

Preconstruction Services Agreement

This Preconstruction Services Agreement (the "Agreement") is made this _____ day of _____ in the year _____ for the <NAME OF PROJECT> (the "Project") by and between:

Owner / Entity Name (the "Owner") and **Contractor Name** (the "Contractor")
1415 S. 10th Street **Contractor Address**
Kelso, WA 98626 **City / State / Zip**

The Agreement shall be effective on the last signature date set forth within this document, and shall be the agreed upon basis for the performance of and compensation for preconstruction services for the Project.

Article I – Preconstruction Agreement Documents

- 1.1 The Agreement documents consist of this Agreement and any accompanying exhibits, and amendments issued after execution of this Agreement, all of which form the Agreement and are as fully a part of the Agreement as if attached to this Agreement or repeated herein. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other preconstruction documents, other than an Amendment, is inconsistent with this Agreement, this Agreement shall govern.
- 1.2 The Owner and Contractor may authorize by an amendment to this Agreement for the performance of additional services by the Contractor deemed necessary by the Owner, provided the Contractor may within 14 calendar days from the date of the Owner's request for amendment, submit a written objection of the amendment to the owner. Any amendment for additional services shall be authorized by the Owner in writing prior to performance by the Contractor.

Article II – Contractor's Responsibilities

- 2.1 The Contractor's designated representative is who is authorized to act on behalf of the Contractor with respect to the Project is named below. The term "Contractor" means the Contractor or the Contractor's Authorized Representative.

Contractor's Authorized Representative: _____

- 2.2 The Contractor shall consult with, advise, assist, and provide recommendations to the Owner and Design Team on all aspects of the planning and design of the work including without limitation participating or conducting (collectively "CM Services"):
 - 2.2.1 Constructability optimization efforts,
 - 2.2.2 Studies of Labor Conditions;
 - 2.2.3 Contractibility and Coordination Reviews;
 - 2.2.4 Evaluation of Alternative Materials and Systems for the work;
 - 2.2.5 Efforts of Services in Conjunction with any consultants retained by Owner, and
 - 2.2.6 Other assistance to the Owner, its Separate Contractors, the Architect, and their respective consultants of every tier (collectively, the "Design Team").

- 2.3 Contractor's CM Services are (i) performed only in Contractor's capacity as a construction contractor and not as a licensed design professional, (ii) for the sole purpose of facilitating coordination of the Work and construction by Contractor and not for the purpose of discovering errors, omissions, or inconsistencies in the design provided by the Design Team, and (iii) not for the purpose of determining whether the design documents conform with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. Notwithstanding anything in the Preconstruction Documents to the contrary, Contractor is not a member of the Design Team and Contractor's obligations to perform CM Services relate only to construction of the Work and not in any way to the design of the Work or the Project.
- 2.4 The Contractor shall jointly schedule and attend regular meetings with the Architect and Owner's Authorized Representative, (OAR). The Contractor shall consult with the Owner, Architect, and OAR regarding site use and improvements, constructability, sequencing (phasing) if appropriate, and selection of materials, building systems, and equipment.
- 2.5 The Contractor shall review and make themselves knowledgeable of KHA construction standards / preferences prior to making recommendations contrary to said preferences without substantial reason or cause.
- 2.6 The Contractor shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurements, installation, and construction completion; life-cycle cost analysis; and factors related to construction cost including estimates of alternate designs or materials, preliminary budgets, and possible economies.
- 2.7 The Contractor shall review in-progress design documents, including the documents generally described in the industry as Schematic Development Documents (SDD), Design Development Documents (DDD), and Construction Documents (CD) and provide input and advice on construction feasibility, alternative materials, and availability. The Contractor shall review completed SDD, DDD, and CD documents and timely suggest modifications to improve completeness and clarity.
- 2.8 The Contractor shall complete an interdisciplinary review of plans and specifications and recommend improvements for better coordination including cost alternative designs.
- 2.9 PROJECT SCHEDULE
- 2.9.1 Once the collective Design Team sufficiently identifies the project requirements, the Contractor shall prepare and periodically update a preliminary project schedule for the Architect's review and the Owner's acceptance.
- 2.9.2 The Contractor shall provide recommendations with regard to accelerated fast-track scheduling, procurement, or phased construction. The Contractor shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

2.9.3 The Contractor shall inform the Design Team of all long-lead purchase items that may adversely affect the schedule, and/or require pre-purchase prior to start of construction to accommodate Project requirements.

2.10 COST ESTIMATING

2.10.1 Based on the preliminary design and other design criteria prepared by the Architect, the Contractor shall prepare preliminary estimates of the cost of work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Contractor suggest exploring alternate materials and systems, the Contractor shall provide cost comparisons / evaluations of those alternative materials and systems.

2.10.2 As the Architect progresses with preparation of the Schematic Design, Design Development, and Construction Documents, the Contractor shall prepare and update at the appropriate intervals agreed to by the Owner, Contractor, and Architect, estimates of the cost of work of increasing detail and refinement and allowing for the further development of the design. The Contractor shall provide such estimates for the Architect's review and the Owner's approval. The Contractor shall inform the Owner and Architect when estimates of the cost of the work exceed the latest approved project budget and make recommendations for corrective action.

2.10.3 Based upon the design and other design criteria prepared by the Architect, the Contractor shall deliver to the Owner, the work products selected below

- Preliminary Cost Estimate
- Design Development Cost Estimate
- 60-75% Construction Documents Cost Estimate
- Permit / FINAL GMP Construction Documents Cost
- Cash Flow Projections

Article III – Owner's Responsibilities

3.1 The Owner's designated representative is authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services of the Contractor. The term "Owner" means the Owner or the Owner's Authorized Representative.

Owner's Authorized Representative: _____

3.2 The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Agreement. The Contractor may rely on all information and services provided by the Owner.

3.3 The Owner shall retain an Architect to provide services, duties and responsibilities that are necessary for the services described in the Agreement. The Owner shall provide the Contractor a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

3.4 Only the Owner for the Project may use the work products resulting from the services described in this Agreement.

Article IV – Compensation and Payment

4.1 For the services described in the Preconstruction Documents, the Owner shall compensate the Contractor as follows:

The Owner will pay the Contractor a stipulated sum of **<amount> -dollars (\$XX,000.00)** for performance of the services described in this Preconstruction Service Agreement. Further, the Contractor will donate **xxx%** of this stipulated sum, resulting in a payable stipulated sum of **<amount> -dollars (\$XX,000.00)** for performance of the services described in this Preconstruction Service Agreement.

4.2 Unless otherwise specified in Section 4.1, payments for the services described in the Agreement shall be made monthly in proportion to services performed, at milestone activities, or as invoiced by the Contractor. Payments are due within 30 days of presentation of the Contractor's invoice.

4.3 If the services are not complete as described herein within **XX** months of the date of this Agreement, through no fault of the Contractor, the Contractor's compensation may be equitably adjusted.

Article V – Insurance

5.1 The Contractor shall provide the following minimum insurance levels; (1) Commercial General Liability Insurance with limits of \$1,000,000 per occurrence, (2) Automobile Liability with a \$1,000,000 Combined Single Limit, (3) \$2,000,000 of Umbrella coverage, (4) Workers Compensation Insurance per Statute, and (5) Professional Liability Insurance with limits of \$2,000,000 per claim.

5.2 The Owner shall maintain its customary liability insurance and provide property insurance to cover the value of the Owner's property.

5.3 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents and employees, each of the other; and (2) the Architect, Architect's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the work provided under this Agreement.

5.4 The Contractor understands that the Project may involve a Tax Credit Equity Investor who may have additional requirements regarding insurance that may result in changes prior to construction commencing on the project.

Article VI – Claims and Disputes

6.1 Any Claim between the Owner and Contractor shall be resolved in accordance with the provisions set forth in this Article 6 and Article 15 of an unmodified AIA Document A201–2017. However, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation for dispute resolution. Further, for any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: (Specify)

Article VII – Termination

7.1 Either party may terminate this Agreement upon not less than fourteen (14) days' written notice to the other party, for convenience and without cause. In the event of termination of this Agreement, the Owner shall compensate the Contractor for services performed prior to the effective date of such termination. In no event shall the Contractor's compensation under this Section exceed the compensation set forth in Section 4.1.

Article VIII – Contractor for Construction Phase

8.1 The parties expect to negotiate, in good faith, a mutually agreeable contract for the construction phase of the Project.

The parties agree that the Contract for the Construction Phase will contain the Contractor markup terms as proposed in the Contractor's RFQ response and as listed below:

- 8.1.1 Overhead and Profit (Contractor's Fee) will be 0.00% of the Cost of the Work.
- 8.1.2 Mark-up for Insurance will be 0.00% of the Cost of the Work.
- 8.1.3 Mark-up for Payment and Performance Bonds will be 0.00% of the GMP.

Article IX – Miscellaneous Provisions

9.1 The law of the place where the Project is located shall govern this Agreement except that if the parties have selected arbitration as a method of dispute resolution, the Federal Arbitration Act shall govern.

9.2 The Owner and Contractor mutually waive any and all claims for consequential damages and agree that the liability of Contractor for any and all remaining claims, irrespective of the number of claims and whether they are based in breach of contract or warranty, indemnity, negligence or any other theory, shall be limited to the amount of compensation paid by Owner to Contractor under this Agreement.

9.3 The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

9.4 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

THIS AGREEMENT IS ENTERED INTO AS OF THE DAY AND YEAR FIRST WRITTEN ABOVE.

Owner: _____

Contractor: _____

Sign: _____

Sign: _____

By: _____

By: _____

Date: _____

Date: _____

SAMPLE