of the safety precautions employed by Contractor during construction, or constitute an approval of Contractor's means or methods of construction. If Contractor fails to obtain review and acceptance before installation and the item or work is subsequently rejected, Contractor shall be responsible for all costs for any and all corrections.
- D. If Shop Drawings show variations from the requirements of the Contract Documents, Contractor shall describe such variations in writing on a separate document from the Shop Drawings, at the time it submits the Shop Drawings containing such variations. If Owner reviews and accepts any such variation, an appropriate Change Order may be issued. If the variation is considered minor and does not involve an adjustment in the Contract Sum or Contract Time, a Change Order will not be issued; however, the modification shall be recorded by the Contractor on the Project Record.
- E. Contractor, and all Subcontractors of any tier, or material or equipment supplier of any tier, grant a non-exclusive license to Owner, without additional cost or royalty, to use for its own purposes (including reproduction) all Shop Drawings, together with the information and diagrams contained therein, prepared by them. In providing Shop Drawings, they warrant that they have authority to grant to Owner a license to use the Shop Drawings, and that such license is not in violation of any copyright or other intellectual property right. Contractor agrees to defend and indemnify Owner pursuant to the indemnity provisions in section 5.03 and section 5.22 from any violations of copyright or other intellectual property rights arising out of Owner's use of the Shop Drawings hereunder, or to secure for Owner, at Contractor's own cost, licenses in conformity with this section.

- F. The Shop Drawings and other submittals prepared by Contractor, Subcontractors of any tier, or its or their equipment or material suppliers, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor of any tier, or material or equipment supplier of any tier, on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. The Contractor, Subcontractors of any tier, and material or equipment suppliers of any tier are granted a limited license to use and reproduce applicable portions of the Shop Drawings and other submittals appropriate to and for use in the execution of their Work under the Contract Documents.
- G. Unless otherwise provided in Division 1, Contractor shall submit to Owner for review four (4) copies of all Shop Drawings. Unless otherwise indicated, three (3) sets of all Shop Drawings shall be retained by Owner and one (1) reviewed set shall be returned to Contractor.

4.04 ORGANIZATION OF SPECIFICATIONS

Specifications are prepared in sections which conform generally with trade practices. These sections are for Owner and Contractor convenience and shall not control Contractor in dividing the Work among the Subcontractors or in establishing the extent of the Work to be performed by any trade.

4.05 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS

- A. The Drawings, Specifications, and other documents prepared by A/E are instruments of A/E's service through which the Work to be executed by Contractor is described. Neither Contractor nor any Subcontractor shall own or claim a copyright to the Drawings, Specifications, and other documents prepared by A/E, and A/E shall be deemed the author of them and will, along with any rights of Owner, retain all common law, statutory, and other reserved rights, in addition to the copyright. All copies of these documents, except Contractor's set, shall be returned or suitably accounted for to A/E, on request, upon completion of the Work.
- B. The Drawings, Specifications, and other documents prepared by the A/E, and copies thereof furnished to Contractor, are for use solely with respect to Work of this Project. They are not to be used by Contractor or any Subcontractor on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner and A/E. Contractor and Subcontractors are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by A/E appropriate to and for use in the execution of the Work.

PART 5 - PERFORMANCE

5.01 CONTRACTOR CONTROL AND SUPERVISION

- A. Contractor shall at all times supervise and direct the Work, using its best skill and attention, and shall perform the Work in a skillful manner with adequate resources. Contractor shall be solely responsible for, and have full control over, construction means, methods, techniques, sequences, procedures, and for coordinating all portions of the Work, unless otherwise noted in the Contract Documents. Contractor shall disclose its means and methods of construction when requested by Owner.
1. Failure to notify the Owner of changes in the project team members and the teams staffing levels established at the start of the Project may entitle the Owner to a credit for excess General Conditions previously allocated at the start of the Project. The Owner reserves the right to withhold General Conditions for staff removed without written notice to the Owner.
 2. The Contractor shall also provide sufficient staffing and supervision to review and process Requests for Information, Change Order Proposals, Change Order Requests, Change Orders, closeout documentation, and to perform all other requirements of the Contract and all Work.
- B. Performance of the Work shall be directly supervised by a competent superintendent who is satisfactory to Owner and has authority to act for Contractor. The superintendent shall be assigned only to this Project unless approved by Owner and shall not be changed without the prior written notice and consent of Owner.
- C. Contractor shall be responsible for acts and omissions of Contractor, Subcontractors, suppliers, vendors, and their employees and agents.
- D. Contractor shall enforce strict discipline and good order among Contractor's employees and all other persons performing the Work. Contractor shall not permit employment of persons not skilled in tasks assigned to them. Contractor's employees shall at all times conduct business in a manner which assures fair, equal, and nondiscriminatory treatment of all persons. Owner may, by written notice, require Contractor to remove from the Work or Project site any employee Owner reasonably deems, in its sole judgement, incompetent, careless, unsafe, or otherwise objectionable.
- E. Contractor shall keep on the Project site a copy of the Drawings, Specifications, addenda, reviewed Shop Drawings, inspection reports, permits, and permit drawings.
- F. The Contractor shall perform on the site, and with its own organization, work equivalent to at least twelve (12) unless otherwise indicated here [_____] percent of the total amount of work to be performed under the contract. This percentage may be reduced by a Change Order to this Contract if, during performance of the Work, the Contractor

requests a reduction and the Owner determines that the reduction would be to the advantage of the Project and Owner.

- G. Contractor shall be responsible for the determination, installation, and maintenance of proper security measures for the Project site temporary facilities for the duration of the Construction Project until Owner assumes the responsibility in writing at Final Acceptance. Contractor shall provide security measures as contractor sees fit for protection of the site, buildings and the Work, but shall provide the following minimum items (the following list does not guarantee adequate security measure):

1. Locks on all construction equipment boxes, temporary storage and office facilities, and construction equipment (vehicles, cranes, dozers, forklifts, construction fence/gates, etc).
2. Contractor shall hold the Owner harmless from all damage, vandalism, stolen equipment, or supplies on the Project site for whatever reason, or from injury to or death of unauthorized persons trespassing on Project site because of inadequate security measures until the Owner releases the Contractor from security responsibilities in writing.
3. Such other security measures as may be required by Contractor's or SHA's insurance policies, builders risk policy, or as required by SHA.

5.02 PERMITS, FEES, AND NOTICES

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all permits (except the building permit, which Owner will secure and provide), licenses, and inspections necessary for proper execution and completion of the Work. Where Owner can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the Contract Sum shall be reduced accordingly by Change Order. Prior to Final Acceptance, all approved, signed permits and all Certificates of Occupancy shall be delivered to Owner.
- B. If allowances for permits or utility fees are called for in the Contract Documents and set forth in Contractor's bid or proposal, and the actual costs of those permits or fees differ from the allowances in the Contract Documents, the difference either increase or decrease shall be adjusted by Change Order.
- C. 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.

5.03 PATENTS AND ROYALTIES

Contractor is responsible for, and shall pay, all royalties and license fees, if any. Contractor shall defend, indemnify, and hold Owner harmless from any costs, expenses, and liabilities

arising out of the infringement by Contractor of any patent, copyright, or other intellectual property right used in the Work; however, provided that Contractor gives prompt notice, Contractor shall not be responsible for such defense or indemnity when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. If Contractor has reason to believe that use of the required design, process, or product constitutes an infringement of a patent or copyright, it shall promptly notify Owner of such potential infringement. Failure to give such notice shall make the Contractor responsible for resultant loss.

5.04 PREVAILING WAGES

- A. As applicable to State- or City-funded projects, and without limiting the application of Section 11.12 for federally-funded projects, Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.
- B. Before commencing the Work, Contractor shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
- C. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060. See Section 8.
- D. Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the Project site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
- E. In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

5.05 HOURS OF LABOR

- A. As applicable to State- or City-funded projects, and without limiting the application of Section 11.12 for federally-funded projects, Contractor shall comply with all applicable

provisions of RCW 49.28 and they are incorporated herein by reference. Pursuant to that statute, no laborer, worker, or mechanic employed by Contractor, any Subcontractor, or any other person performing or contracting to do the whole or any part of the Work, shall be permitted or required to work more than eight hours in any one Day, provided, that in cases of extraordinary emergency, such as danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight hours of each Day shall be not less than one and one-half times the rate allowed for this same amount of time during eight hours' service.

- B. Notwithstanding the preceding paragraph, RCW 49.28 permits a contractor or subcontractor in any public works contract subject to those provisions, to enter into an agreement with its employees in which the employees work up to ten hours in a Day. No such agreement may provide that the employees work ten-hour days for more than four Days a week. Any such agreement is subject to approval by the employees. The overtime provisions of RCW 49.28 shall not apply to the hours, up to forty hours per week, worked pursuant to any such agreement.

5.06 NONDISCRIMINATION

- A. Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, RCW 49.60, and the Seattle Fair Employment Practices Ordinance (together, the "Nondiscrimination Acts"). These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Contractor must meet.
- B. During performance of the Work, Contractor shall comply with the Nondiscrimination Acts, including, but not limited to:
 - 1. Contractor shall not discriminate against any employee or applicant for employment nor commit any unfair practices in violation of the Nondiscrimination Acts.
 - 2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment including, but not limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship, in accordance with requirements of the Nondiscrimination Acts.
 - 3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices required by the Nondiscrimination Acts and as may be provided by the Owner, that explain this clause.

4. Contractor shall, in all solicitations or advertisements for employees placed by or for it, state that all qualified applicants will be considered for employment, without regard to factors as required by the Nondiscrimination Acts.
5. Contractor shall send to each labor union, employment agency, or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or workers' representative of Contractor's obligations according to the Contract Documents, the Nondiscrimination Acts, and RCW 49.60.
6. Contractor shall permit access to its books, records, and accounts, and to its premises by Owner, the Washington State Human Rights Commission, the Seattle Office of Civil Rights, or any other party required by the Nondiscrimination Acts for the purpose of investigation to ascertain compliance with this section of the Contract Documents.
7. Contractor shall include the provisions of this section in every Subcontract.

5.07 SAFETY PRECAUTIONS

- A. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.
- B. In carrying out its responsibilities according to the Contract Documents, Contractor shall protect the lives and health of employees 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. Contractor 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.
- C. Contractor shall maintain an accurate record of exposure data on all incidents relating to the Work resulting in death, traumatic injury, occupational disease including all medical treatments, 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.
- D. Contractor shall provide all persons working on the Project site with information and training on hazardous materials of the Work at the time of their initial assignment, and whenever a new hazard is introduced into their work area.
 1. Information. At a minimum, Contractor shall inform persons working on the Project site of:

- a. The requirements of chapter 296-62 WAC, General Occupational Health Standards;
 - b. Any operations in their work area where hazardous materials are present; and
 - c. 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.
2. Training. At a minimum, Contractor shall provide training for persons working on the Project site which includes:
 - a. Methods and observations that may be used to detect the presence or release of a hazardous materials 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.);
 - b. The physical and health hazards of the materials in the work area;
 - c. 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 materials, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
 - d. The details of the hazard communication 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.
- E. Contractor's responsibility for hazardous, toxic, or harmful substances shall include the following duties:
 1. Contractor shall not keep, use, dispose, transport, generate, or sell on or about the Project site, any materials 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 materials"), in violation of any such law, regulation, statute, or ordinance, but in no case shall any such hazardous material be stored more than 90 Days on the Project site.
 2. 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 Contractor shall pay the full cost of cleanup. Contractor shall promptly notify Owner of all failures to comply with any federal, state, 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.

- F. 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.
- G. In an emergency affecting the safety of life or the Work or of adjoining property, (i) Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury, and (ii) Contractor shall so act if so authorized or instructed.
- H. Nothing provided in this section shall be construed as imposing any duty upon Owner or A/E 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.
- I. The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as Owner, Labor & Industries, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

5.08 OPERATIONS, MATERIAL HANDLING, AND STORAGE AREAS

- A. Contractor shall confine all operations, including storage of materials, to Owner-approved areas.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be provided by Contractor only with the consent of Owner and without expense to Owner. The temporary buildings and utilities shall remain the property of Contractor and shall be removed, and the site restored to the Owner's satisfaction, by Contractor at its expense upon completion of the Work.
- C. 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.
- D. 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 proper/legal disposal off site. Contractor shall provide Owner with a copy of all manifests and receipts evidencing proper disposal when required by Owner or applicable law.

- E. 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 dust control, any repairs, patching, or cleaning arising from such use.
- F. Contractor shall protect and be responsible for any damage, theft, or loss to the Work, tools, 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.

5.09 PRIOR NOTICE OF EXCAVATION

Before commencing any excavation, Contractor shall provide proper notice of the scheduled commencement of excavation to all owners of underground facilities or utilities, through locator services. Contractor shall provide adequate, ongoing locator services as required to accommodate the Work, during the course of the Work, and shall pay all fees for locator services. Any utilities affected from Contractor activities or damaged due to the Contractor's failure to adequately protect or locate utilities per the Contract Documents per the requirements set forth by the Authorities Having Jurisdiction shall be corrected and paid for by the Contractor. No additional days will be added to Contract Time due to these impacts.

5.10 UNFORESEEN PHYSICAL CONDITIONS

- A. If Contractor encounters 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 that differ materially from those ordinarily found and generally recognized in construction activities of the character provided for in the Contract Documents, then Contractor shall give Notice to Owner promptly and in no event later than one-work day after the first observance of the conditions. Continued disturbance of areas encountered by the Contractor before adequate Notice is provided to the Owner, or prior to allowing the Owner ample time to observe the conditions, will constitute waiver of the Contractor's right to an equitable adjustment.
- B. If such conditions differ materially and cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an

equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request therefor as provided in part 7.

5.11 PROTECTION OF EXISTING STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES, AND IMPROVEMENTS

- A. Contractor shall protect from damage all existing conditions, including soils, structures, equipment, improvements, utilities, and vegetation at or adjacent the Project site. Damages on adjacent property of a third party, the locations of which are made known to or should be known by Contractor shall be promptly reported by either the Owner or Contractor to the other party. 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, any defects of equipment, material, workmanship, or design furnished by the Contractor, or failure by Contractor or subcontractor at any tier to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage within seven (7) days, Owner may have the necessary work performed and charge the cost to Contractor.
- B. Contractor shall only remove trees when specifically authorized to do so by Contract Documents and verified by Owner. Contractor shall protect all vegetation that will remain in place.
- C. The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.
- D. Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the original condition.
- E. New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the Contract.
- F. No structural members shall be altered or in any way weakened without the written authorization of the Owner, unless such work is clearly specified in the Contract.
- G. If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the Contract.

- H. Contractor shall conform to requirements in Part 7 in the event conditions noted in G above generate additional costs.

5.12 LAYOUT OF WORK

- A. Contractor shall plan and lay out the Work in advance of operations so as to coordinate all work without delay or revision.
- B. Contractor shall lay out the Work from baselines and bench marks indicated on the Drawings, and shall be responsible for all field measurements in connection with the layout.
- C. 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 established marks.
- D. Contractor shall limit tolerances of layout to an absolute minimum. Standard industry building tolerances shall govern.

5.13 MATERIAL AND EQUIPMENT

- A. 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 Owner, is equal or better to that named in the Specifications, unless otherwise specifically provided in the Contract Documents.
- B. Rentals from the Contractor or any entity in which the Contractor or one of more of its owners has a direct or indirect ownership interest (the "Contractor Equipment") shall be separately accounted for.
- C. Rates of Contractor Equipment and quantities of equipment shall be subject to the Owner's prior approval. Unless expressly waived by the Owner in writing, the rental costs shall not exceed the lesser of fair market rental costs or seventy-five percent (75%) of the purchase price of any comparable item. The rates in effect at the time of the performance of the Work are the maximum rates allowable for equipment of modern design and in good condition and shall include full compensation for furnishing fuel, oil, lubrication, repairs, maintenance, servicing, insurance, and other operating costs to the same extent as the comparable fair market rate. Equipment not of modern design or not in good working condition shall reflect lower rates.

- D. Contractor shall do all cutting, fitting, or patching that may be required to make its 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 or compromise 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.
- E. 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.

5.14 AVAILABILITY AND USE OF UTILITY SERVICES

- A. Owner shall make all reasonable utilities available to Contractor from existing outlets and supplies, or as specified in the Contract Documents. Unless otherwise provided in the Contract Documents, the utility service consumed shall be charged to or paid for by Contractor at current rates charged to Owner or, where the utility is produced by Owner, at reasonable rates determined by Owner. Contractor will carefully conserve any utilities.
- B. Contractor shall, at its expense and in a skillful manner satisfactory to Owner, coordinate use with the Authority, 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 Final Acceptance, Contractor shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.
- C. The Contractor shall provide and pay for, including, but not limited to, all temporary heating, electricity, water, gas, covering, and enclosures and generated power necessary to properly protect all work and materials against damage by moisture and temperature to dry out the work, and to facilitate the completion of the work. No permanent heating or cooling equipment installed during the course of the Work shall be used to facilitate the Contractors work. Contractor shall turn over to Owner all major systems in new condition and at the time required by the Contract Documents.
- D. Commissioning of heating and cooling equipment installed during the course of the Work shall be considered “testing” of such equipment and all utilities consumed for this purpose shall be the responsibility of the Contractor to pay for. System testing activities occurring beyond Substantial Completion are subject to utility use fees and will be prorated by the Owner and will be the responsibility of the Contractor to pay for.

5.15 TESTS AND INSPECTIONS

- A. Contractor shall document and maintain an adequate testing and inspection program and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall be responsible for inspection and quality surveillance of all its Work and all Work performed

by any Subcontractor or other service related entity. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public Authorities Having Jurisdiction, and shall bear all related costs of tests, inspections, and approvals. Contractor shall provide Owner timely notice of when and where tests and inspections are to be made. Contractor shall maintain complete inspection records and make them available to Owner.

- B. OWNER INITIATED TESTS OR INSPECTIONS. Contractor shall participate and cooperate fully with any field tests that may have performed by consultants or testing agencies on behalf of the Owner, and shall make accommodations for that testing, sampling, etc. as required by Owner.
- C. Owner may, at any time, conduct such inspections and tests as it deems necessary to ensure that the Work is in accordance with the Contract Documents. Owner shall notify Contractor when an inspection is scheduled and if an inspection or test reveals that the Work is not in accordance with the Contract Documents. Unless the subject items are expressly accepted by Owner, 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.
- C. 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.
- D. Contractor shall promptly furnish, without additional charge to Owner, 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 agreed to by Contractor and Owner for inspection or testing, or when prior rejection makes reinspection or retest necessary. Owner shall attempt to schedule inspections and tests in a manner that will cause no delay in the Work.

5.16 CORRECTION OF NONCONFORMING WORK

- A. If a portion of the Work is covered contrary to the requirements of the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and if found to be nonconforming, it shall be replaced at the Contractor's expense and without change in the Contract Time.
- B. If at any time prior to Final Acceptance Owner desires to examine the Work, or any portion of it, which has been covered, Owner may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an adjustment in the Contract Sum for the actual costs of uncovering and replacement, and, if completion of the Work is thereby delayed, an adjustment in the Contract Time, provided it makes a request as provided in part 7. If such Work is not in accordance with the Contract Documents, the Contractor shall pay the full costs of uncovering and reconstruction in accordance with the Contract Documents.
- C. Contractor shall promptly correct Work found by Owner not to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion. Contractor shall bear all costs of correcting such nonconforming Work, including additional testing and inspections as required.
- D. If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or within one year after the date for commencement of any system warranties established under section 6.08, or within the terms of any applicable special warranty required by the Contract Documents, any of the Work that is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work promptly after receipt of Notice from Owner to do so. Owner shall give such notice within seven (7) work days after discovery of the condition. This period of one year shall be extended, with respect to portions of Work first performed after Substantial Completion, by the period of time between Substantial Completion and the actual performance of the Work. Contractor's duty to correct with respect to Work repaired or replaced shall run for one year from the date of repair or replacement. Obligations under this paragraph shall survive Final Acceptance.
- E. Contractor shall remove from the Project site portions of the Work which were found not in accordance with the requirements of the Contract Documents and are neither corrected by Contractor nor accepted by Owner.
- F. If Contractor fails to begin correction of nonconforming Work within fifteen (15) Days after Notice to do so, Owner may replace, correct, or remove the nonconforming Work and charge the full cost thereof to the Contractor.
- G. Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

- H. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have according to the Contract Documents. Establishment of the time period of one year as described in paragraph 5.16D relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.
- I. If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum shall be reduced as appropriate and equitable.
- J. This warranty shall not limit the Owner's rights under paragraph 6.09B with respect to latent defects, gross mistakes or fraud.

5.17 SITE ORGANIZATION AND CLEAN UP

Contractor shall at all times keep all Construction areas, adjacent Rights of Way, and Project site areas organized and orderly, including but not limited to hauling routes, infrastructures, utilities, and storage areas free from accumulations of waste materials. Contractor shall remove from the premises during the course of the Work as appropriate and upon completion of the Work, its rubbish, tools, scaffolding, equipment, and unused materials. Upon completing the Work, Contractor shall leave the Project site in a clean, neat, and orderly condition satisfactory to Owner. If Contractor fails to clean up as provided herein, and after reasonable notice from Owner to do so, Owner may do so and the cost thereof shall be charged to Contractor.

5.18 ACCESS TO WORK AND OCCUPIED RESIDENTIAL UNITS.

- A Contractor shall provide Owner and A/E access to the Work in progress, wherever located.
- B. Contractor shall conform to applicable City and State Landlord-Tenant Laws relating to accessing occupied residential units. The Owner and resident shall be notified according to RCW 59.18.150.

Except in the case of emergency or if it is impracticable to do so, Contractor shall give the tenant, on behalf of Owner, at least two days' written notice of Contractor's intent to enter and shall enter only at reasonable times.

The notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry.

The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry.

5.19 OTHER CONTRACTS

Owner may undertake or award other contracts for additional work at or near the Project site. Contractor shall cooperate with any other contractors and with Owner's employees and shall carefully adapt scheduling and performance of the Work in accordance with these Contract Documents to reasonably accommodate the other work. Contractor shall promptly notify Owner of unexpected conditions or circumstances that may hamper Contractor's ability to perform the Work.

5.20 SUBCONTRACTORS AND SUPPLIERS

- A. At the time of each subcontract award, Contractor shall furnish in writing to Owner the names, addresses, telephone numbers, Tax Identification Numbers (TIN) and Unified Business Identifier Numbers (UBI) of all Subcontractors, as well as suppliers providing materials in excess of \$2,500.
- B. For each subcontract, Contractor shall obtain not less than three (3) bids unless otherwise agreed with Owner, and shall provide Owner a list of all subcontractors bidding, amount of bid, and subcontractor contact information.
- C. Contractor shall utilize Subcontractors and suppliers which are experienced and qualified, and meet the requirements of the Contract Documents. Contractor shall not utilize any Subcontractor or supplier to whom the Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions.
- B. All Subcontracts must be in writing. By appropriate written agreement, Contractor shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Contractor by terms of those Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Each Subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. However, nothing in this paragraph shall be construed to alter the contractual relations between Contractor and its Subcontractors with respect to insurance or bonds.
- C. Contractor shall schedule, supervise, and coordinate the operations of all Subcontractors. No Subcontracting of any of the Work shall relieve Contractor from its responsibility for the performance of the Work or any other obligations in accordance with the Contract Documents.
- D. Each subcontract agreement for a portion of the Work is hereby assigned by Contractor to Owner provided that:

1. The assignment is effective only after termination by Owner for cause pursuant to section 9.01 and only for those Subcontracts which Owner accepts by notifying the Subcontractor in writing; and
 2. After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Contractor assumed in the Subcontract.
 3. The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- E. The Contractor shall not enter into any subcontract with any subcontractor whose firm or any of its principals have been suspended, debarred, declared ineligible, or otherwise excluded from participation in this transaction by any agency of the United States Government or by any state, territory, or municipality. The Contractor will submit a signed certification of compliance with this section for itself and for any of its subcontractors as subcontract agreements are issued and will submit an annual certification of compliance for Contracts extending beyond one year in duration. The Owner will provide the certification form to the Contractor.

5.21 WARRANTY OF CONSTRUCTION

- A. Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, design furnished, or workmanship performed by Contractor or Subcontractors.
- B. With respect to all warranties, express or implied, for Work performed or materials furnished according to the Contract Documents, Contractor shall:
1. Obtain all warranties that would be given in normal residential or commercial practice;
 2. Require all warranties to be executed, in writing, for the benefit of Owner;
 3. Enforce all warranties for the benefit of Owner ; and
 4. Be responsible to enforce any subcontractor's, manufacturer's, or supplier's warranty should they extend beyond the period specified in the Contract Documents.
- C. Contractor shall perform warranty repairs within the times required pursuant to RCW 59.18.070:
1. Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life.

2. Not more than seventy-two hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and
3. Not more than ten days in all other cases.

Contractor shall notice the Owner so that proper entry authorization may be arranged by Owner.

- D. The obligations under this section shall survive Final Acceptance.

5.22 INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold Owner and its officers, agents, and employees harmless from and against all claims, demands, suits, judgments, losses, damages, costs, reasonable attorneys' fees, and any other kinds of expense:
1. Arising out of or in any manner connected with the Work performed or to be performed under this Contract; or
 2. Caused or occasioned by the use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued or which violates any other proprietary interest, including copyright, trademark, and trade secret.

This section shall not apply to any claims, demands, suits, judgments, losses, damages, costs or any other kinds of expense that are caused by or result from the sole negligence of the Owner.

This section shall apply to all claims, demands, suits, judgments, losses, damages, costs, and any other kinds of expense that are caused by or result from the concurrent negligence of the Contractor or its officers, agents, or employees and the Owner or its officers, agents, or employees, but only to the extent of the negligence of the Contractor or its officers, agents, and employees.

- B. In any action against Owner or its officers, agents, and employees by any employee of Contractor or any of its subcontractors, the indemnification obligations of Contractor under this section shall not be limited by any limit on the amount or type of damages, compensation, or benefits payable under RCW Title 51 or under any other employee benefit acts. In any such action, Contractor waives any immunity under RCW Title 51 as to Owner and its officers, agents, and employees.

5.23 PROHIBITION AGAINST LIENS

Pursuant to state and federal law, the Contractor is prohibited from placing a lien on the Owner's property. This prohibition shall apply to all subcontractors of any tier and all materials suppliers.

5.24 OWNER'S REPRESENTATIVE

- A. The Owner's Project Manager is authorized to act on behalf of the Owner in all matters pertaining to the Work and the Contract Documents. The Owner's Project Manager may delegate all or part of this authority to others and will communicate this authorization in writing. No representative or employee of the Owner, other than the Owner's Project Manager, shall have authority to obligate the Owner for any purpose unless authorized in writing to do so by the Owner's Project Manager (together, the "Owner's Representatives"). The Owner's Project Manager shall have the authority to reject defective material and suspend work that is not consistent with the Contract Documents.
- B. Owner's decisions, as delegated to the Owner's Representatives, will be final on all questions including, but not limited to, the following:
 - 1. Quality and acceptability of materials and Work, as specified by the Contract Documents;
 - 2. Measurement of unit price work;
 - 3. Acceptability of rates of progress on the Work; and
 - 4. Interpretation of Drawings and Specifications.
- C. The following decisions are the exclusive province of the Owner's Project Manager, the Executive Director of Owner, and the Deputy Executive Director of Owner:
 - 1. Determination as to the existence of Material Differing Site Conditions;
 - 2. Fulfillment of the Contract by Contractor;
 - 3. Payments under the Contract;
 - 4. Issuance of a Field Authorization or Change Order;
 - 5. Adjustment of Critical Milestone Dates; and
 - 6. Achieving Critical Milestones, Substantial Completion and Final Completion.

5.25 CONFLICTS

In the event of any conflict between the Owner's Project Manager and any other Owner's Representative regarding any decision or directive, the Owner's Project Manager's decision or directive shall control.

5.26 APPROVAL OF OWNER'S REPRESENTATIVES

Nothing in the Contract requires the Owner's Representatives to provide Contractor with direction or advice on how to do the Work. Although an Owner's Representative may advise Contractor of any faulty work or materials, or infringements of the terms of the Contract Documents, failure of any Owner's Representative to do so shall not constitute acceptance or approval. If an Owner's Representative approves or recommends any method or manner for doing the Work or producing materials, the approval or recommendation shall not:

- A. Constitute a representation that following the method or manner employed by Contractor will result in compliance with the Contract,
- B. Relieve Contractor or its Surety of any risks or obligations under the Contract, or
- C. Create any liability for Owner.

5.27 NO ORAL AGREEMENTS

No oral agreement or conversation with any officer, agent, or employee of Owner, either before or after execution of the Contract, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract. Such oral agreement or conversation shall be considered as unofficial information and in no way binding upon Owner or Contractor unless subsequently put in writing.

PART 6 - PAYMENTS AND COMPLETION

6.01 CONTRACT SUM

Owner shall pay Contractor the Contract Sum for performance of the Work, in accordance with the Contract Documents. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Project, including sales tax.

6.02 SCHEDULE OF VALUES

Within seven (7) Days of Notice of Award the Contractor shall submit to Owner for approval a detailed breakdown allocating the total Contract Sum to each principle category of work, in such detail as requested by Owner (the "Schedule of Values"). The approved Schedule of Values shall include appropriate amounts for demobilization, punchlists, record drawings, Operating & Maintenance manuals, warranties, as-built drawings, and any other

requirements for Project closeout in the Contract Documents. This shall be used by Owner as the sole basis for progress payments. The Contractor shall prorate its overhead and profit over the construction period of the contract. Payment for Work shall be made only for and in accordance with those items included in the approved Schedule of Values.

6.03 APPLICATION FOR PAYMENT

- A. At monthly intervals, unless determined otherwise by Owner, Contractor shall submit to Owner an itemized Application for Payment for Work completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require.
- B. By submitting an Application for Payment, Contractor is certifying that all Subcontractors have been paid, less earned retainage in accordance with RCW 60.28.011, as their interests appeared in the last preceding certificate of payment. By submitting an Application for Payment, Contractor is recertifying that the representations set forth in section 1.03 are true and correct, to the best of Contractor's knowledge, as of the date of the Application for Payment.
- C. At the time Contractor submits an Application for Payment, Contractor shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work on the Progress Schedule.
- D. If authorized by Owner, the Application for Payment may include a request for payment for material delivered to the Project site and suitably stored. Contractor is at all times fully responsible for any materials stored on site and not yet installed. Payment may similarly be requested for material stored off the Project site, provided Contractor complies with or furnishes satisfactory evidence of the following:
 - 1. The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
 - 2. The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing by Owner;
 - 3. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
 - 4. Contractor furnishes Owner a certificate of insurance extending Contractor's insurance coverage for damage, fire, and theft to cover the full value of all materials stored or in transit;
 - 5. The warehouse (or secure portion thereof) is continuously under lock and key, and only Contractor's authorized personnel shall have access;
 - 6. Owner shall at all times have the right of access in company of Contractor;

7. Contractor and its surety assume total responsibility for the stored materials; and
8. Contractor furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Project site.

6.04 PROGRESS PAYMENTS

- A. Owner shall make progress payments, in such amounts as Owner and any funding/lending agents determine are properly due, within thirty (30) Days from date of Owner approval of a properly executed Application for Payment. Owner shall notify Contractor in accordance with RCW 39.76 if the Application for Payment does not comply with the requirements of the Contract Documents.
- B. Owner shall retain 5% of the amount of each progress payment until no less than forty-five (45) days after Final Acceptance and receipt of all documents required by law or the Contract Documents including, at Owner's request, consent of surety to release the retainage. In accordance with RCW 60.28, Contractor may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Contractor. Owner shall permit Contractor to provide an appropriate bond in lieu of the retained funds.
- C. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve Contractor from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Contractor with the Contract Documents.
- D. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in RCW 39.76 to the same extent as if the Work was a "public work" as defined in that statute.

6.05 PAYMENTS WITHHELD

- A. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including but not limited to:
 1. Work not in accordance with the Contract Documents;
 2. Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum;
 3. Work by Owner to correct defective Work or complete the Work in accordance with section 5.16;

4. Failure to perform in accordance with the Contract Documents; or
 5. Cost or liability that may occur to Owner as the result of Contractor's fault or negligent acts or omissions.
- B. In any case where part or all of a payment is going to be withheld for unsatisfactory performance, Owner shall notify Contractor in accordance with RCW 39.76.

6.06 RETAINAGE AND BOND CLAIM RIGHTS

RCW chapters 39.08 and 60.28, concerning the rights and responsibilities of Contractor and Owner with regard to the performance and payment bonds and retainage, are made a part of the Contract Documents by reference as though fully set forth herein, and to the same extent as if the work was a "public work" and/or "public improvement" as defined in those statutes.

6.07 SUBSTANTIAL COMPLETION

Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punch list work shall have been completed. Before requesting Substantial Completion, the Contractor shall furnish the Owner, a Temporary Certificate of Occupancy, a comprehensive punch list of items of work remaining to be performed or intended to be corrected by the Contractor on the portion of work the Contractor intends to turnover to the Owner and the dates the remaining items on the list are to be completed. Substantial Completion shall not be achieved if any system(s) and part(s) are not fully commissioned, fully tested, or fully functional at the time of acceptance by Owner; if utilities or appliances are not connected; or documentation has not been provided to the Owner and proven to conform per the Contract Documents and operating normally as intended; or if all required occupancy permits have not been issued; or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner after a written request is submitted by Contractor.

6.08 PRIOR OCCUPANCY

- A. Owner may, upon Notice to Contractor, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not be deemed an acceptance or constitute Substantial Completion of any portion of the Work; accelerate the time for any payment to Contractor; prejudice any rights of Owner provided by any insurance, bond, guaranty, or the Contract Documents; relieve Contractor of the risk of loss or any of the obligations established by the Contract Documents; establish a date for termination or partial termination of the assessment of liquidated damages; or constitute a waiver of claims.

- B. Notwithstanding anything in the preceding paragraph, Owner shall be responsible for loss of or damage to the Work resulting from its Prior Occupancy. Contractor's one year duty to repair and any system warranties shall begin on building systems being activated and used by Owner as agreed in writing by Owner and Contractor.
- C. Before taking Prior Occupancy possession of or using any work, the Owner shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that Owner intends to take possession of or use. However, failure of the Owner to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract.

6.09 FINAL COMPLETION, ACCEPTANCE, AND PAYMENT

- A. Final Completion shall be achieved when the Work is fully and finally complete in accordance with the Contract Documents. The date Final Completion is achieved shall be established by Owner in writing.
- B. Contractor shall request Final Acceptance from Owner. Final Acceptance is the formal action of Owner acknowledging Final Completion of the Work. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Owner's rights under any warranty or guarantee. Prior to Final Acceptance, Contractor shall, in addition to all other requirements in the Contract Documents, submit to Owner a Notice of any outstanding disputes or claims between Contractor and any of its Subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the Public Works Bond, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Acceptance of final payment by Contractor, or any Subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any such Subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those Claims made in accordance with the procedures, including the time limits, set forth in part 8.

PART 7 - CHANGES

7.01 CHANGES IN THE WORK

- A. Owner may, at any time and without notice to Contractor's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided

in section 7.02 or 7.03, respectively, and such adjustment(s) shall be incorporated into a Change Order.

- B. If Owner desires to order a change in the Work, the Owner may request a written Change Order Proposal (COP) from Contractor. Contractor shall submit a Change Order Proposal within fourteen (14) Days of the request from Owner, or within such other period as mutually agreed. Contractor's Change Order Proposal shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Contract Time, and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity that may result from the change in the Work. Contractor's COP shall not include losses relating to section 5.01G.
- C. Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order Proposal, Owner may direct Contractor to proceed immediately with the Change Order Proposal Work. Contractor shall proceed with any change in the Work only after it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.
- D. If Owner and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.
- E. If Owner and Contractor are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, Contractor may in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within fourteen (14) Days of Contractor's request. Owner may also provide Contractor with a final offer at any time. If Contractor rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Contractor's only remedy shall be to file a Claim as provided in part 8.
- F. Field Directives. The Owner may, by Field Directives, provide clarifications or instructions, and to order minor adjustments in the Work not involving adjustment in the Contract Sum or Contract Time and not inconsistent with the intent of the Contract Documents. Contractor shall carry out such Field Directive promptly; if Contractor believes that such Field Directive causes an increase in the Contract Sum or Contract Time, Contractor shall properly proceed according to paragraph 7.01 E.

The Owner has the authority to direct the Contractor to proceed with a change in the work through a Field Directive when the time required to price and execute a Change Order would impact the Project. The Field Directive shall describe and include the following:

1. The scope of work;
2. An agreed upon-maximum not-to-exceed amount;
3. Estimated change to the Contract Time, if any;
4. The method of final cost determination and the required supporting cost data to be submitted in accordance with the requirements of Part 7 of the General Conditions.

Upon receipt of a Field Directive, Contractor shall promptly proceed with the change in the Work involved. As soon as possible and within ten (10) days of receipt of a Field Directive, Contractor shall advise the Owner in writing of the Contractor's agreement or disagreement with the proposed adjustment(s) and/or the method provided in the Field Directive. Without such timely response, Contractor shall conclusively be deemed to have accepted Owner's adjustment(s) and method. Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly, and such disagreement shall be resolved according to subsection 7.01 E.

Only upon approval by the Owner of supporting cost data submitted by the Contractor, and the Owner and Contractor agree upon the adjustment(s), a Change Order may be issued for all or part of the Field Directive work.

7.02 CHANGES IN THE CONTRACT SUM

A. General Application

1. The Contract Sum shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Sum in its Change Order Proposal.
2. No change in the Contract Sum shall be allowed to the extent: Contractor's changed cost of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible; or where the change is concurrently caused by Contractor and Owner.
3. If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure:
 - a. A request for an equitable adjustment in the Contract Sum shall be based on a written Notice delivered to Owner within 7 Days of the occurrence of the event

giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Contractor believes it is entitled to an adjustment in the Contract Sum, then Contractor shall immediately notify Owner in writing and begin to keep and maintain complete, accurate, and specific daily records including photographs, daily logs, accounting of labor, materials, and equipment associated with the occurrence. Contractor shall give Owner access to any such records and, if requested, shall promptly furnish copies of such records to Owner.

- b. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than seven (7) Days before Contractor's written Notice to Owner. The Notice shall provide, at a minimum: a description of the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Contractor and its Subcontractors of any tier, and to the extent possible the full amount of the adjustment in Contract Sum requested. Failure to provide a timely written notice with this information shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Owner's interests are prejudiced, for example, if Owner receives knowledge of facts after Owner incurs costs that could have been avoided or reduced if the notice had been timely. In such case, Contractor shall receive an equitable adjustment only if otherwise entitled to it, less the costs incurred.

A separate Notice must accompany each request for equitable adjustment. If Owner approval of equitable adjustment has been granted, the correspondence containing such approval shall accompany the request for equitable adjustment. Owner must approve all requests for equitable adjustments before any Change Order is executed.

- c. Within thirty (30) Days of the occurrence of the event giving rise to the request, Owner may allow an additional period of time to ascertain more accurate data, unless Owner agrees to the initial Change Order Proposal in writing. Contractor shall deliver a supplement Notice provided in accordance with subparagraph (a), above, with additional supporting data. Such additional data shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Contractor for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Contractor shall demonstrate the impact on the critical path schedule, in accordance with section 7.03C. Failure to provide such additional information and documentation

within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Owner's interests are prejudiced, for example, if Owner is deprived of full knowledge of all material facts needed to verify the request or make an informed decision on Contractor's request; or if Owner receives knowledge of facts after Owner incurs costs that could have been avoided if the notice had been timely. In such case, Contractor shall receive an equitable adjustment only if otherwise entitled to it, less the costs incurred.

- d. Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
 - e. Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Contract Time that arise out of the same event(s) shall be submitted together. Failure to do so constitutes a waiver of Contractor's right to an equitable adjustment.
4. The value of any Work covered by a Change Order Proposal, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:
- a. On the basis of a fixed price as determined in paragraph 7.02B.
 - b. By application of unit prices to the quantities of the items involved as determined in paragraph 7.02C.
 - c. On the basis of time and material as determined in paragraph 7.02(D). If we add time and materials clause.
5. When Owner has requested Contractor to submit a Change Order Proposal, Owner may direct Contractor as to which method in subparagraph (4), above, to use when submitting its proposal. Otherwise, Contractor shall determine the value of the Work, or of a request for an equitable adjustment, on the basis of the fixed price method.

B. Change Order Pricing – Fixed Price

When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

- 1. Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the

manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner. Contractor shall provide substantiating details for its itemization, such as, but not limited to, subcontractor quotes, cost analysis, labor costs, invoices, and vendor prices.

2. All costs shall be calculated based upon appropriate industry standard methods of calculating current Contractor labor rates for the Project and local material prices and local equipment costs.
3. If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
4. The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond, and insurance markups will apply to the net difference.
5. Contractor shall submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:
 - a. Lump sum labor;
 - b. Lump sum material;
 - c. Lump sum equipment usage;
 - d. Overhead and profit as set forth below; and
 - e. Insurance and bond costs as set forth below.
6. Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
 - a. Craft labor costs. Craft labor costs are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work multiplied by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
 - (1) Basic wages and benefits. Hourly rates and benefits shall be determined according to applicable prevailing wages. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.

- (2) Workers Compensation Insurance. Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension; by the class and rates established by the State Department of Labor and Industries.
 - (3) Federal insurance. Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
 - (4) Safety. Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.
- b. Material costs, which shall consist of an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides for the local area. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges shall be itemized.
 - c. Equipment costs, which shall consist of an itemization of the type of equipment, and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used entirely and exclusively for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs, or if owned, from the current edition of one of the following sources in the order in which they are listed:
 - (1) Associated General Contractors - Washington State Department of Transportation Equipment Rental Agreement; latest edition;
 - (2) The state of Washington Utilities and Transportation Commission for trucks used on highways.
 - (3) The National Electrical Contractors Association for equipment used on electrical work.
 - (4) The Mechanical Contractors Association of America for equipment used on mechanical work.

The most recent edition of the Data Quest Rental Rate (Blue Book) shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, latest edition.

- d. Allowance for small tools, expendables and consumable supplies. Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:

(1) For Contractor, 3% of direct labor costs.

(2) For Subcontractors, 5% of direct labor costs.

Expendables and consumable supplies directly associated with the change in Work must be itemized.

- e. Subcontractor costs shall include those payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' costs of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.

- f. Allowance for overhead. The allowance for overhead is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum but not to the cost of any change in the Contract Time for which contractor has been, or could have been (had Contractor filed a sufficient, timely claim), compensated pursuant to the conditions set forth in Section 7.03. This allowance shall compensate Contractor for all noncraft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:

(1) For Contractor, for any Work actually performed by Contractor's own forces, 10% of the cost.

(2) For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 10% of the cost.

(3) For Contractor, for any Work performed by its Subcontractor(s), no additional percentage allowance.

(4) For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, no additional percentage allowance.

The cost to which overhead is to be applied shall be determined in accordance with subparagraphs (a)-(e), above.

- g. Allowance for profit shall be an amount to be added to the cost of any change in contract sum, but not to the cost of change in Contract Time for which contractor

has been, or could have been (had contractor filed a sufficient, timely claim), compensated pursuant to the conditions set forth in section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:

- (1) For Contractor or Subcontractor of any tier for work performed by their forces, 5% of the cost developed in accordance with 7.02B.6(a)-(e) above.
- (2) For Contractor for work performed by its Subcontractor(s), 10% of the Subcontractor cost developed in accordance with 7.02B.6(a)-(e), less the Subcontractor(s)' profit.
- (3) For Subcontractors of any tier for work performed by a subcontractor of a lower tier, no additional percentage allowance.

h. Cost of change in insurance or bond premium, which shall be determined as:

- (1) The cost of any changes in Contractor's liability insurance arising directly from execution of the changed Work;
- (2) The cost of the additional premium for Contractor's bond arising directly from the changed Work.

The costs of any change in insurance or bond premium shall be added after overhead and profit are calculated in accordance with subparagraphs (f) and (g) above, and invoices, riders, and updated bonds as required by section 2.02 evidencing such costs shall be provided to Owner.

C. Change Order Pricing – Unit Prices

1. If Owner authorizes Contractor to perform Work on a unit-price basis, Owner's authorization shall clearly state:
 - a. Scope of work to be performed;
 - b. Type of reimbursement including pre-agreed rates for material quantities; and
 - c. Cost limit of reimbursement.
2. Contractor shall:
 - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Contractor shall identify workers assigned to the Change Order Work and areas in which they are working;
 - b. Leave access as appropriate for quantity measurement; and
 - c. Not exceed any cost limit(s) without Owner's prior written approval.

3. Contractor shall submit costs in accordance with paragraph 7.02B, and satisfy the following requirements:
 - a. Unit prices shall include reimbursement for all direct and indirect costs of the Work, including, but not limited to, overhead and profit, bond, and insurance costs; and
 - b. Quantities must be supported by field measurement statements signed by Owner's Representative.

D. Change Order Pricing – Time-and-Material Prices

1. Whenever Owner authorizes Contractor to perform Work on a time-and-material basis, Owner's authorization shall clearly state:
 - a. Scope of Work to be performed;
 - b. Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
 - c. Cost limit of reimbursement.
2. Contractor shall:
 - a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
 - b. Identify on daily time sheets all labor performed in accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner's review.
 - c. Leave access as appropriate for quantity measurement;
 - d. Perform all Work in accordance with this section as efficiently as possible; and
 - e. Not exceed any cost limit(s) without Owner's prior written approval.
3. Contractor shall submit costs in accordance with paragraph 7.02B and additional verification supported by:
 - a. Labor detailed on daily time sheets; and
 - b. Invoices for material.

7.03 CHANGES IN THE CONTRACT TIME

- A. The Contract Time shall only be changed by a Change Order. Contractor shall include any request for a change in the Contract Time in its Change Order Proposal.
- B. If the time of Contractor's performance is changed due to an act of Force Majeure, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.
 - 1. A Contractor's request for an equitable adjustment in the Contract Time shall be based on Notice delivered to Owner within seven (7) Days of the occurrence of the event giving rise to the request. If Contractor believes it is entitled to adjustment of Contract Time, Contractor shall immediately begin to keep and maintain complete, accurate, and specific daily records including photographs, and track daily loss of productivity specific to the established critical path schedule in sufficient detail as to fully document the claim. Contractor shall give Owner access to any such records and, if requested, shall promptly furnish copies of such records to Owner.
 - 2. Contractor shall not be entitled to an adjustment in the Contract Time for any events that occurred more than seven (7) Days before Contractor's Notice to Owner. The Notice shall provide, at a minimum: a description of the event giving rise to the request for an equitable adjustment in the Contract Time; the nature of the impacts to Contractor and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Time requested. Failure to provide this information in the Notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Owner's interests are prejudiced, for example, if Owner receives knowledge of facts after the Work incurs delay that could have been avoided if the notice had been timely. In this case, Contractor shall receive an equitable adjustment if otherwise entitled to it, less the delay incurred.

- 3. Within thirty (30) Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Contractor shall supplement the Notice provided in accordance with subparagraph 7.03B.2 with additional supporting data. Such additional data shall include, at a minimum: the amount of delay claimed, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Contractor suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in Contract Time for such act, event, or condition; and supporting documentation sufficiently detailed to permit

an informed analysis of the request by Owner. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Owner's interests are prejudiced, for example, if Owner is deprived of full knowledge of all material facts needed to make an informed decision on Contractor's request; or if Owner receives knowledge of facts after the Work incurs delay that could have been avoided if the notice had been timely. In this case, Contractor shall receive an equitable adjustment if otherwise entitled to it, less the delay incurred.

4. Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work.
- C. Any change in the Contract Time covered by a Change Order, or based on a request for an equitable adjustment in the Contract Time, shall be limited to the change in the critical path of Contractor's schedule attributable to the change of Work or event(s) giving rise to the request for equitable adjustment. Any Change Order proposal or request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Contractor shall be responsible for showing clearly on the Progress Schedule that the change or event: had a specific impact on the critical path, and except in case of concurrent delay, was the sole cause of such impact; and could not have been avoided by resequencing of the Work or other reasonable alternatives.
- D. Contractor may request compensation for the cost of a change in Contract Time in accordance with this paragraph 7.03D, subject to the following conditions:
 1. The change in Contract Time shall solely be substantiated as caused by the fault or negligence of Owner or anyone for whose acts Owner is responsible;
 2. Compensation under this paragraph is limited to changes in Contract Time for which Contractor is not entitled to be compensated under section 7.02;
 3. Contractor shall follow the procedure set forth in paragraph 7.03B;
 4. Contractor shall establish the extent of the change in Contract Time in accordance with paragraph 7.03C; and
 5. The daily cost of any change in Contract Time shall be limited to the items below, less funds that may, or could (had contractor filed a sufficient, timely claim), have been paid pursuant to a change in the Contract Sum that contributed to this change in Contract Time:
 - a. Cost of nonproductive field supervision or labor extended because of the delay;

- b. Cost of weekly meetings or similar indirect activities extended because of the delay;
- c. Cost of temporary facilities or equipment rental extended because of the delay;
- d. Cost of insurance extended because of the delay; and
- e. General and administrative overhead in an amount to be agreed upon, but not to exceed 3% of Contract Sum divided by the Contract Time for each Day of the delay.

PART 8 - CLAIMS AND DISPUTE RESOLUTION

8.01 CLAIMS PROCEDURE

- A. Except as otherwise provided in paragraph 5.04C or paragraph 11.12H, whichever is applicable, if the parties fail to reach agreement regarding any dispute arising from the Contract Documents, including a failure to reach agreement on the terms of any Change Order for Owner-directed Work as provided in section 7.01, or on the resolution of any request for an equitable adjustment in the Contract Sum as provided in section 7.02 or the Contract Time as provided in section 7.03, Contractor's only remedy shall be to file a Claim with Owner as provided in this section.
- B. Contractor shall file its Claim within the earlier of 120 Days from Owner's final offer in accordance with paragraph 7.01E; or the date of Final Acceptance.
- C. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled. It shall be fully substantiated and documented. At a minimum, the Claim shall contain the following information:
 - 1. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
 - 2. The date on which facts arose which gave rise to the Claim;
 - 3. The name of each employee of Owner or A/E knowledgeable about the Claim;
 - 4. The specific provisions of the Contract Documents which support the Claim;
 - 5. The identification of any documents and the substance of any written communications that support the Claim;
 - 6. Copies of any identified documents, other than the Contract Documents, that support the Claim;

7. If an adjustment in the Contract Time is sought: the specific Days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
 8. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, section 7.02; and
 9. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.
- D. After Contractor has submitted a fully documented Claim that complies with all applicable provisions of parts 7 and 8, Owner shall respond, in writing, to Contractor within sixty (60) Days from the date the Claim is received, with a decision or with notice to Contractor of the date by which it will render its decision.
- E. To assist in the review of Contractor's Claim, Owner may visit the Project site, or request additional information, in order to fully evaluate the issues raised by the Claim. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision as set forth above shall be final and conclusive as to all matters set forth in the Claim, unless Contractor follows the procedure set forth in section 8.02.
- F. Any Claim of the Contractor against the Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by the Contractor unless timely made in accordance with the requirements of this section.

8.02 DISPUTE RESOLUTION

- A. All Claims arising out of the Work shall be attempted to be resolved by both parties in good faith. If Contractor disagrees with Owner's decision rendered in accordance with paragraph 8.01D Contractor shall provide Owner with a written request for Dispute Resolution. No request for Dispute Resolution of any such Claim shall be made later than thirty (30) Days after the receipt date of Owner's decision on such Claim; failure to request Dispute Resolution within said thirty (30) Day period shall result in Owner's decision being final and binding upon Contractor and its Subcontractors. All other rights to equitable adjustment from that point are deemed waived.
- B. Notice of the request for Dispute Resolution shall contain all claims Contractor has against Owner, state the Contractor's specific disagreement with the Owner's decision,

and state the Contractor's preference of mediation, arbitration, or litigation. Within ten business days of receipt of Contractor's Notice of Request for Dispute Resolution, Owner shall advise Contractor whether the dispute will be resolved by mediation, arbitration or litigation. If the dispute is to be mediated, the parties shall mediate under the then current Construction Industry Mediation Rules of the AAA. If the parties do not agree to another location, the mediation shall take place in Seattle, Washington.

- C. Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall be submitted in the same mediation.
- D. If the parties resolve the Claim(s) prior to a mediation decision, the terms of their agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim(s), including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.
- E. If any Claim is not resolved through mediation, Owner may elect to have the disputed claim(s) resolved through arbitration or litigation. Owner shall, within ten (10) working days of conclusion of the mediation, inform Contractor of its election to proceed with arbitration or litigation.

8.03 ARBITRATION

If Owner elects to have the dispute resolved through arbitration, Contractor shall file a notice, of Demand for Arbitration with the American Arbitration Association (AAA), with a copy provided to Owner, in accordance with the Construction Industry Arbitration Rules of AAA as follows:

- 1. Claims involving \$75,000 or less, exclusive of claimed interest, attorney's fees, arbitration fees and costs shall be conducted in accordance with the AAA Fast Track Procedures
- 2. Disputes over \$75,000 shall be conducted in accordance with the AAA Procedures for Large Complex Construction Disputes unless the parties agree to use the expedited rules.
- 3. For disputes conducted according to this section, notwithstanding any contrary provision of the referenced rules:
 - a. The arbitrator shall determine the rights and obligations of the parties according to the substantive and procedural laws of the state of Washington;
 - b. The obligations of Contractor under section 8.05 shall continue and shall not be affected;

- c. The arbitrator shall be an attorney with at least ten (10) years' experience in construction law;
 - d. The arbitrator shall issue a written decision setting out: (i) each of the findings of facts; (ii) the evidence supporting each finding of fact; (iii) a statement of the applicable law; and (iv) an explanation of how the arbitrator applied the law to those facts;
 - e. If the parties do not agree to another location, the arbitration proceedings shall be conducted in Seattle, Washington.
- C. The judgment upon the arbitration award may be entered, or review of the award may occur, in the court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.
- D. Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E, and Owner and A/E shall be submitted in the same arbitration.
- E. If the parties resolve the Claim prior to an arbitration award, the terms of the party's agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

8.04 LITIGATION

If Owner elects to resolve the dispute through litigation, Contractor shall file suit in a court of competent jurisdiction in the City of Seattle.

8.05 CLAIMS AUDITS

- A. All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.
- B. In support of Owner audit of any Claim, Contractor shall, upon request, promptly make available to Owner the following documents:
- 1. Daily time sheets and supervisor's daily reports;
 - 2. Collective bargaining agreements;
 - 3. Insurance, welfare, and benefits records;
 - 4. Payroll registers;

5. Earnings records;
6. Payroll tax forms;
7. Material invoices, requisitions, and delivery confirmations;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Vendors', rental agencies', Subcontractors', and agents' invoices;
11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
12. Subcontractors' and agents' payment certificates;
13. Cancelled checks (payroll and vendors);
14. Job cost report, including monthly totals;
15. Job payroll ledger;
16. Planned resource loading schedules and summaries;
17. General ledger;
18. Cash disbursements journal;
19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for three (3) years preceding execution of the Work;
20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim, including, but not limited to, labor, benefits and

insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and

24. Work sheets, software, and all other documents used by Contractor to prepare its bid.

B. The audit may be performed by employees of Owner or a representative of Owner. Contractor, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Contractor, and all Subcontractors, shall make a good faith effort to cooperate with Owner's auditors.

PART 9 - TERMINATION OF THE WORK

9.01 TERMINATION BY OWNER FOR CAUSE

A. Owner may, upon seven (7) Days' Notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for cause upon the occurrence of any one or more of the following events:

1. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
2. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors or a receiver is appointed on account of its insolvency;
3. Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
4. Contractor fails to supply adequately skilled workers, an adequate number of skilled workers to do the Work, proper materials or equipment verified by actual progress made against the approved schedule;
5. Contractor fails to make prompt payment due to Subcontractors, suppliers, or for labor;
6. Contractor materially disregards or fails to comply with recognized and established safety measures, laws, ordinances, rules, regulations, or orders of any Public Authority Having Jurisdiction; or
7. Contractor is otherwise in material breach of any provision of the Contract Documents.

B. Upon termination, Owner may, at its option:

1. Take possession of the Project site and take possession of or use all materials, equipment, tools, construction equipment, and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work;
 2. Accept assignment of subcontracts pursuant to section 5.20; and
 3. Finish the Work by whatever other reasonable method it deems expedient.
- C. Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- D. When Owner terminates the Work in accordance with this section, Contractor shall take the actions set forth in paragraph 9.02B, and shall not be entitled to receive further payment until the Work is accepted.
- E. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. Contractor shall also be liable for liquidated damages until such reasonable time as may be required for Substantial Completion. These obligations for payment shall survive termination.
- F. Termination of the Work in accordance with this section shall not relieve Contractor or its surety of any responsibilities for Work performed.
- G. If Owner terminates Contractor for cause, and it is later determined that none of the circumstances set forth in paragraph 9.01A exist, then such termination shall be deemed a termination for convenience pursuant to section 9.02.

9.02 TERMINATION BY OWNER FOR CONVENIENCE

- A. Owner may, upon Notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.
- B. Unless Owner directs otherwise, after receipt of a Notice of termination for either cause or convenience, Contractor shall promptly:
1. Stop performing Work on the date as specified in the notice of termination;
 2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work which is not terminated;

3. Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
 4. Assign to Owner all of the rights, titles, and interests of Contractor in all orders and subcontracts;
 5. Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
 6. Continue performance only to the extent not terminated.
- C. If Owner terminates the Work or any portion thereof for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages, whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of part 7.
- D. If Owner terminates the Work or any portion thereof for convenience, the Contract Time shall be adjusted as determined by Owner.

PART 10 - MISCELLANEOUS PROVISIONS

10.01 GOVERNING LAW

The Contract Documents and the rights of the parties herein shall be governed by the laws of the state of Washington. Venue shall be in the county in which Owner's principal place of business is located, unless otherwise specified.

10.02 SUCCESSORS AND ASSIGNS

Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party shall assign the Work without written consent of the other, except that Contractor may assign the Work for security purposes, to a bank or lending institution authorized to do business in the state of Washington. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

10.03 MEANING OF WORDS

Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of bids, except as may be otherwise specifically stated. Wherever in these Drawings and Specifications an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the Drawings, or required to complete the installation.

10.04 RIGHTS AND REMEDIES

No action or failure to act by Owner or A/E shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of an acquiescence in a breach therein, except as may be specifically agreed in writing.

10.05 CONTRACTOR REGISTRATION

Contractor shall be registered or licensed as required by the laws of the state of Washington, including but not limited to RCW 18.27.

10.06 TIME COMPUTATIONS

When computing any period of time, the Day of the event from which the period of time begins shall not be counted. The last Day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next Day that is not a weekend or holiday. When the period of time allowed is less than seven (7) Days, intermediate Saturdays, Sundays, and Owner-observed holidays are excluded from the computation. "Owner-observed holidays" are New Year's Day; Martin Luther King, Jr. Day; Presidents' Day; Memorial Day; Juneteenth; Fourth of July; Labor Day; Thanksgiving, the day after Thanksgiving; and Christmas. If New Year's Day, the Fourth of July, or Christmas fall on a Saturday, they shall be observed on the preceding Friday; if on a Sunday, they shall be observed on the following Monday.

10.07 RECORDS RETENTION

The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with section 8.03, shall be retained for a period of not less than six (6) years after the date of Final Acceptance.

10.08 THIRD-PARTY AGREEMENTS

The Contract Documents shall not be construed to create a contractual relationship of any kind between A/E and Contractor; Owner, any Subcontractor; or any persons other than Owner and Contractor.

10.09 ANTITRUST ASSIGNMENT

Owner and Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Contractor hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Contractor shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Contractor.

10.10 NOTICES

- A. Method of Serving Notices. Any and all notices required under this Contract (each, a "Notice") shall be in writing and shall be deemed delivered:
1. Three (3) Business Days after being posted by certified or registered mail to the other party's contact person at the address specified below;
 2. One (1) Business Day after being sent by recognized national overnight courier service to the other party's contact person at the address specified below;
 3. On the same Day when sent by facsimile to the contact person at the designated facsimile number of the party with confirmed receipt, provided the facsimile is sent on a Business Day and prior to 3:00 pm on that Business Day, and otherwise, the Notice shall be deemed delivered one (1) Business Day after being sent by facsimile with confirmed receipt;
 4. On the same Day when delivered in person to an Authorized Representative of the other Party on the Development Site; or
 5. On the same Day when delivered via email to Owner's Project Manager by 3:00 pm.
- B. Owner's Address. The Owner's address for all Notices, other than those certain submittals described in the next paragraph, shall be:

Seattle Housing Authority
101 Elliott Avenue W, Suite 100
PO Box 79015

Seattle, WA 98119
Contact Person: _____
Email: _____@seattlehousing.org

Submittals of Performance and Payment Bond and Proof of Insurance, and submittal of Prevailing Wage, EEO, Apprentice Utilization, Section 3 Resident Utilization, WMBE, and Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses information and reports will be addressed to:

Seattle Housing Authority
101 Elliott Avenue W, Suite 100
PO Box 79015
Seattle, WA 98119
Contact Person: _____
Email: _____@seattlehousing.org

C. Contractor's Address. The address of the Contractor for all Notice shall be:

Contact Person: _____
Email: _____

D. Change in Notice Address.

Either party may change its address and contact person for Notice by delivering a Notice of such change to the other party in accordance with this Article 10.

E. Importance of Contractor Compliance with Notice Requirements. The Contract Documents contain many important provisions regarding delivery of notices, particularly with regards to delays, adjustments in Contract Sum or Contract Time, and other claims. Contractor's failure to comply with the applicable notice requirements in the Contract Documents, whether in terms of timely delivery or delivery in required form and substance, can and will result in the absolute forfeiture, waiver, bar and release of rights, remedies, and claims that Contractor might otherwise have against Owner.

10.11 LABOR AND INDUSTRIES REQUIRED DOCUMENTS FOR HUD-FUNDED PROJECTS

Contractors must comply with the Prevailing Wage Policy Memorandum No. 04202011, dated April 20, 2011, from the state of Washington's L&I regarding HUD Housing Projects –Federal Preemption; The Housing Act of 1937; and 24 CFR 965.101; accessible on Labor and Industries website at https://lni.wa.gov/licensing-permits/_docs/HUDHousingProjects-HousingActOf1937.pdf. Pursuant to this Directive from the state of Washington, regardless of the federal wage preemption, contractors are required to file the Statement of Intent to Pay Prevailing Wages & the Affidavit of Wages Paid forms on HUD Housing Projects. This

requirement is in addition to the observance of the required federal labor standards requirements specified in the Contract Documents.

PART 11 - FEDERAL PROVISIONS

These provisions supplement other provisions in this Contract.

11.01 PROHIBITION AGAINST USE OF LEAD-BASED PAINT

The Contractor shall comply with the prohibition against the use of lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

11.02 FEDERAL HEALTH, SAFETY, AND ACCIDENT PREVENTION

- A. In performing this contract, the Contractor will ensure that no laborer or mechanic will be required to work in surroundings or in or under any working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- B. For these purposes, the Contractor will comply with section 5.07 and with regulations and standards issued by the Secretary of Labor at 29 CFR Parts 1904 and 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C 3701-3708).
- C. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (A). "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.

11.03 CLEAN AIR AND WATER

- A. This section is applicable to contracts in excess of \$150,000.
- B. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.
- B. In compliance with regulations issued by the United States Environmental Protection Agency (EPA), 40 CFR Part 15, pursuant to the Clean Air Act, as amended ("Air Act"), 42 U.S.C. 7401-7671q, et seq., the Federal Water Pollution Control Act, as amended ("Water Act"), 33 U.S.C. 1251-1387, et seq., and Executive Order 11738, the Contractor agrees to:

1. Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to Part 15 of the regulations for the duration of time that the facility remains on the list;
2. Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
3. Comply with all requirements of the Air Act and the Water Act, including the requirements of Section 114 of the Air Act and Section 308 of the Water Act, and all applicable clean air and clean water standards; and
4. Include or cause to be included the provisions of this clause in every subcontract, and take such action as HUD may direct as a means of enforcing such provisions.

11.04 ENERGY EFFICIENCY

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201) for the State in which the work under the contract is performed.

11.05 SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE, AND LABOR SURPLUS AREA FIRMS

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to qualified small business firms, minority firms, women's business enterprises, and labor surplus area firms:

- A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- B. Ensuring that qualified small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by qualified small and minority businesses and women's business enterprises;
- D. Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by qualified small and minority businesses and women's business enterprises; and
- E. Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

11.06 EQUAL EMPLOYMENT OPPORTUNITY

- A. Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- B. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973 as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Owner, or the Secretary of Labor for purposes of investigation to ascertain compliance with this section of the Contract, and/or such rules, regulations, and orders.
- C. In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- D. Contractor shall include the terms and conditions of this clause in every subcontract or purchase order so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

11.07 SECTION 3 - CREATING ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS AND ELIGIBLE BUSINESSES

Contractor will comply with Section 3 and with this Section 11.07.

- A. The work to be performed under this contract is subject to the requirements of Section 3.
- B. Contractor will require its subcontractors to comply with Section 3. As evidenced by its execution of this Contract, Contractor certifies that it is under no contractual or other impediment that would prevent it from complying with Section 3.
- C. Contractor will include this Section 3 clause in every subcontract will take all necessary steps to ensure compliance with Section 3 by its subcontractors. Upon a finding that a subcontractor is in violation of Section 3, Contractor will take appropriate action, as

provided in an applicable provision of the subcontract or in this Section 3 clause. Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of Section 3.

- D. Contractor will provide certifications in form and substance required by Owner, at such times as Owner may request, certifying Contractor's compliance with Section 3, and as to such facts and circumstances pertaining to Section 3 as Owner may require or request, including certification with respect to total number of labor hours worked under this Contract, labor hours worked by Section 3 Workers (as defined in Section 3), and labor hours worked by Targeted Section 3 Workers (as defined in Section 3).
- E. Contractor's noncompliance with Section 3 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- F. Contractor agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions and intent of this Section 11.07 or otherwise to ensure compliance with Section 3.

11.08 INTEREST OF MEMBERS OF CONGRESS

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

11.09 INTEREST OF MEMBERS, OFFICERS, OR EMPLOYEES, AND FORMER MEMBERS, OFFICERS, OR EMPLOYEES

During his or her tenure or for one year thereafter, none of the following classes of people may have an interest, direct or indirect, in this contract or the proceeds thereof:

- A. Any present or former employee or officer of the governing body of Owner, or any member of the officer's immediate family. There is excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, SHA or a business entity.
- B. Any employee of Owner who formulates policy or who influences decisions with respect to the Project, or any member of the employee's immediate family, or the employee's partner.
- C. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the Project or Owner.

11.10 LIMITATIONS ON PAYMENTS MADE TO INFLUENCE CERTAIN FEDERAL FINANCIAL TRANSACTIONS

- A. The Contractor agrees to comply with Section 1352 of title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.
- B. The Contractor further agrees to comply with the requirement of the aforementioned act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

11.11 EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS

- A. Owner, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until three (3) years after final payment under this contract, have access to and the right to examine any of the Contractor's, Sub-Contractor's and Supplier's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- B. The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (A). "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- C. The periods of access and examination in paragraphs (a) and (b) above for records relating to: (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which Owner, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

11.12 LABOR STANDARDS – DAVIS-BACON AND RELATED ACTS

If the total amount of this Contract exceeds \$2,000, the Davis-Bacon and Related Acts Federal labor standards shall apply to the construction work to be performed under the contract, and all rulings, implementing regulations, and interpretations of the Davis-Bacon

and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

Davis-Bacon wage decisions may be accessed or obtained via <https://sam.gov> and the "Prevailing Wage Compliance" page on Seattle Housing Authority website <https://www.seattlehousing.org/do-business-with-us/prevailing-wage-compliance>.

This section 11.12 does not apply if the construction work has been determined to be "Nonroutine Maintenance." See section 11.13.

11.13 LABOR STANDARDS – HUD-DETERMINED NON-ROUTINE MAINTENANCE

For contracts exceeding \$2,000 and for which HUD has determined that the construction covered by this Contract consists of non-routine maintenance (as defined in 24 CFR 905.100) necessary for the operation of the Public Housing project, the labor standards set forth in HUD-5370-C and the provisions of Section 12 of the United States Housing Act of 1937 which pertain to such work shall apply.

HUD-5370-C form has two sections. These sections shall be incorporated in this Contract in the following manner:

- A. Maintenance contracts (including nonroutine maintenance as defined in 24 CFR 905.100) greater than \$2,000 but not more than \$250,000 - use Section II; and
- B. Maintenance contracts (including nonroutine maintenance), greater than \$250,000 — use Sections I and II.

11.14 COMPLIANCE WITH COPELAND ACT REQUIREMENTS

The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

11.15 NON-FEDERAL PREVAILING WAGE RATES

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever either of the following occurs:

- A. Such non-Federal prevailing wage rate exceeds: (1) the applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trade; (2) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor or a DOL-recognized State Apprenticeship Agency; or (3) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

- B. Such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

11.16 PROCUREMENT OF RECOVERED MATERIALS

- A. In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (“EPA”) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- B. Paragraph (A) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State, and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

11.17 BUILD AMERICA, BUY AMERICA ACT COMPLIANCE

- A. Pursuant to the Build America, Buy America Act (“BABAA”), enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, Contractor shall apply a domestic content procurement preference (the “Buy America Preference” or “BAP”) for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Absent an approved waiver by HUD, all iron, steel, manufactured products, and construction materials used in this project must be produced in the United States, as further outlined by the Office of Management and Budget’s Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure, April 18, 2022 and HUD Notice 2024-01 pihn (January 3, 2024) (HA), as such guidance may be supplemented or revised from time to time by HUD. Installation of materials or products that are not compliant with BABAA requirements shall be considered defective work. Additional information may be found at <https://www.hud.gov/baba>.
- B. Contractor shall comply with BABAA requirements and shall ensure all products meet BABAA requirements, which shall include, but are not limited to the following:

1. Review and approve or take action with respect to Shop Drawings, samples, and other required Contractor submittals, including applications for payment, to ensure compliance with BABAA.
 2. Review substitutes and “or equals” for conformity with contract conditions, HUD regulations, and BABAA requirements.
 3. Coordinate with manufacturers, distributors, and suppliers to correct deficiencies in any BABAA documentation.
 4. Obtain and review manufacturers’ and subcontractors’ certifications on compliance with BABAA requirements and maintain copies of certifications in project files.
 5. Assist Owner, if needed, in due diligence related to any BABAA waiver request.
 6. For any change orders, Contractor shall provide BABAA documentation for any new products or materials required by the change.
 7. Confirm that any opinions of total project costs and revisions thereof reflect compliance with BABAA requirements.
 8. Determine and certify that to the best of Contractor’s knowledge and belief all iron and steel products, manufactured products, and construction materials referenced in any technical analysis/report; the plans, specifications, and bidding documents; any bid addenda; and change orders comply with all federal requirements, including BABAA. By submitting an application for payment, based in whole or in part on furnishing equipment or materials, Contractor certifies that such equipment and materials, to Contractor’s knowledge, are compliant with BABAA requirements.
- C. Contractor shall include the terms and conditions of this clause in every subcontract or purchase order so that these terms and conditions will be binding upon each subcontractor or vendor, and agrees to take appropriate action, upon a finding that the subcontractor or vendor is in violation of BABAA. Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of BABAA.

PART 12 – SECTION 3 AND RELATED REQUIREMENTS

12.01 EMPLOYMENT AND TRAINING GOALS AND REQUIREMENTS

A. Apprentice Utilization Goals

For contracts estimated to cost one million dollars or more, the Contractor shall ensure that apprentices, registered with the Washington State Apprenticeship and Training Council (“WSATC”), perform at least 15% of the total Contract labor hours on this Project.

1. Total Contract labor hours include the hours worked by supervisors, foremen, and superintendents if it is determined that they are subject to prevailing wage requirements pursuant to WAC 296-127-015 or federal labor standards and all hours worked as a result of change orders.

Total Contract labor hours do not include hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements.

2. The Contractor shall include the apprentice utilization requirements in all subcontracts executed under this Contract and ensure that all subcontractors are notified of the apprentice utilization requirements.
3. The Contractor shall use good faith efforts to meet the 15% apprentice utilization requirements of the Contract, including overall compliance on all Contract labor hours worked by subcontractors.
4. The Contractor shall comply with the apprenticeship training standards for each trade/craft classification used on the Project, as set forth by the Washington State Department of Labor and Industries.

B. Apprentice Utilization Monitoring and Enforcement

1. The Owner's Representative will verify the registration of each apprentice used on the Project with the Washington State Apprenticeship and Training Council.
2. The Owner's Representative will monitor the apprentice utilization data provided by the Contractor. If the Contractor is deficient in its use of apprentices, the Owner's Representative will meet with the Contractor to discuss the reasons for the deficiency and help the Contractor develop a written Plan for rectifying the deficiency.
3. The Owner's Representative will make routine visits to the Site for the purpose of confirming the use of apprentices. The Contractor will provide access to the site to the person designated by Owner to make visits to the Site for the purpose of confirming the use of apprentices. The person designated will be required to abide by any applicable work rules and safety Plan.

12.02 WOMEN AND MINORITY BUSINESS AND SECTION 3 BUSINESS UTILIZATION GOALS AND REQUIREMENTS FOR ALL FEDERALLY FUNDED PROJECTS

- A. Women and Minority Business Enterprise (WMBE) Subcontractor Utilization Goal and Plan for all federally-funded projects.**

The Owner's aspirational goal for WMBE utilization is 14%. As part of the Community Participation Plan to be submitted with the Bid or as otherwise specified, the Contractor/Bidder shall document its plans for how it intends to solicit the participation of, and encourage the utilization of Small, Minority and Women Business Enterprises (hereinafter "WMBEs") on the Project. Consistent with the requirements of federal regulation HUD 2 CFR 200, the Bidder's plan must demonstrate the Bidder's commitment to take all necessary affirmative steps to provide contracting opportunities for WMBEs to the greatest extent possible. Such efforts shall include, but will not be limited to:

1. Consider WMBE firms, including but not limited to:

- (a) These business types are included on solicitation lists;
- (b) These business types are solicited whenever they are deemed eligible as potential sources;
- (c) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- (d) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- (e) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (f) Requiring a contractor under a Federal award to apply this section to subcontracts..

B. Section 3 requirements for all federally-funded projects.

- 1. Owner shall apply a 25% Section 3 Worker labor hour goal and 5% Targeted Section 3 Worker labor hour goal for this Project, including the Contractor and Subcontractors of all tiers.
- 2. Contractor will document in the Community Participation Plan to be submitted with the bid, or as otherwise specified, use its best efforts to meet the requirements above with respect to the work to be performed under this Contract. Contractor's efforts may include working closely with the Owner's job assistance offices to help identify potential Section 3 Workers and taking other actions or implementing procedures as Owner may reasonably request from time to time in order to maximize the number of labor hours performed by Section 3 Workers.

12.03 REPORTING REQUIREMENTS

- A. Contractor, for itself and all subcontractors, will submit to the Owner's Representative a monthly report in form and substance acceptable to Owner. Each monthly report is due no later than the time specified for the Contractor's Monthly Pay Application. If the reports are not submitted in a timely manner, the Contractor's progress payment for that month will not be processed.
- B. Contractor will report apprentice utilization data required by Owner beginning on the first day of work for each person. Contractor's first submittals are due at the end of the first month after the Contract start date specified in the Notice to Proceed, and at monthly intervals thereafter as specified above. Subcontractor submittals are due at the end of the month after they commenced work and monthly thereafter as specified above.
- C. Contractor will report the following information, or such additional information as required by Owner, on each apprentice:
 - 1. Apprentice's Name,
 - 2. Home Zip Code,
 - 3. Employment Status,
 - 4. Section 3 status,
 - 5. Trade/Craft,
 - 6. State Apprentice Registration I.D. Number,
 - 7. Program Sponsor and/or Hiring Source,
 - 8. Apprentice Progression Period or Percentage,
 - 9. Ethnicity/Gender, and
 - 10. Labor hours for Reporting Period by Ethnicity/Gender.
- D. Contractor will report the following information, or such additional information as required by Owner, on all apprentices:
 - 1. Total labor hours and number of apprentice employees for reporting period by ethnicity and gender,
 - 2. Total apprentice labor hours and number of employees to-date,
 - 3. Other information as noted on the form.

E. Contractor will report the following information, or such additional information as required by Owner, on journey level employees:

1. Labor hours for reporting period by ethnicity and gender, for each trade/craft,
2. Labor hours for reporting period for Section 3 employees,
3. Total labor hours for Section 3 employees,
4. Total journey level labor hours by ethnicity and gender, for each trade/craft,
5. Total labor hours and number of journey level employees for reporting period by ethnicity and gender,
6. Total journey level labor hours and number of employees to-date, and
7. Summary information as noted on the reporting form.

F. WMBE and Section 3 Business Reporting Requirements.

1. On a weekly basis and in a form acceptable to Owner, Contractor shall submit to Owner's Representative a Subcontractors on Site Report which shall be completed by the Contractor for all Subcontractors performing work on the Contract for the previous week.
2. On a monthly basis, on a form acceptable to Owner, Contractor will document the Contractor's progress in meeting its Section 3 and WMBE goal commitments.

G. Contractor will submit such other information as may be requested by Owner to verify compliance with the requirements of the Contract. Owner reserves the right to add, delete, or change as necessary, the information required.

H. Monthly Community Participation Plan Meetings. Contractor may be required to attend the Owner's monthly Section 3 Advisory Committee meetings to discuss implementation of the Community Participation Plan throughout the duration of the Project. At Owner's request, Contractor will ensure that specified subcontractor(s) attend the meeting.

12.04 VIOLATIONS

Any material violation of the mandatory requirements of the Contract will be considered a breach of the Contract and the Owner may withhold payment, stop the work for cause, or terminate the Contract for cause pursuant to the terms of the Contract.

END OF SECTION 00700

SUPPLEMENTARY CONDITIONS TO THE GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

Where the basis of percent fee is MACC

The following supplements shall modify, delete, and/or add to the RFCP for 14378 30TH AVE NE Affordable Housing (the "RFCP #6039"), including but not limited to Section 00700 General Conditions (the "General Conditions"). Where any article, paragraph, or subparagraph in the General Conditions is supplemented by one of the following paragraphs, the provisions of such article, paragraph, or subparagraph shall remain in effect and the supplemental provisions shall be considered as added thereto. Where any article, paragraph, or subparagraph in the General Conditions is deleted and replaced by one of the following paragraphs, the provisions of such article, paragraph, or subparagraph shall be removed. The supplements referenced within this section are identified with the same number and title used for that topic in the General Conditions.

MODIFICATIONS TO SECTION 00700 GENERAL CONDITIONS

1) SC PART 1 GENERAL PROVISIONS

1.01 DEFINITIONS

Delete paragraph H in its entirety and replace with the following:

H. "Contract" or the **"Public Work Contract"**, means the written agreement between the General Partner of 14378 30TH AVE NE LLLP, herein referred to as "SHA" or "Owner" and [] (the "Contractor") for construction of 14378 30TH AVE NE Affordable Housing.

Delete paragraph I in its entirety and replace with the following:

I. "Contract Documents" consist of the Public Works Contract, General Conditions, Supplementary Conditions, Drawings, Specifications, Addenda issued prior to execution of the Public Works Contract and modifications (include Change Orders and Field Directives) issued after execution of the Public Works Contract. For federally-funded projects, the Contract Documents also include the applicable wage rate determinations from either the U.S. Department of Labor or Housing and Urban Development.

Unless specifically specified in the Public Work Contract, the Contract Documents do not include the Advertisement for Bids or Proposals, Instructions for Bidders or Proposers, completed Bid or Proposal Form, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, or portions of Addenda related to bidding requirements.

1.02 ORDER OF PRECEDENCE

Delete Article 1.02 in its entirety and replace with the following:

In the event of a conflict or discrepancy among or in the Contract Documents, interpretation shall be governed in the following priority, with an Addendum or a revision to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

1. Public Work Contract;
2. Supplementary Conditions;
3. General Conditions;
4. Specifications, material and systems schedules, Drawings (large-scale having precedence over small-scale, and written or computed dimensions having precedence over scaled dimensions).

If there is any inconsistency between the Drawings, material and system schedules or Specifications, the Contractor shall make an inquiry to the Owner and the Owner's Architect to determine how to proceed. Unless otherwise ordered in writing by the Owner or by the Architect as instructed by the Owner, the Contractor shall provide the better quality of, of the greater quantity of, any work or materials, as reasonably interpreted by the Architect or the Owner, at no change in the GCC or Contract Time. In the event that Work is shown on Drawings but not contained in Specifications or schedules or contained in the Specifications or schedules but not shown on Drawings, the Work as shown or described shall be provided at no change in the GCC or Contract Time.

2) SC PART 2 INSURANCE AND BONDS

Unless otherwise specified in the Public Works Contract, the following shall be included and incorporated as the "Insurance and Bond Requirements" under PART 2 INSURANCE AND BONDS of the General Conditions:

PART 2 – INSURANCE AND BONDS:

2.01 CONTRACTOR'S LIABILITY INSURANCE

A. General Requirements:

1. Prior to undertaking any work under this Contract and for the duration of this Contract, Contractor will procure and continuously maintain at its own expense, insurance coverage as specified in this section, covering performance of the Work under this Contract by Contractor and its agents, representatives, employees and/or Subcontractors.

2. Contractor's insurance will be primary and non-contributory as respects any insurance or self-insurance maintained by Owner, and will include a severability of interests clause for applicable coverages.
3. Owner reserves the right to waive or modify any of the insurance requirements of this contract at its sole discretion, or as may be required by SHA transactional or financial partners.
4. Coverage will be placed with financially sound and responsible companies acceptable to Owner which are authorized to do business in the state of Washington.
5. Contractor's policies will provide waivers of subrogation by endorsement or otherwise when applicable.

B. Required and Optional Insurance Coverage. Contractor will maintain and provide evidence of insurance in the following types and amounts:

1. Commercial General Liability Insurance. A policy of Commercial General Liability insurance and if necessary, commercial umbrella insurance including bodily injury, property damage, and products/completed operations, written on an industry standard form (GC 0001 or equivalent) occurrence form, with limits of at least \$15,000,000 each occurrence, and \$15,000,000 in the aggregate.

Coverage will extend to cover the use of any mobile equipment on the site or sites of the work of this contract.

In the event that the services to be provided under this Contract involve the Contractor's unsupervised access to by minor children, and/or elderly, disabled or vulnerable adults as defined in RCW 74.34.020, the Contractor may be asked to provide evidence that sexual misconduct coverage has not been excluded from the policy. Acceptable evidence of sexual misconduct coverage is subject to approval by SHA's Risk Manager.

2. Employers Liability or Washington Stop Gap Liability. A policy of Employers Liability, or a Washington Stop Gap Liability insurance, and, if necessary, commercial umbrella insurance, with limits of at least \$15,000,000 each accident/ occupational disease.
3. Commercial Business Auto Coverage. A policy of Commercial Business Auto Coverage, and if necessary, commercial umbrella insurance, including coverage for on owned, non-owned, leased, or hired vehicles written on an insurance industry standard form (CA 00 01) or equivalent, with limits of at least \$15,000,000 per accident.

4. Workers Compensation Insurance. Contractor will provide coverage in accordance with the provisions of Title 51 of the Revised Code of Washington (RCW).
5. Contractor's Pollution Legal Liability Insurance. Contractor and, if applicable, Contractor's Transporter, will provide pollution legal liability policy applicable to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims; all in connection with any loss arising from the insured facility. Coverage will be maintained in an amount of at least \$5,000,000 per loss, with an annual aggregate of at least \$5,000,000.
 - a. Coverage will apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants.
 - b. If coverage is provided on a claims-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed.
6. Professional Liability/Errors and Omissions Insurance. If required by Owner a policy of Errors and Omissions or Professional Liability insurance appropriate to the Contractor's licensed profession with limits of at least \$5,000,000 per occurrence and in the aggregate.
7. Information Privacy and Security Liability Insurance. If required by Owner a policy of Cyber Liability, or Information Security and Privacy, insurance, including both first- and third-party coverage, and covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion and network security with minimum limits of \$5,000,000 on each occurrence.

Coverage may be provided by either a stand-alone policy or included within the Professional Liability policy.
8. Commercial Crime Insurance/ Employee Theft Insurance. If required by Owner a policy of Commercial Crime Insurance/ Employee Theft Insurance, including third party coverage in favor of Owner with limits of at least \$2,000,000 per occurrence and in the aggregate.

9. Railroad Protective Liability Insurance. If required by Owner, Contractor shall maintain railroad protective liability ("RRP") insurance on behalf of Railroad specified by Owner as a named insured, with a limit of \$3 million for each occurrence and \$6 million for the annual aggregate.

C. Proof of Insurance and Insurance Expiration:

1. Contractor will furnish certificates of insurance (and policy endorsements if needed) as evidence of compliance with the insurance requirements of the order. All certificates shall reference Owner's project number and title.
2. SHA, any limited liability partnership for which SHA serves as managing agent, and any project investors will be named as Additional Insureds on all liability policies of the Consultant other than professional liability policies.
3. Owner reserves the right to request complete copies of all required insurance policies at any time during the term of the contract.
4. If subcontractors will perform work under this contract, Contractor will:
 - a. Include all subcontractors at any tier as insureds, and ensure that the Contractor's coverage of subcontractors under the Contractor's policies is not excluded by any policy provision or endorsement, or, alternatively,
 - b. Obtain from each subcontractor not insured under the Contractor's policy or policies of insurance, evidence of insurance meeting all the requirements of this order and maintain such evidence on file for a period of one year after the completion of this order and, upon request, submit such evidence to SHA for examination.
5. The Contractor's insurance will not be reduced or canceled without forty-five (45) days prior written notice to SHA.

2.02 PAYMENT AND PERFORMANCE BONDS

- A. Payment and performance bonds for 100% of the Contract Sum, including all Change Orders and state sales tax, shall be furnished for the Work, and shall be in a form acceptable to the Owner.
- B. Prior to Contract execution, Contractor shall provide provisional Payment and Performance bonds to Owner for review and approval along with the Contract bearing Contractor's signature.

- C. Within seven (7) calendar days of Contract execution, Contractor shall deliver originals of the approved Payment and Performance bonds to Owner. An extended period for delivery of the original bonds may be granted by Owner based upon reasons determined adequate by Owner at its sole discretion.
- D. Failure to furnish original Payment and Performance bonds within the time specified after Contract execution may render Contractor ineligible for award.
- E. The Contractor will be required to add the Limited Partnership of which SHA is the managing partner, and any affiliate partners, as multiple obligees as a requirement for funding the project.

2.03 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:

- A. Owner has a reasonable objection to the surety; or
- B. Any surety fails to furnish reports on its financial condition if requested by Owner.

2.04 BUILDERS RISK INSURANCE

- A. When applicable, Owner shall purchase and maintain, or require Contractor to purchase and maintain, Builders Risk insurance in the amount of the Contract Sum, including all adjustments thereto by Change Order, on a replacement cost basis until issuance of a Temporary Certificate of Occupancy for the Project. The Builders Risk insurance shall cover the interests in the Work of the Owner by the Contractor and Subcontractor of any tier. Coverage shall be on a special causes of loss form, and include coverage for materials stored offsite and in transit up to \$5 million per location and per conveyance. Coverage for the perils of earth movement, flood, and terrorism shall be excluded except at Owner's sole discretion, or as required by Project investors. Contractor shall be responsible for payment of deductibles from any Builders Risk insurance policy purchased by Owner, which deductibles shall be disclosed prior to binding and specified in the Supplementary Conditions section. Deductibles for policies purchased by either party may be subject to increase or decrease from time

to time upon prior written notice to the other party and prior approval by any investors in the Project.

- B. Builders Risk insurance placed by Owner will not include coverage for Contractor's or Subcontractor's owned, hired, or leased property or tools, equipment, or supplies used for the construction and not intended to form a permanent part of the Work. Contractor and Subcontractor shall be responsible for any such equipment and may insure it at their sole discretion.
- C. Owner and Contractor waive all subrogation rights against each other, any Subcontractors, A/E, A/E's subconsultants, separate contractors described in section 5.19, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by Builders Risk insurance obtained pursuant to this section or other property insurance applicable to the Work, except for such rights as they have to proceeds of such insurance held by Owner as fiduciary. The Builders Risk and any property policies shall provide waivers of subrogation by endorsement or otherwise. Each waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

2.05 CRIMINAL BACKGROUND CHECKS

Criminal Background Investigation: Contractor shall conduct criminal background investigations of all employees, volunteers, subcontractors and sub-consultants performing any work which may reasonably be expected to have direct or incidental contact with SHA residents, SHA staff members, or vulnerable populations, unless amended or waived in writing by SHA. In addition, criminal background investigations shall be performed for any person performing work under this Contract who needs special entry into SHA buildings, is given temporary use of an SHA building-access card or who collects payments of any kind.

Criminal background investigations shall include, but not necessarily be limited to, a Washington State Patrol background report or if the employee, volunteer, subcontractor or subconsultant resides in a state other than Washington, a background report obtained from the state patrol office where the employee, subcontractor or subconsultant has resided for the last three (3) years. In the event a background check provides evidence of a felony conviction within the past seven (7) years, the results of that investigation shall be disclosed to the SHA Project Manager. If any person performing work under this Contract is charged with a felony, the Contractor agrees to remove that person from

performing any further work on the project unless and until SHA agrees in writing to allow the person to continue.

3) SC PART 3 – TIME AND SCHEDULE

1.07 Damages for Failure to Achieve Timely Completion

Delete Part 3.07 Paragraph A. Liquidated Damages Subparagraph 1. in its entirety and replace with the following:

A. Liquidated Damages

1. Timely performance and completion of the Work is essential to Owner and time limits stated in the Contract are of the essence. Owner will incur serious and substantial damages if Substantial Completion and Final Completion of the Work does not occur within the Contract Time. However, it would be difficult if not impossible to determine the exact amount of such damages. Consequently, liquidated damages of **\$2,100/day the first thirty days after the end of the Contract Time (i.e., days 1-30), \$2,600/day for the next thirty days after the end of the Contract Time (i.e., days 31-60), and \$3,300/day from then on (i.e., days 61 – Substantial Completion) will be assessed.**

4) SC PART 3 CHANGES IN THE CONTRACT SUM

7.01 Changes in the Work

Delete 7.01 paragraph C in its entirety and replace with the following:

C. Upon receipt of the Change Order Proposal, or a request for equitable adjustment in the Contract Sum or Contract Time, or both, as provided in sections 7.02 and 7.03, Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Contractor. Pending agreement on the terms of the Change Order Proposal, Owner may direct Contractor to proceed immediately with the Change Order Proposal Work. Contractor shall proceed with any change in the Work only after it has obtained Owner's approval. All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.

Notwithstanding anything to the contrary under Part 7, it is the intent of the parties that when the GCC is set, the Contractor will have participated in and be aware of the proposed and existing Project site conditions and design for the Project; it is further intended that the GCC will include all elements necessary to complete the Work in accordance with the Contract Documents, and that Change

Orders adjusting the Contract Sum will therefore not be necessary except in limited circumstances as set forth below. Accordingly, the Contract Sum shall be adjusted principally for the following events:

1. **Owner revisions to scope items** previously approved by the Owner and incorporated in the pricing of the GCC;
2. **Concealed or unknown conditions** as described in 5.10 of the General Conditions;
3. **Cost incurred as a result of changes in regulatory requirements** when such requirement changes happen after the MACC is established and accepted by the Owner. For clarity, "regulatory requirements" shall not include inspection or other enforcement based on pre-existing requirements of the building permit;
4. **Significant errors or omissions in the Drawings or Specifications** that could not reasonably have been anticipated or discovered by the Contractor before the MACC is established and accepted by the Owner. Design errors and omissions shall not include, for example and not intended as an inclusive list: failure to coordinate between trades, design changes made at the request of the Contractor in order to facilitate the constructability of the Project.
5. **Allowance adjustments** .

7.02 Changes in the Contract Sum

Delete Paragraph 7.02B and all its subparagraphs in its entirety and replace with the following:

B. Change Order Pricing -- Fixed Price

Subject to 7.01, when the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply:

1. Contractor's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, subcontractor costs, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.
2. All costs shall be calculated based upon appropriate industry standard methods of calculating current Contractor labor rates

for the Project and local material prices and local equipment costs.

3. If any of Contractor's pricing assumptions are contingent upon anticipated actions of Owner, Contractor shall clearly state them in the proposal or request for an equitable adjustment.
4. The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Contractor or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.
5. If the total cost of the change in the Work or request for equitable adjustment does not exceed \$2,500, Contractor may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:
 - a. lump sum labor;
 - b. lump sum material;
 - c. lump sum equipment usage;
 - d. overhead and profit as set forth below; and
 - e. insurance and bond costs as set forth below.
6. Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:
 - a. Craft labor costs: These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
 - (1) Basic wages and benefits: Hourly rates and benefits according to applicable prevailing wages. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.

- (2) Workers Compensation Insurance: Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the State Department of Labor and Industries.
 - (3) Federal insurance: Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
 - (4) Safety: Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.
- b. Material costs: This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides for the local area. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges shall be itemized.
- c. Equipment costs: This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used entirely and exclusively for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources in the order in which they are listed:
- (1) Associated General Contractors - Washington State Department of Transportation Equipment Rental Agreement; latest edition;
 - (2) The state of Washington Utilities and Transportation Commission for trucks used on highways.
 - (3) The National Electrical Contractors Association for equipment used on electrical work.
 - (4) The Mechanical Contractors Association of America for equipment used on mechanical work.

The most recent edition of the Data Quest Rental Rate (Blue Book) shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, latest edition.

d. Allowance for small tools, expendables & consumable supplies: Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:

(1) For Contractor, 1% of direct labor costs.

(2) For Subcontractors, 2% of direct labor costs.

Expendables and consumable supplies directly associated with the change in Work must be itemized.

e. Subcontractor costs: This is defined as payments Contractor makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Contractor.

f. Allowance for Specified General Conditions: This is defined as costs of any kind, except Fee and Overhead, attributable to direct and indirect delay, acceleration, or impact, added to the total direct cost to Owner of any change in the Contract Sum but not to the cost of any change in the Contract Time for which contractor has been, or could have been (had Contractor filed a sufficient, timely claim), compensated pursuant to the conditions set forth in Section 7.03. This allowance shall compensate Contractor for all increased cost for items identified in the contract as Specified General Conditions, directly attributable to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:

(1) For Contractor, for any Work actually performed by Contractor's own forces, 3% of the cost.

(2) For each Subcontractor for any Work actually performed by its own forces, 5% of the cost.

(3) For Contractor, for any Work performed by its Subcontractor(s), 3% of the cost.

- (4) For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, no additional percentage allowance.

The cost to which Specified General Conditions is to be applied shall be determined in accordance with subparagraphs a.-e. above. The Fixed Amount for Specified General Conditions shall not increase on any change order during construction unless the contract increases by 10% or more. Any change to the Fixed Amount for Specified General Conditions shall be strictly limited in all cases to a reasonable, mutually acceptable, amount, subject to an aggregate maximum of 6%.

- g. Allowance for Contractor's Fee: This is an amount to be added to the direct cost of any change in Contract Sum, but not to the cost of change in Contract Time for which Contractor has been, or could have been (had Contractor filed a sufficient, timely claim), compensated pursuant to the conditions set forth in section 7.03. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:

- (1) For Contractor for work performed by Contractor's own forces, the cost developed in accordance with 7.02B.6a.- e. above multiplied by the Contractor's Fee % stated in the contract.
- (2) For Contractor for work performed by its Subcontractor(s), the Subcontractor cost developed in accordance with 7.02 B.6 a. – e. less the Subcontractor(s)' profit, multiplied by the Contractor's Fee % stated in the contract.
- (3) For subcontractors of any tier, for work performed by its own forces, 5% of the cost developed in accordance with 7.02.B.6a-e above.
- (4) For Subcontractors of any tier for work performed by a subcontractor of a lower tier, no additional percentage allowance.

- h. Cost of change in bond premium: This is defined as:

- (1) Public works bond(s): The cost of the additional premium, if any, for Contractor's bond(s) arising directly from the changed Work, as evidenced by a rider to the original contract bond(s)

i. Contractor's Overhead: This is an amount to be added to all other costs of any change in contract sum, but not to the cost of change in Contract Time for which Contractor has been, or could have been (had contractor filed a sufficient, timely claim), compensated pursuant to the conditions set forth in section 7.03. This amount shall be calculated after Fee and Specified General Conditions are agreed to or calculated in accordance with subparagraphs f. through i. above, by applying the Overhead % stated in the Contract. This amount is allowed to the Contractor and subcontractors of any tier.

END OF SECTION 00800

CERTIFIED PAYROLL, SECTION 3 AND RELATED REPORTING

In order to meet the reporting requirements of the Contract documents with regards to certified payroll and Section 3 and Related reporting, the Contractor will be required to submit Certified Payrolls.

The Contractor is responsible for the accuracy and completeness of the information submitted to SHA. In addition, the Contractor is responsible for the full compliance of the labor standards provisions applicable to the Project for itself, its subcontractors, and all lower-tier subcontractors that have engaged the service of laborers or mechanics on the Project.

Submission of Certified Payroll Documentation: Before payment is made to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, all certified payroll documentation including but not limited to, payroll reports (for Contractor and subcontractors) for the period covered in the application for payment, and applicable Authorization to Sign Payroll Form must be submitted to SHA for compliance review.

1. Statement of Intent to Pay Prevailing Wages: Before payment is made to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the Contractor shall submit, or shall have previously submitted to SHA for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
2. Submission of Certified Payroll Documentation: Before payment is made to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, all certified payroll documentation including but not limited to, payroll reports (for Contractor and subcontractors) for the period covered in the application for payment, and applicable Authorization to Sign Payroll Form must be submitted to SHA for compliance review.
3. Affidavit of Wages Paid: Prior to the SHA's acceptance of the Contract, the Contractor shall submit to SHA an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed work on the Project.

END OF SECTION 00820

WAGE RATE SCHEDULES

This is a federally funded project, subject to HUD Wage Determination. Included in this solicitation are Davis Bacon Residential wage rates, for general reference.

PLEASE NOTE: HUD will make the final and binding Wage Determination which will be included as part of the MACC Construction Contract.

END OF SECTION 00830

SEATTLE HOUSING AUTHORITY
CONTRACTOR PERFORMANCE EVALUATION PROGRAM

I. POLICY

The Seattle Housing Authority, through its Purchasing Division, is charged with the responsibility of ensuring that all public construction projects are awarded to the lowest responsive, responsible bidder, and are performed in compliance with the contract documents, and state and federal laws and regulations. The Seattle Housing Authority (SHA) is responsible to the taxpayers to oversee the expenditure of public funds, and to secure the best possible results for that expenditure. To assist the Seattle Housing Authority in evaluating a Contractor's or subcontractor's responsibility, as well as its performance on SHA contracts, the Contractor Performance Evaluation Program has been developed. The implementation of a mandatory, standardized system of evaluating Contractors' and subcontractors' performance is expected to yield consistency, objectivity, fairness, and accountability.

II. PURPOSE

The purpose of the Contractor Performance Evaluation Program is to better assure that Contractors considered for contract award on public construction projects and their proposed principal subcontractors either possess, or will likely possess at the time contract performance is set to begin, all qualifications necessary to successfully complete the project on time. Among other things, the Program is intended to:

- ° Assist SHA in exercising its discretion to determine a Contractor's qualifications and abilities to successfully perform a particular contract.
- ° Provide SHA with a rational basis for determining that a Contractor is or is not responsible, or for approving or disapproving his or her proposed principal subcontractor(s).
- ° Provide Contractors with a means of enhancing their qualifications and reputation by receiving recognition for high standards of performance.
- ° Encourage better working relationships between SHA and Contractors.
- ° Guide SHA in approving or disapproving proposed principal subcontractors on a particular project.

- Provide official, verifiable references for Contractors and subcontractors who may be under consideration for award of, or approval on, contracts to be awarded by other public owners.
- Provide a history and an assessment of a Contractor's or subcontractor's performance on prior SHA contracts for use in suspension or debarment proceedings.

The Contractor Performance Evaluation Program is not intended to determine whether a Contractor has breached a contract with SHA, or to determine the acceptability of any particular noncompliance with contract requirements.

For purposes of the Contractor Performance Evaluation program, The Seattle Housing Authority is concerned with four major areas relative to a Contractor's or subcontractor's performance on a given project:

- (1) The Contractor's or subcontractor's ability to effectively and efficiently schedule, administer, coordinate, finance, and manage its work and the work of its subcontractors on the project;
- (2) The degree and extent of the Contractor's or subcontractor's cooperation with SHA, its employees and consultants, and the public;
- (3) The Contractor's or subcontractor's initiative in all aspects of its work; and
- (4) The quality of material and workmanship in, and safe and timely completion of, the final product.

To evaluate the Contractor's or subcontractor's success in meeting the above concerns, specific performance criteria have been developed that take into account the effect the Contractor's or subcontractor's performance has had on:

- Compliance with contract requirements and applicable laws and regulations;
- Project schedule and budget;
- Public safety and convenience; and
- Increases or decreases in contract administration or consultant workload.

III. PERFORMANCE CATEGORY EVALUATION GUIDE

The Performance Category Evaluation Guide establishes criteria to be used in evaluating the Contractor's or subcontractor's performance in connection with each Performance Category, and describes six Performance Levels, five of

which range in ascending order of merit from "Inadequate" to "Superior." The "Standard" Performance Level is considered a baseline; it characterizes the level of acceptable performance normally associated with a reasonably prudent, diligent, and skilled Contractor or subcontractor working on projects of the same general type and size. Both the "Superior" and "Good" Levels characterize performance levels that exceed the baseline; they respectively connote consistent and substantial positive contributions to the overall project. Both the "Deficient" and "Inadequate" Levels characterize levels of performance that fall below the baseline, and respectively connote substantial and serious detriment to the overall project. The "No Evaluation" Level is to be used only where the Contractor or subcontractor had no direct or indirect responsibility for performance.

The six Performance Levels are more specifically described as follows, and the criteria set forth for each shall be applied in evaluating the Contractor's or subcontractor's performance in connection with each of the Performance Categories listed in Section III of the Contractor Performance Evaluation Report:

A. Superior. To merit an evaluation of "Superior" in any Performance Category, the Contractor or subcontractor must have consistently demonstrated:

- (1) Command or virtual mastery of the contract documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that always exceeded or surpassed the material requirements of the contract;
- (3) A highly cooperative attitude in dealing with SHA employees, consultants, and the public in connection with that Performance Category, which attitude made a substantial, positive contribution to the project; and
- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner without prompting by SHA staff or consultants.

If the Contractor or subcontractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Good" Level by applying the criteria for that Level.

B. Good. To merit an evaluation of "Good" in any Performance Category, the Contractor or subcontractor must have demonstrated:

- (1) Thorough knowledge of contract documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that always met, and often exceeded, the material requirements of the contract;
- (3) A cooperative attitude in dealing with SHA employees, consultants, and the public in connection with that Performance Category, which attitude made a positive contribution to the project; and
- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only minimal prompting by SHA staff or consultants.

If the Contractor or subcontractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Standard" Level by applying the criteria for that Level.

C. Standard. To merit an evaluation of "Standard" in any Performance Category, the Contractor or subcontractor must have demonstrated:

- (1) Acceptable knowledge of the contract documents related to that Performance Category;
- (2) Performance of the work or activity being evaluated under that Performance Category that met all material contract requirements;
- (3) A generally cooperative attitude toward SHA employees, consultants, and the public in connection with that Performance Category; and
- (4) Initiative in carrying out his or her duties in connection with that Performance Category in a responsive, thorough, and timely manner with only moderate prompting by SHA staff or consultants.

If the Contractor or subcontractor fails to satisfy any one of the Performance Level criteria set out above, then his or her performance will be re-evaluated under the "Deficient" and "Inadequate" Levels by applying the criteria for those Levels.

- D. Deficient. To merit an evaluation of "Deficient" in any Performance Category, the Contractor or subcontractor must have demonstrated:
- (1) Marginal knowledge of the contract documents related to that Performance Category;
 - (2) Performance of the work or activity being evaluated under that Performance Category that did not always meet contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;
 - (3) An occasionally uncooperative attitude toward SHA employees, consultants, or the public in connection with that Performance Category; or
 - (4) Performance of his or her duties in connection with that Performance Category in a moderately unresponsive, inattentive, or dilatory manner, or after frequent or repeated prompting by SHA staff or consultants.
- E. Inadequate. To merit an evaluation of "Inadequate" in any Performance Category, the Contractor or subcontractor must have either: (a) failed to satisfy the criteria listed for the Performance Levels of "Superior," "Good," "Standard," and "Deficient" set out above and did not qualify for treatment under Section III.F below; or (b) must have demonstrated:
- (1) Inadequate knowledge of the contract documents related to that Performance Category;
 - (2) Performance of the work or activity being evaluated under that Performance Category which seldom met the contract requirements, and such failures were not excusable as the sole fault and responsibility of one or more other parties;
 - (3) A seriously uncooperative attitude toward SHA employees, consultants, or the public in connection with that Performance Category; or
 - (4) Performance of his or her duties in connection with that Performance Category in a seriously unresponsive, inattentive, or dilatory manner, or only after frequent prompting by SHA staff or consultants.
- F. No Evaluation. This Performance Level shall be used only in those circumstances where the Contractor or subcontractor had no contractual responsibility, either directly or through its subcontractors, suppliers, or

materialmen, for performance related to that Performance Category. Consequently, this Performance Level is generally applicable only to certain Performance Categories in the evaluation of subcontractors.

IV. OVERALL EVALUATION GUIDE

The Contractor's or subcontractor's Overall Evaluation can be determined by placing the Overall Percentage Score calculated on the Contractor Performance Evaluation Report within the numerical ranges of the following narrative ratings in the Overall Evaluation Guide:

A. SUPERIOR (Overall Percentage Score of 85% or above)

The Contractor or subcontractor exceeded the contract requirements and expectations in most or all of the areas evaluated. The Contractor or subcontractor was extremely or completely knowledgeable regarding contract requirements and applicable laws and regulations. A consistently high level of cooperation, project management, and job site control appreciably contributed to an unusually good result. The Contractor or subcontractor is commended for excellent performance.

B. GOOD (Overall Percentage Score of 75% to 84%)

The Contractor or subcontractor met contract requirements evaluated, and exceeded them in some areas. The Contractor or subcontractor was generally cooperative, and performed his/her work with a minimum of prompting. The results of the performance were very good.

C. STANDARD (Overall Percentage Score of 70% to 74%)

The Contractor or subcontractor generally satisfied the minimum requirements of the contract as evaluated. The Contractor or subcontractor occasionally had to be prompted or reminded of contract requirements, but overall management of the project was good, producing a good result.

D. DEFICIENT (Overall Percentage Score of 55% to 69%)

Even though the project may have been accepted, the Contractor's or subcontractor's performance as evaluated was marginal overall. While the Contractor or subcontractor performed some tasks satisfactorily, most elements evaluated reflected a less than satisfactory response to contract requirements.

E. INADEQUATE (Overall Percentage Score of 54% or below)

The Contractor's or subcontractor's performance as evaluated did not meet minimum contract requirements, or so otherwise detracted from the project as to seriously call it into jeopardy. While the project may have been accepted by SHA, the effort expended by SHA staff or consultants in prompting the Contractor or subcontractor to perform was excessive. The Contractor's or subcontractor's poor or uncooperative performance created serious unnecessary or avoidable difficulties in achieving contract completion.

A Contractor's Overall Evaluation, being based upon an averaged score on a discrete number of Performance Categories, should not be read or interpreted as a measure of whether the Contractor did or did not breach the contract in question. For example, a Contractor who receives an overall Evaluation of "Superior" may have nevertheless breached the contract (1) in an area not evaluated, or (2) within an area or Performance Category actually evaluated but under which, on balance, the Contractor's performance was rated "Superior," "Good," or "Standard."

V. PERFORMANCE EVALUATION REPORTS

In consultation with appropriate SHA staff and consultants, each Contractor Performance Evaluation Report shall be prepared by, or at the direction of, the SHA Project Manager, who will include numerical ratings substantiated, when necessary, by one or more narratives which describe the Contractor's or subcontractor's performance.

Each Performance Category has been assigned its own point range; the point ranges for the various Performance Categories have been weighted to reflect the relative importance of the Performance Categories and their overall impact on SHA projects generally. A larger number of possible points has been assigned to those elements that typically have a greater impact on the success or failure of a project. The point ranges reflect the dramatic effect either poor performance or very good performance can have on the project, e.g., in terms of workload, budget, schedule, and safety.

Every Contractor Performance Evaluation Report containing Performance Level evaluations of "Deficient" or "Inadequate," and all Overall Evaluations on projects the total cost of which is \$100,000 or more, shall contain one or more narratives which provide details substantiating the evaluations. Narratives may be provided for other Performance Categories as the project manager deems necessary.

Narratives provided with a Contractor Performance Evaluation Report shall be based upon documentation prepared during the life of the project, e.g., project diaries, inspectors' reports, and other pertinent documents. Such documentation shall constitute a major portion of the administrative record to be used for any review, appeal, or litigation that may arise from the evaluation process.

Every Contractor Performance Evaluation Report shall be signed by the project manager's supervisor before a copy of the Report shall be transmitted to SHA's Procurement and Contracts Manager, who will subsequently transmit the Report to the Contractor or subcontractor. The Report shall not be considered final until such time as the review/appeal periods described in Section VI of these instructions have been completed.

Generally, only one Contractor Performance Evaluation Report shall be issued, following completion of the contract work. However, in addition to a final Report, one or more interim Reports may be issued at the department's discretion when:

- A contract is of long duration, particularly those in excess of one year.
- An individual charged with primary responsibility for administration of the contract will cease his or her involvement with the project prior to completion of the work.
- Contractor's/subcontractor's performance at 50% completion is deficient or inadequate.

Interim Contractor Performance Evaluation Reports shall be considered to be preliminary and shall be designated as such, and shall be processed administratively in the same manner as a Final Report. A Contractor or subcontractor may request review of an Interim Report by the department director and appeal to the Director of Finance & Administration or his/her designee pursuant to the provisions of Section VI below. All Interim Reports shall be attached to, and considered when preparing, the Final Report.

VI. NOTICE, REVIEW, AND APPEAL

- A. Notice. SHA's Purchasing Division shall mail to Contractors and subcontractors a copy of their Contractor Performance Evaluation Report after completion of the Report. A Contractor or subcontractor who is given an Overall Evaluation of "Deficient" or "Inadequate" in connection with a project shall be provided with a copy of the Contractor Performance Evaluation Report via certified mail (return receipt requested).

- B. Review. A Contractor or subcontractor who disputes, or is otherwise dissatisfied with, his or her Contractor Performance Evaluation Report may request review of the Report by the department director. The request must be submitted in writing within thirty (30) calendar days of receipt by the Contractor or subcontractor of the Final Contractor Performance Evaluation Report. The request must also state, with specificity, all bases for the requested review.

The department director shall, upon receipt of a proper and timely request, review the Contractor Performance Evaluation Report and any documentation submitted by the Contractor or subcontractor with his or her request. The department director shall, on the basis of his or her review, issue findings which may affirm, correct, or modify all or any part of the Report. A copy of the findings shall be mailed to the Contractor or subcontractor via registered mail, return receipt requested.

- C. Appeal. Within ten (10) calendar days of receipt by the Contractor or subcontractor of the department director's findings on review, the Contractor or subcontractor may appeal therefrom to the Director of Finance & Administration or his/her designee. Any such appeal shall be in writing, and shall state with specificity the bases or grounds for the appeal.

The Director of Finance & Administration or his/her designee shall review and consider the objectivity, accuracy, completeness, and fairness of the Contractor Performance Evaluation Report, together with the department director's findings, engineers' diaries, job records and other documentation, including such documentation as the Contractor may provide with the appeal.

Upon hearing and review of the department director's findings, the Director of Finance & Administration or his/her designee shall issue a determination and findings which may affirm or modify the Contractor's or subcontractor's Contractor Performance Evaluation Report. The Director of Finance & Administration or his/her designee shall notify the Contractor or subcontractor of its determination and findings by certified mail (return receipt requested).

VII. DISQUALIFICATION FOR WORK ON SPECIFIC PROJECT

The SHA Director of Finance & Administration or his/her designee may determine, from Contractor Performance Evaluation Reports and other public documents relating to the project in question, that a Contractor or subcontractor who has received one or more Overall Evaluations of "Deficient" or "Inadequate" is not qualified or able to successfully perform a specific SHA project and is therefore ineligible for award of that contract.

When, on that basis, the SHA Director of Finance & Administration or his/her designee believes that the low bidder is not qualified or able to successfully perform a project, the Director of Finance & Administration or his/her designee shall notify the low bidder of its intent to award the contract to the next lowest responsive, responsible bidder. At that time, the Director of Finance & Administration or his/her designee shall also inform the Contractor of the date and time the matter of contract award has been scheduled for consideration by the Director of Finance & Administration or his/her designee. Only the Contractor or subcontractor, departmental staff, and counsel will be given an opportunity to address the Director of Finance & Administration or his/her designee on the issue of disqualification prior to the Director of Finance & Administration or his/her designee reaching a decision on the award.

VIII. DEBARMENT OF CONTRACTING FIRM

Upon request of an SHA department director, the Director of Finance & Administration or his/her designee, after hearing and evaluating the evidence, may debar a Contractor or subcontractor from contracting with SHA for a period of up to two years for any of the following reasons:

- A. A Contractor or subcontractor has received overall evaluations of their performance of "Deficient" or "Inadequate" on three or more SHA projects physically completed during the preceding five (5) year period.
- B. A Contractor or subcontractor has abandoned, surrendered, or failed to complete, or failed to perform work on, or in connection with, any SHA contract.
- C. A Contractor or subcontractor has failed to perform work on an SHA contract in accordance with the contract provisions, including among other specifications, those on the quality of workmanship and the timeliness of performance, safety standards, and prevailing wage requirements.
- D. A Contractor or subcontractor has failed to comply to a substantial extent with applicable federal or State law, or with the rules and regulations implementing them.
- E. A Contractor or subcontractor has submitted false or misleading reports or statements to SHA in connection with an SHA contract.
- F. A Contractor or subcontractor has colluded with another to restrain competition.
- G. A combination of any or part of any of the above reasons.

- H. A determination by the Director of Finance & Administration or his/her designee that the performance of a Contractor or subcontractor is such that it would not be in the best interests of SHA to permit the Contractor or subcontractor to work on additional SHA projects.

IX. RELEASE OF INFORMATION

Contractor Performance Evaluation Reports are public documents subject to disclosure to other governments and to the public. Because the Reports and the Overall Evaluations they contain may be used as a basis for contract award and may reflect upon the Contractor's or subcontractor's reputation, care must be taken to assure that only accurate, complete, and current information is released.

- A. Final Reports. Contractor Performance Evaluation Reports may be released when:
- (1) The Report becomes final as set forth in Section V of these instructions; or
 - (2) SHA has relied upon the Report for the purpose of taking further action with respect to the Contractor or subcontractor; or
 - (3) A court has ordered release of the Report.
- B. Interim Reports. Interim Contractor Performance Evaluation Reports may only be released when:
- (1) The Contractor or subcontractor has consented in writing to the release; or
 - (2) The Contractor or subcontractor has requested and received final administrative review of an Interim Report; or
 - (3) SHA has used or relied upon the Interim Report to take action with respect to the Contractor or subcontractor; or
 - (4) A court has ordered release of the Report.
- C. Termination for Default and Pending Litigation. In the event that an SHA contract is terminated for reason of the prime Contractor's default, that fact shall be noted only on the prime Contractor's Contractor Performance Evaluation Report. In the event that a Contractor commences suit against SHA, that Contractor's Performance Evaluation Report shall not be released without approval of the SHA General Counsel's office.

- D. Intergovernmental Cooperation. All requests for Contractor or subcontractor references from agencies of foreign, federal, state, or local governments shall be referred to the Procurement and Contracts Manager or his/her designee. If such a request is honored, the requesting agency shall be provided with copies of all Performance Evaluation Reports on the Contractor or subcontractor, together with any written objections or refutations filed with the Purchasing Division by the Contractor or subcontractor in connection therewith.

X. INSTRUCTIONS FOR COMPLETING EVALUATION FORMS

The SHA project manager shall first complete Sections I and II, "Contractor Data" and "Project Data."

The project manager shall then evaluate the Contractor's or subcontractor's performance in each of the Performance Categories listed in Section III of the Contractor Performance Evaluation Report and shall assign points for each. In all cases, the first step is to apply the Element Rating Guide to determine the Performance Level of the Contractor's or subcontractor's performance in each Performance Category.

The descriptions provided on the Contractor Performance Evaluation form for each Performance Category will not necessarily match precisely with the Contractor's or subcontractor's actual performance of the task(s) on a given portion of the project.

The project manager should consider the general character of the Contractor's or subcontractor's performance for each Performance Category evaluated and select the Performance Level that most closely matches the actual performance.

Once a Performance Level has been determined for a Performance Category, the corresponding point subrange will be found on the Contractor Performance Evaluation Report form. For example, suppose the project manager applied the criteria in the Performance Evaluation Guide to a Contractor's performance in relation to Performance Category Number 5 (Adherence to plans and specifications as related to quality of the work—94 points possible) and determined that the Contractor's level of performance in that Category was "Good." The corresponding point subrange would be 70-79 points.

The project manager may then, at his or her discretion, assign any number of points within the subrange. To continue the example, suppose the project manager decided that the Contractor's performance in that Performance Category fell just short of "Superior." He or she could assign the Contractor up to 79 points in that Category. Project managers should use only whole numbers within the subrange indicated for each Performance Category. If the Contractor or subcontractor was not responsible for any performance in connection with a

given Performance Category, then the Contractor's or subcontractor's evaluation in that Category should be "No Evaluation," and no points should be assigned.

When rating a prime Contractor, the project manager should consider all the work performed by the prime as well as work performed by all subcontractors, since the prime Contractor is contractually responsible to SHA for all of the work under the prime contract, whether or not the prime actually performs the work. A separate Contractor Performance Evaluation Report should be completed for the performance of each major subcontractor to evaluate that portion of the job for which the subcontractor or its subcontractors is responsible. (Rating all subcontractors shall be at the option of the SHA department; i.e., it may be deemed unnecessary to evaluate a subcontractor whose involvement in the contract work was minimal.)

Comments are always encouraged, and may be written on the reverse side of the Contractor Performance Evaluation Report or on an attachment to the Report.

However, for each Performance Category evaluated as "Deficient" or "Inadequate," the project manager must prepare a written narrative substantiating the facts and circumstances giving rise to the evaluation.

After evaluating the Contractor or subcontractor on Performance Categories listed in Section III of the Contractor Performance Evaluation Report (and assigning points for each Category), the project manager shall total all the assigned points for Section III. The Grand Total Assigned Points will then be divided by the Total Points Possible (i.e., excluding the maximum number of points available for those Performance Categories evaluated as "No Evaluation"). The project manager will calculate the Overall Percentage Score and will enter the appropriate Overall Evaluation on the basis of the following ranges:

Superior	85% and above
Good	75% to 84%
Standard	70% to 74%
Deficient	55% to 69%
Inadequate	54% and below

The project manager shall sign the Report and forward it to the department director or his/her designee for concurrence signature and submission to the Procurement and Contracts Manager. The Purchasing Division staff shall then forward signed copies of the completed Report to the Contractor or subcontractor.

If a Contractor Performance Evaluation Report is an Interim Report, the Report should indicate on its face that it is interim, and shall contain the following language:

This Performance Evaluation Report is not the final report on this Contractor on this project. The Contractor may dispute the Report or any part thereof, and need not seek review or appeal until completion and acceptance of the project.

Interim Reports, if issued, shall be attached to the Final Report.

Pending issuance of a Final Report, an Interim Report shall not be released to anyone other than SHA staff employees and the subject Contractor or subcontractor unless: (1) the Contractor or subcontractor has consented in writing; (2) the Contractor or subcontractor has requested and received final administrative review of an Interim Report; (3) SHA has used or relied upon the Interim Report to take action with respect to the Contractor or subcontractor; (4) a court has ordered release of the Report.

END OF SECTION 00850