

## ATTACHMENT C

### MASTER Q & A FORM

#### PROJECT: EMPIRE GARAGE DESIGN-BUILD REQUEST FOR QUALIFICATIONS

#### Empire Garage – Q & A Response 2 July 13, 2012

<b>Master Q&amp;A</b>	Any questions regarding this RFQ should be submitted according to the process outlined below. The City will make every effort to answer within two (2) days of receiving the questions.
<b>Q&amp;A Process</b>	<ol style="list-style-type: none"> <li>1. Prepare questions or concerns on the template provided.</li> <li>2. Complete the table in full, providing a date for each question and a section of the RFQ to reference (if applicable).</li> <li>3. Submit the completed form via email to Steve Johnson, OAC Services, Inc at: <a href="mailto:sjohnson@oacscvs.com">sjohnson@oacscvs.com</a>. Attach associated documents as necessary.</li> </ol> <p>Please contact Chris Mallow or Steve Johnson with any questions regarding this process.</p>

#	Date	Reference Section	Question or Comment	City Response
1	July 13, 2012	Section 5.2.e.i	City issued change	<p>Delete paragraph 5.2.e.i from the RFQ document.</p> <p><i>This project will be financed by the City. Detail, in the subcontracting plan, how you will comply with the City's procurement requirements.</i></p>
2	July 13, 2012	Attachment A – Question 8	City issued change	Question 8 should reference section 11 for insurance requirements not section 3.
3	July 13, 2012	Section 11, Par 5.b:	When will the referenced addendum re: Builder's Risk be issued?. Need to understand requirements in order to assess if response is appropriate.	See attached revised Section 11 dated July 13, 2012



**Empire Garage – Q & A Response 2**  
**July 13, 2012**

#	Date	Reference Section	Question or Comment	City Response
4	July 13, 2012	Section 11, Par 7:	When will the referenced addendum re: Waivers of Subrogation be issued? Need to understand requirements in order to assess if response is appropriate.	See attached revised Section 11 dated July 13, 2012
5	July 13, 2012	Section 11, Par 4.h:	City issued clarification to Riggers Liability Insurance	To be issued July 16, 2012
6	July 13, 2012	Section 1 & 2:	Will there be an honorarium offered for shortlisted firms?	No honorariums will be offered
7	July 13, 2012	Section 1 & 2:	If there is an honorarium provided, how much will it be?	No honorariums will be offered
8	July 13, 2012	Section 4,5	<ul style="list-style-type: none"> <li>Section 5 of the RFQ (pages 10-13) provide explicit detail of what the proposer is scored upon and the requested information of projects, references and team members. Most design-build teams have multiple team members and the amount of information requested in 5.2a and b for each team member is extensive. We respectfully request additional pages over the specified 15 page limit in order to comply with the RFQ and / or lower font size.</li> <li>Section 5.2.i.3: past project list - Last 10 years please clarify project listing requirements</li> <li>Section 4.4.c.v.a: include standard forms to be used as part of your process.</li> </ul>	<ul style="list-style-type: none"> <li>Increase page limit to 20 pages in lieu of specified 15 pages. Font sizing / margins noted in Section 4.4.c are to be used as a guideline in the response from each firm.</li> <li>In lieu of 10 year list, each responder to provide listing of past relevant projects for design build and / or garage experience</li> <li>Provide relevant sample forms to show capabilities, process and how they support the day to day operations of the project. Include in appendix as indicated in RFQ.</li> </ul>



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#	Date	Reference Section	Question or Comment	City Response
9	July 13, 2012	General	Aesthetic Discussion	<p>The overall aesthetic design shall complement and fit within the context of the immediate surroundings of Downtown Billings CBD. Special sensitivity shall be placed on the retail street level façades, stair and elevator towers and have a human scale. These elements shall address the architectural context of the Historic District of the City of Billings. The upper levels of the garage can be represented as a background building but shall be sensitive and fit within the surrounding context. The garage shall also incorporate treatments that are economical to maintain and be durable for the lifespan of the structure. Brick and/or precast concrete are examples of acceptable façade options incorporated into to the glass store fronts for retail and the stair and elevator towers.</p>
10	July 13, 2012	Section 5.1	Define the City / Stakeholder Evaluation Committee	<p>The current anticipated committee for the evaluation of the RFQ proposals are:</p> <p>City of Billings Parking Supervisor &amp; Asst. City Administrator, Northern Hotel owner, Securities Building owner, Downtown Billings Alliance Development Director, Parking Advisory Committee Chair, OAC PM Team</p> <p>Anticipated RFP evaluation committee would be similar to above with potentially other key City or Community members yet to be defined.</p>



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**Revised Section Eleven**

**SECTION ELEVEN – INSURANCE REQUIREMENT AND INDEMNIFICATION**

1. Once the successful Proposer (hereafter deemed “Design-Builder”) has executed an agreement with The City, the Design-Builder will be required to furnish a performance and payment bond in an amount equal to the guaranteed maximum price plus 15%.
2. The surety company must be authorized and licensed to transact business in the State of Montana with a Financial Strength Rating of A- or better for a Financial Size Category of VII or greater.
3. As part of the contract execution requirements, the Design-Builder will procure and maintain, at its sole expense, insurance as outlined herewith. The policies are incorporated in the contract documents for the work by reference herewith.
4. Insurance Requirements:
  - a. For any Work, the Design-Builder shall purchase and maintain at its own expense, or cause to be purchased and maintained, throughout the term of these Contract Documents, the insurance as specified below. Insurance required hereunder shall apply to and cover all loss or liability caused by, arising from, or resulting from the Work performed or required to be performed, provided or require to be provided, whether due to action or inaction by the Design-Builder or any Person for whom the Design-Builder is responsible hereunder, it being understood and agreed that the work may include hazardous and ultra-hazardous activities. Such insurance shall protect the Design-Builder from claims set forth below which may arise out of or result from the Design-Builder’s operations under these Contract Documents and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder or by a Subcontractor or by anyone directly or indirectly employed by any of the them, or by anyone for whose acts any of them **may** be liable.
    - i. Claims under Worker’s Compensation, occupational sickness, or disease, disability benefit and other similar employee benefits acts;



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- ii. Claims for damages because of bodily injury, disease, illness, death or personal injury, and other claims usually covered by bodily injury liability insurance;
  - iii. Claims for damages because of injury to, or destruction of, property and other claims usually covered by property damage liability insurance.
- b. Commercial General Liability Insurance. The Design-Builder shall purchase and maintain a Commercial General Liability insurance policy on an occurrence coverage basis (including, without limitation, coverage for bodily injury, personal injury and advertising injury, property damage, and broad-form contractual liability arising from or relating to these Contract Documents, coverage as respects independent contractor, operating mobile equipment, products and completed operations, explosion, collapse and underground hazards) with limit not less than the amounts indicated below.
- c. Business Automobile Liability Insurance. The Design-Builder shall purchase and maintain Commercial Automobile Insurance including Owned, Non-Owned, and Hired Automobile Liability coverage for bodily and property damage with limits not less than the amounts listed below. Such insurance shall cover and include liability arising from all vehicles owned by, hired by, and used by or on behalf of the Design-Builder. The coverage must be endorsed with ISO Form CA 9948, or a substitute form providing equivalent coverage, to include without limitations, coverage respecting liability arising out of the transporting, loading or unloading of Hazardous Material/Regulated Substances. The Commercial General Liability insurance limit and Auto Liability limit requirements may be satisfied by the purchase and maintenance of any combination of primary coverage, or an Umbrella or Excess Liability Policy.
- d. Worker's Compensation Insurance. Employers Liability with an annual limit not less than the amounts listed below or statutory limits whichever is greater; coverage shall include defense of an allegation against the employer for injury believed to have been substantially certain to occur. The Employers Liability insurance requirement may be satisfied by including such coverage within the General Liability policy.



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- e. Contractors Pollution Liability. If Work performed or provided by the Design-Builder includes activities that could result in or give rise to a contamination or pollution incident, the Design-Builder shall purchase and maintain in force insurance covering loss and liability arising out of or relating to Work, and shall cover claims alleging bodily injury, property damage, or clean up which shall include investigation, response, removal, remediation, and neutralization of the pollution condition both on and off-site, or to any other location to which Hazardous Material/Regulated Substances were transported from the Work site with limits not less than the amount listed below. The Design-Builder's Pollution Liability insurance may be written on a claims-made basis provided such policy shall either (1) be renewed annually for a period of not fewer than thirty six months following completion with substantially the same terms and conditions or (2) include an extended reporting period endorsement or clause providing not less than thirty-six months within which a claim may be made under the policy respecting the Design-Builder; provide further that if such insurance is written on a claims-made basis then the per occurrence limits stated above shall apply per incident; limits of liability shall apply on a per-Project basis.
- f. Professional Liability Insurance. If Work performed or provided by Design-Builder includes activities that could result in or give rise to a Professional Liability claim or loss, then the Design-Builder shall purchase and maintain in force Professional Liability insurance (including contractual liability coverage) covering liability and damages arising out of or resulting from the Design-Builder's professional services rendered, or which should have been rendered, pursuant to these Contract Documents. The Design-Builder shall purchase and maintain Professional Liability insurance coverage with limits no less than the amount listed below. Professional Liability insurance may be written on a claims-made basis provided such policy shall either (1) be renewed annually for period of not fewer than thirty-six months following Final Completion with substantially the same terms and conditions or (2) include an extended reporting period endorsement or clause providing not less than thirty six months within a claim may be made under the policy respecting the Design-Builder's performance of Work; the cost of coverage for such twelve month period shall be



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borne exclusively by the Design-Builder, provided further that if such insurance is written on a claims-made basis then the per occurrence limits stated above shall apply per incident; and if commercially feasible, limits of liability shall apply on a per-project basis with a designated limit apply to the Project Site.

### g. Required Limits

- i. Contracts in excess of \$5,000,000 or more require coverage with limits in an amount to be determined by the City and its Assigns and identified in the Special Conditions, but in no case less than the following amounts:

#### 1. General Liability and Umbrella Combination

\$5,000,000 per Occurrence

\$750,000 per Claim

\$5,000,000 Products / Completed Operations Annual Aggregate

\$5,000,000 Bodily Injury and Property Damage Limit for Each Occurrence Limit

\$5,000,000 Personal and Advertising Injury Limit

#### 2. Business Automobile and Umbrella Combination

\$5,000,000 Combined Single Limit

#### 3. Workers Compensation and Employers Liability

\$5,000,000 Bodily Injury by Accident, Each Accident

\$5,000,000 Bodily Injury by Disease, Each Employee

\$5,000,000 Bodily Injury by Disease, Policy

Aggregate

#### 4. Contractor's Pollution Liability

\$2,000,000 Bodily Injury and Property Damage, Third-Party Claims, Each Occurrence

\$4,000,000 Bodily Injury and Property Damage, Third-Party Claims, Annual Aggregate

\$2,000,000 Clean-up, Response, and Remediation On-Site, Each Occurrence

\$2,000,000 Clean-Up, Response, and Remediation Off-Site, Each Occurrence



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5. Contractor and Design Professional Liability  
(Design-Build)

\$2,000,000 per Occurrence

\$2,000,000 per Claim

- The Design Builder policy must provide coverage for the Contractor and Designer either individually or as a single policy.
- ii. Such policies shall be endorsed to provide that the Commercial General Liability and Umbrella/Excess limits of liability (including Products/Completed Operations coverage) General Aggregate Limits apply separately to each of the insured Design-Builder's projects.
- h. Riggers Liability Insurance. To be issued by addendum.
- i. Owners and Contractors Protective Policy. Contractor will purchase this policy in the name of the City of Billings with policy limits of \$1,000,000 per occurrence and \$2,000,000 General Aggregate.
- 5. Property Coverage – New Construction and Renovations
  - a. Contractor's Property Insurance. Design-Builder shall purchase and maintain Property Insurance covering construction machinery, equipment, mobile equipment, special equipment, falsework, scaffolding, materials, valuable papers, trailers, and tools used or owned by the Design-Builder in the performance of Work. The City and its Assigns shall in no circumstance be responsible or liable for the loss or damage to, or disappearance of, any property listed above used or owned by the Design-Builder in performance of the Work.
  - a. Builder's Risk: The City and its Assigns shall purchase and maintain, during the progress of the Work and until the execution of the Certificate of Occupancy and Acceptance by the City, Property Insurance, Builder's Risk Insurance, or equivalent policy form to cover all Work including tools, equipment, buildings, and buildings in the course of construction, including temporary buildings and structures, and materials, used in the construction process relative





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to the Project, owned or used by The City stored on or off-site if permitted by The City or while in transit. Such insurance shall be on a special cause of loss (or comparable) form, insuring against the direct physical loss of, or damage to, covered property, including, without limitation, for physical loss caused by theft, vandalism, malicious mischief, earthquake, tornado, lighting, explosion, breakage of glass, flood, collapse, and water damage. It shall also include coverage for certain demolition and abatement. In the case of a loss covered under such Property insurance or Builders Risk insurance, the Contractor(s) responsible for such claim, will pay the deductible in the amount of Five Thousand Dollars \$5,000.00 (\$25,000 in the case of flood or earthquake). The amount of coverage purchased is to be determined by the City/OAC in its sole discretion.

- i. Coverage must include a "soft cost endorsement" to include, without limitations, the reasonable extra costs of Architect and OAC.
- ii. Coverage purchased and maintained pursuant to this Article 12 shall waive all rights between the City/OAC for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under such policy.
- iii. Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.
- iv. Coverage shall be primary to all other applicable insurance.
- v. The Property coverage shall specifically permit and allow for Partial Occupancy by the City/OAC prior to execution of the Certificate of Contract Completion and Final Acceptance of the Project by the Commission and coverage shall remain in effect until all punch list items are completed.

### 6. Insurance Policy Requirements

- a. Additional Insured. The City and the City's officials, officers, employees and Project Management Firm shall be named as additional insured on the Contractor's General Liability Policy, Automobile Policy, and Excess/Umbrella Liability Policy and shall be listed on the certificate of insurance submitted by the Contractor. The extent of the additional insured coverage shall be no less broad than that provided under ISO Form CG 20 10 11 85 or the equivalent as approved by the City of Billings for General Liability and Umbrella/Excess Liability and ISO Form CA 20 48 02 /99 Automobile Liability. The additional insured coverage afforded under the Contractor's policies shall include both ongoing operations (work in progress), and completed operations



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(completed work). Additional insured coverage shall be maintained for a minimum of thirty-six months after Final Completion.

- b. Maintenance of Coverage. The Design-Builder shall maintain all insurance in the required amounts, without interruption, from the date of the execution of the Contract until the date of the execution of the Certificate of Contract Completion by the OAC and shall be maintained for minimum of thirty-six month after execution. Failure to maintain the required insurance during the time specified shall be cause for termination of the Contract and could be considered a material breach to this contract.
- c. Primary Insurance. Except with request to the insurance required of the City/OAC pursuant to these Contract Documents, the insurance coverage to be purchased and maintained by the Design-Builder shall be primary to any insurance, self-insurance, or self-funding arrangement maintained by the City/OAC which shall not contribute therewith, and there shall be severability of interest under the insurance policies for all coverage provided under said insurance policies and otherwise provide cross liability coverage.
- d. Sub-Contractor Insurance. The Design-Builder shall not sublet or subcontract any part of this Contract without assuming responsibility for requiring each of its Subcontractor(s) (and each subsubcontractor at every tier) to purchase and maintain the same types of insurance with substantially the same terms, conditions, and limits of liability as required of Contractor or as specified herein for Subcontractor. Failure of Contractor or any of its Subcontractor(s) to maintain insurance for minimum of thirty-six months after Final Completion as required by these Contract Documents shall be deemed a material breach of these Contract Documents allowing the City to terminate these Contract Documents or to provide insurance at the Design-Builder's sole expense, in neither case, however, shall Contractor's liability be lessened.
- e. Insurance Rating. All insurance required to be purchased and maintained by the Design-Builder shall be placed and maintained with insurance companies rated, currently and for at least the previous three years, at least equal to the AM Best's Rating of A-, financial size of VII, licensed to do business in Montana; where commercially feasible admitted to do business in Montana. The



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City/OAC's review, receipt and/or acceptance of any insurance policy purchased and maintained by the Design-Builder, or a certificate of insurance evidencing such insurance, shall not constitute approval of such insurance or agreement that such insurance satisfies the insurance requirements set forth in this Contract.

- f. Notice of Occurrence. Upon the Design-Builder's knowledge of any occurrence or claim which may reduce or materially affect the aggregate amount of insurance coverage available to pursuant to these Contract Document, the Design-Builder shall (1) immediately provide The City and its Assigns with written notice of such occurrence, event or third-party claim(s) with reasonable detail, and (2) promptly obtain replacement insurance for the eroded aggregate limit and provide The City with evidence thereof.
- g. Evidence of Insurance. The Design-Builder shall submit to the City and OAC within ten (10) calendar days after award of the Contract to Contractor and prior to commencement of the Work, certificates evidencing the effectiveness of the foregoing insurance policies. The Design-Builder shall, within thirty (30) days of the City and its Assign's request during the term of these Contract Documents, provide The City with a full and complete copy of all insurance policies purchased and maintained by the Design-Builder pursuant to these Contact Documents. Annually for a period of thirty-six months following Final Completion, the Contractor upon written request from the City during the term and annually, shall promptly provide the City with certificates of insurance evidencing the effectiveness of the insurance coverage required pursuant to these Contract Document, and if requested by the City, original copies of the complete policies, including all endorsements. In no event shall any failure to demand a copy of any required insurance or insured endorsement be construed as a waiver of the obligation of the Design-Builder to obtain required insurance. Each policy and respective Certificate of Insurance shall expressly provide that no less than thirty (30) days prior to written notice shall be give to the City in the event of cancellation, non-renewal, expiration or material alteration of the coverage contained in such policy or evidenced by such Certificate of Insurance. This requirement may be satisfied by the Design-Builder providing City such written notice.



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- h. Deductible. Except with respect to the insurance required of the City, the Design-Builder shall be responsible for the payment of any and all deductible(s) or retention(s) under the policy or policies of insurance purchased and maintained by each pursuant to these Contract Documents.
- i. No Limitation. The types and limits of Insurance to be purchased and maintained by the Design-Builder pursuant to these Contract Documents shall not be deemed to constitute a limitation of the Contractor's liability or indemnification obligation hereunder.
- j. Purchase of Insurance. If the Design-Builder fails to purchase and maintain, or fails to continue in force throughout the term of the Contract Documents and until Final Completion, insurance in the types and with limits of liability required under this Agreement, City may purchase such insurance and any cost thereof shall be borne by Contractor, and shall be deducted from any amounts due and owing by the Owner to Design-Builder. If such amounts are insufficient, the Design-Builder agrees to promptly pay the City the amount incurred by the City to purchase such insurance.
- 7. Waivers of Subrogation: All general liability, automobile and umbrella or excess policies will be endorsed to waive the right of subrogation in favor of the City of Billings.
- 8. Indemnification
  - a. The Design-Builder will agree to indemnify, defend and save City, its officers, agents and employees harmless from any and all claims causes of action, demands, judgments, lawsuits losses, damages, and liabilities and litigation costs and expenses or attorneys' fees and costs occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of the Design-Builder or its agents or employees.
  - b. The Design-Builder shall not indemnify, defend, save and hold the City harmless from claims, causes of action, demands, judgments, lawsuits, losses, damages, liabilities, and litigation costs and expenses or attorneys' fees and costs arising from wrongful or negligent acts, error or omission solely of the City occurring during the course of or as a result of the performance of the subsequent agreement.
  - c. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the City and the Design-Builder, the Design-Builder shall indemnify, defend, save,



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and hold the City harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, which result from the Design-Builder's or any subcontractor's wrongful or negligent acts occurring as a result from the Design-Builder's performance pursuant to the subsequent agreement.