

PRECONSTRUCTION CONTRACT

THIS PRECONSTRUCTION CONTRACT is made and entered into this _____ day of _____, 20____, by and between the City of Tukwila ("Owner" or "City" or "City of Tukwila"), and [_____] ("Contractor"), also referred to collectively or singularly as "Parties" or "Party".

WHEREAS, pursuant to RCW Ch. 39.10, the Owner has selected the Contractor as its General Contractor/Construction Manager ("GC/CM") with respect to the City of Tukwila Fire Stations 51, 52, 54 Project ("Project"); and

WHEREAS, the Owner has need for certain preconstruction services with respect to the Project while the parties work toward negotiating and finalizing the Maximum Allowable Construction Cost ("MACC") as set forth in the solicitation documents for the Project;

The Parties agree as follows:

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 this Preconstruction Contract and as described in the [insert date] Request for Proposals for General Contractor/Construction Manager for the City of Tukwila Fire Stations 51, 52, 54 Project, for a not-to-exceed allowance of \$372,000.

ARTICLE 1 DEFINITIONS

Except as provided in this Article 1, capitalized words shall have the meaning set forth in the Project General Conditions, attachment [] of the Project Request for Proposals for a General Contractor/Construction Manager.

- 1.1 "Architect" and "Design Team" The term "Architect" or "Design Team" means Weinstein A+U and its sub-consultants.
- 1.2 "Total Contract Cost" ("TCC") means the Preconstruction Work Allowance + MACC + Fixed Fee + Fixed Amount for Specified General Conditions work + applicable Washington State sales tax.
- 1.3 "Project Development Manager" ("PDM") means Shiels, Oblatz, Johnsen designated by the City of Tukwila to manage the Project.

ARTICLE 2 ENTIRE AGREEMENT

This Preconstruction 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 Preconstruction Contract is intended to be integrated with the final GC/CM Contract that will be executed at the completion of MACC negotiations.

ARTICLE 3 WORK OF THIS PRECONSTRUCTION CONTRACT

3.1 General

The Contractor shall execute the entire work described in this Preconstruction Contract, except to the extent specifically indicated in the Preconstruction Contract to be the responsibility of others. The Contractor shall

provide construction management ("CM") services, including but not limited to: assisting the Design Team with 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 identifying and organizing subcontractor bid packages. CM services shall be provided throughout the preconstruction period and shall be closely coordinated with the Architect's and Owner's representatives. The Contractor shall work collaboratively and proactively with the Owner and Architect to proceed with the planning, design, and development of the work in a manner which supports the Owner's efforts to maintain the MACC.

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

3.2 Work During Preconstruction

The Contractor shall actively participate as a member of the Project team with the Owner and the Architect during the design phases prior to construction. The purpose of this consulting responsibility is to provide the expertise necessary to ensure that the MACC and the Project schedule are met. The GC/CM will work collaboratively with the Design Team, but will provide input through the PDM unless otherwise authorized by the Owner.

During this preconstruction period, the Contractor's Project Manager or higher-level person will attend all design meetings and provide or oversee the services of the Contractor to ensure development of a high quality, functional, constructible, and cost-effective Project. Preconstruction services will begin at the end of schematic design phase and anticipated to be complete by October 2018 for FS 51. FS 52, 54 to commence September 2018 and complete August 2019.

3.3 Preconstruction Services

3.3.1 General

The Contractor agrees to review all Drawings and Specifications and Contract Documents developed with respect to the Project, and to advise and make recommendations to the PDM and Architect regarding such matters as construction feasibility, possible economies, time requirements for procurement and construction, means and methods, estimates and projected costs as necessary to meet the Owner's financial and schedule constraints. By reviewing, advising, or making such recommendations, the Contractor will not be deemed to have assumed the Architect's or consultants' design obligations with respect to the Contract Documents developed by them.

The scope of services to be provided also will include value engineering, cost estimating, scheduling, identification and organization of subcontract packages, procurement strategies, and analysis of labor and material conditions.

3.3.2 Preconstruction Administration and Planning

The Contractor shall:

- A. Have a Contractor's Project Manager or higher-level person attend at least weekly coordination meetings to discuss design, permitting, schedule, construction planning, and other Project coordination issues.
- B. Prepare a detailed milestone schedule for the Project from the onset of design development through the completion of construction, commissioning and Substantial Completion. The schedule shall identify work to be performed by the Design Team, the Contractor and the Owner. 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 for approval at the 100% schematic design stage.

- C. Develop cost accounting and job management reporting systems to be used during construction.
- D. Assist in the development of the Project labor agreement, if one is utilized, coordinate all labor issues, and work with building trade unions for their constructive involvement in the Project.
- E. Perform other preconstruction administration and planning services as required by the PDM.

3.3.3 Design Review

The Contractor shall:

- A. Conduct timely design review of the Project at each scheduled design review phase: schematic design, design development, and 50% and 100% construction documents. Design review shall include budget, constructability, value engineering, completeness, and coordination. The Contractor shall provide written design review comments to the PDM and Design Team within four (4) weeks from receipt of the design documents for each phase.
- B. Review the drawings and specifications for the final design development submittal for viable value engineering ("VE") recommendations. The Contractor shall create a value engineering tracking system which identifies each VE 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 VE proposal, indicates the current status of the VE proposal and the team member with current action, and the date the proposal was accepted or rejected.
- C. Review and comment on all studies including preliminary and final EIS, basis of design report, etc. The Contractor shall cooperate in other design reviews as required by the PDM.
- D. Propose a breakdown of bid package and work buy out.

3.3.4 Work for Construction Documents

The Contractor shall provide the following services during the construction document phase:

- A. Determine subcontract bid packages and material procurement packages and identify those that could be advertised prior to the completion of construction documents. If the PDM concurs that the Project will benefit and if funds are available, the PDM may, at its option, elect to authorize the Contractor to advertise and award subcontracts or material procurements for long lead-time items in advance of completion of construction documents. The Contractor shall prepare procurement documents for long lead-time materials as necessary.
- B. Revise the Project schedule as required to reflect changes that have occurred during design or to reflect a change or more refined schedule for procurement of materials, subcontract buyout or construction. The Contractor shall provide weekly updates at the coordination meetings.

- C. Prepare and process the application(s) for all necessary permits except the master use and building. The Contractor shall monitor and expedite the permitting process as necessary to ensure that all construction permits are received in a timely fashion.
- D. Monitor the development of the construction documents. The Contractor shall provide value engineering and constructability reviews of elements of design when requested by the design team and approved by the Owner.
- E. Prepare construction cost estimates within four weeks of receipt from the Design Team for the entire Project based on both the mid- and final construction documents submittals. If the estimate exceeds the MACC, the GC/CM shall take whatever actions are necessary in conjunction with the Architect and Owner to reduce the cost of the Project to within the MACC.
- F. Complete an interdisciplinary plan check of both the mid- and final construction documents submittals. The Contractor shall provide comments to the PDM and Architect. The Contractor shall verify that the comments are incorporated into the contract documents.
- G. Review the record drawings and investigate the existing conditions at the Project site to ensure that the construction documents reflect the existing conditions.

3.3.5 Schedule

The Contractor shall:

- A. Develop and keep current a master critical path schedule for the Project that includes design and construction activities as well as applicable regulatory agency, outside entity, Project team, and Owner activities and constraints. The schedule shall identify all long-lead procurement items. In developing the activities for this schedule, the Contractor shall consult with both the PDM and Design Team to ensure that the responsibility for and duration of these activities is accurate.
- B. Monitor and update the schedule monthly and discuss the need for corrective action with the PDM and the Architect in weekly coordination meetings.
- C. Develop a bid packaging/phasing strategy and schedule.
- D. Develop a procurement strategy and schedule for direct purchase of materials, furnishings, fixtures, and equipment by the PDM. The Contractor shall adjust construction schedule accordingly.
- E. With the PDM, establish a schedule for establishment of the MACC and TCC.

3.3.6 Budget

The Contractor shall:

- A. Provide a detailed cost estimate for the Project at those points in the design review phases described in Subsection 3.3.3.A. The Contractor shall identify the margin of accuracy of estimates and identify appropriate contingencies. The Contractor's estimate shall employ a Unifomat system and also Bid Package format so it can be compared to other estimates. Formats will be coordinated with those being used by A/E. The Contractor shall monitor and update the budget each month and discuss the need for corrective action with the PDM and Architect at progress meetings.

- B. Provide value engineering alternatives and cost reduction suggestions to the Architect and PDM, such that the implementation of the proposed measures would maintain the design within budget without compromising the Owner's basic needs.
- C. Evaluate the availability and supply of labor and materials and the effect of market conditions on the budget, including the possibility of foreign-purchased materials.
- D. Prepare budget for long lead items.

3.4 Allowance for Preconstruction Services.

The Contractor will be paid an amount not to exceed \$372,000 for Preconstruction Services (the "Preconstruction Services Allowance"). Within seven (7) days of notification of its selection for MACC negotiations, the Contractor shall submit a plan for the Preconstruction Services work ("Preconstruction Work Plan" or "Plan"). The Preconstruction Work Plan shall include a schedule of the activities included in the scope of work for preconstruction services and will identify the individuals the Contractor intends to use to accomplish the tasks assigned. If the Plan is not satisfactory to the Owner, the Owner will advise the Contractor of the shortcomings in the Plan and require the Contractor to resubmit the Plan. The Preconstruction Work Plan shall also include the anticipated number of hours needed to complete each activity, the name(s) of the individuals that will be used to complete each task and an hourly rate for each individual. The hourly rates multiplied by the number of hours needed to complete all tasks shall, unless adjusted pursuant to mutual agreement of the Owner and Contractor, constitute the "Total Compensation" for preconstruction services. The Contractor may submit its first request for payment for Preconstruction Services once this Contract is executed. In the event the Contractor incurs costs in excess of the "Total Compensation", the Contractor shall pay such excess from its own funds and the Owner shall not be required to pay any part of such excess and the Contractor shall have no claim against the Owner on account thereof. The Contractor will not be entitled to any compensation under this Section until a Preconstruction Work Plan satisfactory to the Owner is provided. If, in the performance of the Preconstruction Services, the GC/CM performs any services normally associated with the construction phase of the Project, the cost of such services shall be included in the MACC or shall be paid as an additional service based on the GC/CM's billing rate for such services, as shown in Exhibit [] hereto, and expenses, without markup, if the work of the GC/CM for the Project does not proceed beyond the preconstruction phase.

ARTICLE 4 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Preconstruction Contract and covenants with the Owner to cooperate with the Architect through every phase of the work and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to use best efforts to furnish at all times an adequate supply of workers and materials; and to perform the work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to assist the Contractor to perform the work in the best way and most expeditious manner by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with the requirements of this Preconstruction Contract. The Contractor recognizes 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 recognizes that in order for the Project to be completed on time and within the TCC, the Contractor, the Architect 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 TOTAL CONTRACT COST; PRECONSTRUCTION SERVICES FEE ALLOWANCE; PAYMENT

5.1 The Total Contract Cost will be determined through a negotiation of the MACC conducted prior to the execution of the final GC/CM Contract. While the Preconstruction Services Fee Allowance will be part of the

TCC, the MACC negotiations are separate from Preconstruction Work. The Contractor shall not be reimbursed for the work related to MACC negotiations.

5.2 Preconstruction Services Fee Allowance.

The Owner has established an allowance for Preconstruction Work as defined in Section 3 of this Contract. The money for this work will not be included in either the Fixed Fee or the dollar amount for Specified General Conditions Work. Pursuant to this Preconstruction Contract, the Contractor will be paid monthly for its Preconstruction Services based on actual time (at the rates set forth in Exhibit []) and expenses, without markup, in an amount not to exceed the Preconstruction Services Fee Allowance. Any amount that exceeds the Preconstruction Services Fee Allowance shall be borne by the Contractor.

5.3 Payment.

The contractor, on a monthly basis, may invoice the Owner for work performed in the prior month. Labor charges shall be based on the rates set forth in Exhibit []. Such rates shall be compensation for any and all expenses and costs of the Contractor other than reimbursables. Reimbursables must be accompanied by appropriate receipts or other evidence of expenditure. Reimbursables are for items such as long distance travel, research, copying and documentation, etc.

With regard to travel, the Preconstruction Services price includes local travel and parking costs, but does not include the costs of long distance trips made outside the Seattle metropolitan area by employees of the GC/CM in connection with the Work. Provided the Owner approves such travel in advance, the Owner shall reimburse the GC/CM for its actual travel costs, including lodging and meals, except that lodging and meal expenses for long distance trips shall not exceed the current Runzheimer index amounts for the metropolitan areas visited. Travel shall be at the lowest cost reasonably available. Travel expenses shall conform to, or be limited by, any provisions applicable to persons traveling on official business for the Owner. Any travel and travel expenses that would increase the Contract Sum (including those occurring prior to resolving the Allowance for travel expense in the Specified General Conditions) shall be subject to the Owner's approval.

ARTICLE 6 MISCELLANEOUS PROVISIONS

6.1 Contractor's Liability Insurance

Prior to commencement of the Work, at its own expense, Contractor shall obtain all the insurance required by this Preconstruction Contract and provide evidence satisfactory to Owner that such insurance has been procured. Review of the Contractor's insurance by Owner shall not relieve or decrease the liability of Contractor. Companies writing the insurance to be obtained by this part shall be licensed to do business under Chapter 48 RCW or comply with the Surplus Lines Law of the State of Washington. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A.B. Best rating shall be indicated on the insurance certificates.

6.2 Contractor shall maintain the following insurance coverage during the period of this Preconstruction Contract and for one year thereafter.

- A. General liability on the ISO 1986 New Occurrence Form or its equivalent, which will include:
 - i. Completed operations/products liability;
 - ii. Explosion, collapse, and underground; and
 - iii. Employer's liability coverage.
- B. Automobile liability

C. Contractor shall comply with the Washington State Industrial Insurance Act.

D. All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Contractor or any Subcontractor.

E. All insurance coverages shall be endorsed to include Owner as an additional named insured for Work performed in accordance with this Preconstruction Contract, and all insurance certificates shall evidence the Owner as an additional insured.

F. The coverage limits shall be as follows:

1. Limits of Liability shall not be less than \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.
2. \$2,000,000 Combined Single Limit Annual General Aggregate.
3. \$2,000,000 Annual Aggregate for Products and Completed Operations Liability.
4. \$1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.

G. Insurance Coverage Certificates

1. Prior to commencement of the Work, Contractor shall furnish to Owner a completed certificate of insurance coverage.
2. All insurance certificates shall name Owner's Project number and Project title.

All insurance certificates shall specifically require 45 days prior notice to Owner of cancellation or any material change, except 30 days for surplus line insurance.

6.3 Equal Employment Opportunity Requirements

A. Nondiscrimination and Affirmative Action

Notwithstanding any other provisions in reference to this Contract, this Contract does not require any specific utilization levels of minorities or women in the Contractor's workforce, except as may be specified in any federal regulations or statutes included or referenced in the Contract. The Owner encourages the Contractor to employ a workforce reflective of the region's diversity. The Contractor shall adhere to all non-discrimination requirements set forth in Federal and State laws and regulations and in local applicable provisions.

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, prior to commencement and during the term of this Contract, furnish to the Owner or his/her designee upon his/her request and on such form as may be provided therefor, a report of the affirmative action taken by the Contractor in implementing the terms of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the Owner for the purposes of investigation to determine compliance with this provision.

3. If, upon investigation, the Owner finds probable cause to believe that the Contractor has failed to comply with any of the terms of these provisions, the Contractor shall be so notified in writing. The Owner shall give the Contractor an opportunity to be heard, after ten days notice. The Owner may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the terms of these provisions.

4. Any violation of the mandatory requirements of the provisions of this Section shall be a material breach of contract for which the Contractor may be subject to damages and sanctions provided for by contract and by applicable law.

5. The foregoing provisions will be inserted in all subcontracts for work covered by this Contract.

6.4 Compliance with Law

6.4.1 General Requirement

The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the applicable laws of the City of Tukwila; and rules, regulations, orders, and directives of their administrative agencies and their officers.

6.4.2 Licenses and Similar Authorizations

The Contractor, at no expense to the Owner, shall secure and maintain in full force and effect during the term of this Preconstruction Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

6.4.3 Taxes

The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Preconstruction Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Preconstruction Contract and any leasehold interest deemed to have been created under Chapter 82.29A RCW.

6.4.4 Use of Recycled Content Paper

The Contractor shall, whenever practicable, use recycled content paper on all documents submitted to the Owner.

6.4.5 Americans with Disabilities Act

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Preconstruction Contract. In particular, if the Contractor is providing services, programs, or activities to Owner employees or members of the public as part of this Preconstruction 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 Preconstruction Contract.

6.5 Governing Law

The laws of the state of Washington shall govern the Contract Documents and the rights of the parties herein. Venue shall be in King County, Washington, unless otherwise specified.

6.6 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.

6.7 Rights and Remedies

No action or failure to act by Owner or Architect 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.

6.8 Contractor Registration

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.

6.9 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 7 days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

6.10 Records Retention

The wage, payroll, and cost records of Contractor, and its Subcontractors, and all records subject to audit in accordance with Section 6.12, shall be retained for a period of not less than three (3) years after the date of Completion.

6.11 Third-party Agreements

The Contract Documents shall not be construed to create a contractual relationship of any kind between: the Design Team and Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

6.12 Audit

The Contractor shall permit the Owner and/or any other governmental agency that is involved in the funding of the Project (hereinafter referred to as "Agency"), from time to time as the Owner or Agency deems necessary (including up to three (3) years after the final payment or release of withheld amounts has been made under this Preconstruction Contract), to inspect and audit at any and all reasonable times in King County, Washington, or at such other reasonable location as the Owner and/or Agency selects, all pertinent

books and records of the Contractor and any subcontractors or other person or entity that has performed work in connection with or related to the Contractor's services under this Preconstruction Contract to verify, among other things, that the compensation or other consideration provided to the Contractor has been appropriate, and that the contracted-for services were provided in a timely manner; and shall supply the Owner with, or shall permit the Owner and/or Agency to make, a copy of any books and records and any portion thereof, upon the Owner's or the Agency's request. The Contractor shall ensure that such inspection, audit and copying right of the Owner and Agency is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work in connection with or related to the Contractor's services under this Preconstruction Contract. All audit findings, except those for performance audits, will be governed by the Federal Acquisition Regulation (FAR), subpart 31, which is hereby incorporated in and made a part of this Preconstruction Contract.

6.13 Contractual Relationship

This Preconstruction Contract does not constitute the Contractor as the agent or legal representative of the Owner for any purpose whatsoever, and the relationship of the Contractor to the Owner by reason of this Preconstruction 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 to bind the Owner in any manner or thing whatsoever.

6.14 Assignment and Subcontracting

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. Neither party shall subcontract any of its obligations under this Preconstruction Contract, in whole or in part, without the other party's written consent. The Contractor shall be responsible for ensuring that all subcontractors comply with the obligations and requirements of this Preconstruction Contract.

6.15 Amendments

No modification or amendment of the provisions hereof shall be effective unless in writing and signed by authorized representatives of the Parties. The Parties expressly reserve the right to modify this Preconstruction Contract, from time to time, by mutual agreement.

6.16 Executory Agreement

This Preconstruction Contract will not be considered valid until signed by both Parties.

6.17 Binding Effect

The provisions, covenants and conditions in this Preconstruction Contract apply to bind the Parties, their legal heirs, representatives, successors, and assigns.

6.18 Applicable Law; Venue

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

6.19 Remedies Cumulative

Rights under this Preconstruction Contract are cumulative; the failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. The use of one remedy shall not be taken to exclude or waive the right to use another.

6.20 Captions

The titles of sections are for convenience only and do not define or limit the contents.

6.21 Invalidity of Particular Provisions

A judicial determination that any term, provision, condition, or other portion of this Preconstruction Contract, or its application, is inoperative, invalid, or unenforceable shall not affect the remaining terms, provisions, conditions, or other portions of this Preconstruction 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.

6.22 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 Preconstruction Contract. The payment of compensation to the Contractor shall not be deemed a waiver of any right or the acceptance of defective performance.

ARTICLE 7 TERMINATION

7.1 For Cause

Either Party may terminate this Agreement in the event the other fails to perform its obligations as described in this Agreement 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 GC/CM 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.

7.2 For Reasons Beyond Control of Parties

Either Party may terminate this Agreement 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.

7.3 Termination for Convenience

The Owner may terminate this Agreement for any reason, including, but not limited to, its convenience, at any time, by giving notice thereof, in writing not less than five (5) days prior to the effective date of termination, to the Contractor specifying the effective termination date. If this Agreement is terminated by the Owner pursuant to this Section, the Contractor will be paid an amount equal to the Contractor's fees and expenses incurred to the date of termination less any amounts previously paid to the Contractor pursuant to this Agreement; provided, however, in no event shall the amount paid exceed the Preconstruction Services Allowance multiplied by the percentage of the total services actually performed.

7.4 Termination Expenses

The Contractor agrees that the payment provided in Section 7.3 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 Agreement.

7.5 Notice

Notice of termination pursuant to Sections 7.1 and 7.2, above, shall be given by the Party terminating this Agreement to the other not less than five (5) working days prior to the effective date of termination. Upon termination, the GC/CM 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 GC/CM shall have no further involvement in the Project and neither Party shall have any further obligation to the other except with respect to any unsettled obligations arising out of this Preconstruction Services Agreement. At Owner's election, any Subcontracts that may have been awarded by the GC/CM shall be assigned to the Owner.

City of Tukwila

By _____ Date _____

Title _____

[Contractor name]

By _____ Date _____

Title _____