



RESOLUTION
(15-2018)

**A RESOLUTION OF THE FAIRVIEW CITY COUNCIL AUTHORIZING A
PROFESSIONAL SERVICES CONTRACT, FOR PHASE 1 RELATED PROFESSIONAL
SERVICES FOR THE PUBLIC WORKS FACILITY PROGRESSIVE DESIGN BUILD
PROJECT**

WHEREAS, the City received proposals to perform progressive design-build professional services in response to the Request for Qualifications for Progressive Design-Build Services; and

WHEREAS, the Qualification Based Selection procedure detailed in OAR 137, Division 48 was followed as specified in the City's Contracting Rules; and

WHEREAS, P & C Construction was selected based on expertise, project understanding, responsiveness, previous work samples and other relevant factors; and

WHEREAS, P & C Construction desires to enter into a contract with the City of Fairview for Progressive Design-Build Services for the proposed Public Works Facility.

NOW, THEREFORE, BE IT RESOLVED BY THE FAIRVIEW CITY COUNCIL AS FOLLOWS:

Section 1 The Fairview City Council hereby authorizes the City Administrator to enter into a Professional Services Contract with P & C Construction for Phase 1 of the Progressive Design-Build Services on behalf of the City of Fairview for work substantially in the form attached hereto as Exhibit A; including additional changes as negotiated by the City Attorney.

Section 2 This resolution is and shall be effective from and after its passage by the City Council.

Resolution adopted by the City Council of the City of Fairview, this 7th day of March, 2018.

Mayor, City of Fairview
Ted Tosterud

ATTEST

City Recorder, City of Fairview
Devree Leymaster

3-16-2018

Date



STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - WITH A GUARANTEED MAXIMUM PRICE

Document No. 530

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Washington, DC



TABLE OF CONTENTS

Article	Name	Page
Article 1	Scope of Work.....	3
Article 3	Interpretation and Intent	3
Article 4	Ownership of Work Product.....	4
Article 5	Contract Time.....	4
Article 6	Contract Price.....	5
Article 7	Procedure for Payment.....	7
Article 8	Termination for Convenience	8
Article 9	Representatives of the Parties	8
Article 10	Bonds and Insurance	9
Article 11	Other Provisions.....	9



Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price

*This document has important legal consequences. Consultation with
an attorney is recommended with respect to its completion or modification.*

This **AGREEMENT** is made as of the _____ day of _____
in the year of 20_____, by and between the following parties, for services in connection with the Project
identified below:

OWNER:

City of Fairview
1300 NE Village Street
Fairview, Oregon 97024

DESIGN-BUILDER:

P & C Construction
2133 NW York Street
Portland
OR 97210

PROJECT:

City of Fairview Operations Facility Phase 1 Design-Build services to include preparation of a replacement options matrix, coordination of the Public Works Operation Facility replacement plan from the options matrix approved by the City of Fairview, and design information such that P & C Construction can prepare and provide a Guaranteed Maximum Price (GMP) for review and approval by the City of Fairview.

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools, and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with the general conditions of contract between Owner and Design-Builder (“General Conditions of Contract”);

2.1.2 The Guaranteed Maximum Price (GMP) Proposal accepted by Owner in accordance with Section 6.6.2 herein;

2.1.3 This Agreement, including all exhibits:

2.1.3.1 Scope of Work for Phase 1 from Design-Builder from Design-Builders bid

2.1.3.2 RFP#2017-02, Section 1, Background

2.1.3.3 RFP#2017-02, Section 2, Overview

2.1.3.4 RFP#2017-02, Section 3, Progressive Design-build services

2.1.4 The General Conditions of Contract; and

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner’s acceptance of the GMP Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner’s acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or

inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 Owner and Design-Builder recognize that Owner does not warrant the plans and specifications of the design documents provided by Owner and Design-Builder shall be responsible for evaluating the constructability of any plans, specifications, or other design documents provided by Owner or Owner's Consultants in creating the Construction Documents.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications, and other documents and electronic data, including intellectual property rights, copyrights and/or patents and such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") will become the property of Owner who may use them without Design-Builder's permission for any proper purpose relating to the Work, including, but not limited to, additions to or completion of the Work.

Article 5

Contract Time

5.1 Date of Commencement for Phase 1 Work. The Work for Phase 1 shall commence within five (5) days of both parties executing this Agreement ("Date of Commencement for Phase 1 Work") unless the parties mutually agree otherwise in writing. Design-Builder will be deemed to have completed the Work for Phase 1 upon transmitting the GMP Proposal to Owner which should occur no later than July 1, 2018.

5.2 Date of Commencement for Phase 2 Work. The Work for Phase 2 shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed with Construction ("Date of Commencement for Phase 2 Work") unless the parties mutually agree otherwise in writing.

5.2.1 Substantial Completion and Final Completion.

The parties agree that the substantial completion date is the date on which the Work for Phase 2, or an agreed upon portion of the Work for Phase 2, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official.

5.2.2 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section A.1 of the General Conditions of Contract.

5.2.3 All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Section E of the General Conditions of Contract a contract price ("Contract Price") equal the Cost of the Work for Phase 1 and the Cost of Work for Phase 2 (if applicable), subject to any GMP established in Section 6.6 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.2 Cost of the Work. The term Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work for Phase 1 and Phase 2 respectively as set forth in the Contract Documents.

6.2.1 Cost of Work for Phase 1 is a not to exceed amount of \$146,875.

6.3 Non-Reimbursable Costs.

6.3.1 The following shall not be deemed as Cost of Work:

6.3.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices.

6.3.1.2 Overhead and general expenses which may be recoverable for changes to the Work.

6.3.1.3 The cost of Design-Builder's capital used in the performance of the Work.

6.3.1.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.35.1.5 Land use Permit costs will be borne by the Owner

6.6 The Guaranteed Maximum Price ("GMP").

6.6.1 GMP Proposal. As part of the Work for Phase 1, Design-Builder shall submit a GMP Proposal by July 1, 2018 to Owner which shall include the following, unless the parties mutually agree otherwise:

6.6.1.1 A proposed GMP, which shall be the sum of:

i. The estimated Cost of the Work for Phase 2 including all of Design-Builders Direct Costs; and

ii. If applicable, any prices established under Section 6 hereof.

6.6.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;

6.6.1.3 A detailed, itemized breakdown of every item that is included in the Cost of Work for Phase 2 including all costs for labor and materials;

6.6.1.4 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

6.6.1.5 The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

6.6.1.6 If applicable, a schedule of alternate prices;

6.6.1.7 If applicable, a schedule of unit prices;

6.6.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

6.6.1.9 The expiration date for the proposed GMP and estimated increase in GMP for a January 1, 2019 Date of Commencement for Phase 2 Work.

6.6.2. GMP Adjustment Period. Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

6.6.3 Public Comment Period. Owner will have an additional sixty days to seek public and City Council input on the GMP Proposal ("GMP Proposal Comment Period").

6.6.4 Within 10 business days of the expiration of the GMP Proposal Comment Period, the Owner will have the following options:

6.6.4.1 Owner may accept the GMP Proposal;

6.6.4.2 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.6.4.1 above;

6.6.4.3 Owner may ask for an extension of time before beginning Phase 2 to allow Owner to take GMP Proposal to the voters; or

6.6.2.4.3 Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If the Owner accepts the GMP Proposal the GMP Proposal shall be set forth as an amendment to this Agreement.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the _____ (_____) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Section E of the General Conditions of Contract.

7.1.2 Owner shall make payment after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Section E of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section E.2.4 of the General Conditions of Contract.

7.2 Retainage on Progress Payments.

7.2.1 For Work on Phase 2, Owner will retain _____ percent (_____%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work for Phase 2 has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2 Within fifteen (15) days after Substantial Completion of the Work for Phase 2, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section E.2.4 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section E.5 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the

parties may have agreed to set aside for warranty work) after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section E.5 of the General Conditions of Contract.

7.4 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

Article 8

Termination for Convenience

8.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

8.1.1 All Work completed in connection with the Work for Phase 1 or 2 as applicable.

8.2 If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents, or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4 hereof.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section D.3 of the General Conditions of Contract:

Nolan Young, City Administrator, City of Fairview

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section A of the General Conditions of Contract:

INSERT NAME/CONTACT INFO

Allan Berry, Public Works Director, City of Fairview

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section D.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section B of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

Article 10

Bonds and Insurance

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article G of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

Required Not Required

Payment Bond.

Required Not Required

Other Performance Security.

Required Not Required

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows: *(Insert any additional provisions)*

Notwithstanding Section B of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section D of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located and shall not be tried to a jury.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

DESIGN-BUILDER:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____