PURPOSE
This agenda bill recommends approval of Hoffman Construction Guaranteed Maximum Price Amendment #1 (GMP#1) for early procurement of Membrane Bio Reactor (MBR) and Ultraviolet Disinfection (UV) equipment in Connection with Construction of the new wastewater treatment plant (WWTP).

AUTHORITY

FISCAL IMPACT DESCRIPTION
Funds Required: $2,553,317
Appropriation Source: Wastewater Fund

SUMMARY STATEMENT
Hoffman GC/CM Contract Summary:

- July 1, 2014 – Base agreement approved by council
  - Base agreement included the bid GC/CM fee of 4.28% on constructed work.
  - Base agreement also included up to a maximum of $790,050 for preconstruction services.
  - Pending December 2\textsuperscript{nd}, 2014 approval – GMP component #1 for early procurement of UV and MBR equipment.
  - Anticipated Subsequent GMP Components as follows will be combined for the total project GMP:
    - Construction of the new outfall
    - Additional early equipment procurement (solids equipment)
    - Early site work (mobilization, excavation, shoring, dewatering, etc.)
    - WWTP construction
    - Sitework improvements (landscape, Bayshore, parking, etc.)
**GC/CM Early Equipment Procurement Method:**

- Equipment is directly solicited by Hoffman under RCW GC/CM provision for “self performed” work.
- Bids are for design support, equipment, and training after installation.
- Bids are not for installation, which will likely be completed by a mechanical sub-contractor and included in the cost of a subsequent GMP for the main facility.
- Bids included total capital cost as well as additional data that supported a calculation of 15 year O&M costs.

**MBR Equipment Bid Summary:**

<table>
<thead>
<tr>
<th>MBR System Equipment</th>
<th>GE/Zenon</th>
<th>Koch</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance and Payment Bond</td>
<td>$6,500</td>
<td>$31,725</td>
</tr>
<tr>
<td>Shop Drawings and Design Support</td>
<td>$249,000</td>
<td>$325,000</td>
</tr>
<tr>
<td>Membrane Bioreactor System</td>
<td>$1,567,000</td>
<td>$1,688,275</td>
</tr>
<tr>
<td>Chemical Cleaning System</td>
<td>$20,500</td>
<td>$28,750</td>
</tr>
<tr>
<td>Spare Parts and Special Tools</td>
<td>$47,000</td>
<td>$25,000</td>
</tr>
<tr>
<td>Freight (Delivered Duty Paid)</td>
<td>$56,000</td>
<td>$26,250</td>
</tr>
<tr>
<td>Supervision</td>
<td>$203,000</td>
<td>$225,000</td>
</tr>
<tr>
<td><strong>Total Capital Bid Price</strong></td>
<td><strong>$2,149,000</strong></td>
<td><strong>$2,350,000</strong></td>
</tr>
</tbody>
</table>

- 15 YR O&M cost were also considered for GE & Koch including electricity, various chemical annual costs & membrane replacements.
- Although O&M costs were estimated to be slightly higher for GE the savings is not expected to be sufficient to offset the lower capital cost.

**UV Equipment Bid Summary:**

<table>
<thead>
<tr>
<th>UV Disinfection System</th>
<th>Trojan</th>
<th>ETS</th>
<th>Wedeco</th>
</tr>
</thead>
<tbody>
<tr>
<td>UV Disinfection System</td>
<td>$247,131</td>
<td>$236,550</td>
<td>$223,568</td>
</tr>
<tr>
<td>Chemical Cleaning System</td>
<td>$24,000</td>
<td>$4,000</td>
<td>$4,753</td>
</tr>
<tr>
<td>Spare Parts and Special Tools</td>
<td>$10,280</td>
<td>$16,432</td>
<td>$38,875</td>
</tr>
<tr>
<td>Shop Drawings and Design Support</td>
<td>$10,320</td>
<td>$12,450</td>
<td>$15,790</td>
</tr>
<tr>
<td>Freight (Delivered Duty Paid)</td>
<td>$5,179</td>
<td>$2,818</td>
<td>$4,200</td>
</tr>
<tr>
<td>Supervision</td>
<td>$45,245</td>
<td>$15,750</td>
<td>$24,258</td>
</tr>
<tr>
<td>Performance and Payment Bond</td>
<td>$1,845</td>
<td>$11,520</td>
<td>$2,856</td>
</tr>
<tr>
<td><strong>Total Capital Bid Price</strong></td>
<td><strong>$344,000</strong></td>
<td><strong>$299,520</strong></td>
<td><strong>$314,300</strong></td>
</tr>
</tbody>
</table>
15 YR O&M cost were considered for Trojan, ETS and Wedeco including annual calibration, electricity and various replacement parts such as sleeves, lamps, ballasts, sensors and cleaning equipment. Although O&M costs were estimated to be slightly higher for ETS than Trojan the savings is not expected to be sufficient to offset the lower capital cost of ETS. Wedeco had the highest O&M cost of the three vendors.

Hoffman Recommendation of Award:

- Recommend award to GE for MBR equipment in the amount of $2,149,000
- Recommend award to ETS for UV equipment in the amount of $299,520
- Hoffman’s GC/CM fee per July award of 4.28% = $104,797

DISCUSSION

PLANNING COMMISSION REVIEW

CITY COUNCIL WORKSHOP
11-13-2013 – Project funding and alternative project delivery were discussed.
11-19-2013 – Project delivery options were discussed.
2-26-2014 – Established the GC/CM contractor selection and review team.
6-25-2014 – Selection of the GC/CM was discussed.
11-19-2014 – GMP#1 bids for UV and MBR were discussed

CONCLUSION

RECOMMENDED ACTION
Authorize the Mayor to sign AIA Document A133 – 2009 Exhibit A in the amount of $2,553,317.00 with Hoffman Construction for early procurement of UV and MBR equipment.

ATTACHMENTS
1. A-133 Agreement (base agreement)
2. A-133 - 2009 Exhibit A - Guaranteed Maximum Price Amendment (GMP#1)
3. November 18, 2014 Hoffman recommendation letter

PREVIOUS COUNCIL ACTIONS
12-3-2013 – Adopted Resolution 13-32 directing staff to pursue GC/CM as the delivery method for the new wastewater treatment plant.
12-17-2013 - Adopted Ordinance 1682 amending Oak Harbor Municipal Code to include a provision for alternative project delivery methods.
2-18-2014 - Authorized staff to advertise a request for qualifications (RFQ) to select a General
Authorized staff to advertise a request for qualifications (RFQ) to select a General Contractor / Construction Manager (GC/CM) for the new wastewater treatment plant project.


7-1-2014 - Authorize the Mayor to sign the A-133 agreement with Hoffman Construction in connection with the new wastewater treatment plant (WWTP) project.
AGREEMENT made as of the ____ day of ______ in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, Washington 98277

and the Construction Manager:
(Name, legal status and address)

Hoffman Construction Company of Washington
1505 Westlake Avenue N., Suite 500
Seattle, Washington 98109

for the following Project:
(Name and address or location)

Oak Harbor Clean Water Facility

The Architect: The Architect (which refers to the following engineer):
(Name, legal status and address)

Carollo Engineers
1218 Third Avenue, Suite 1600
Seattle, Washington 98277

The Owner's Designated Representative:
(Name, address and other information)

John Piccone
Project Engineer
865 SE Barrington Drive
Oak Harbor, Washington 98277

The Construction Manager's Designated Representative:
(Name, address and other information)

Trevor Thies
Senior Project Manager
Hoffman Construction Company of Washington
1505 Westlake Avenue N., Suite 500
Seattle, Washington 98109

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

AIA Document A201™—2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.
The Architect's Designated Representative:
(Name, address and other information)

Brian Matson
Carello Engineers
1218 Third Avenue, Suite 1600
Seattle, Washington 98277

The Owner and Construction Manager agree as follows.
TABLE OF ARTICLES

1 GENERAL PROVISIONS
2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
3 OWNER'S RESPONSIBILITIES
4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6 COST OF THE WORK FOR CONSTRUCTION PHASE
7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8 INSURANCE AND BONDS
9 DISPUTE RESOLUTION
10 TERMINATION OR SUSPENSION
11 MISCELLANEOUS PROVISIONS
12 SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS
§ 1.0. DEFINITIONS

§ 1.0.1 The Agreement is this revised A133-2009 Agreement between Owner and Construction Manager.

§ 1.0.2 An Allowance is a stated amount included in a Guaranteed Maximum Price ("GMP") for a stated part of the Work that is not fully defined and/or quantified at the time the GMP is established. When that part of the Work is adequately defined and/or quantified, the GMP will be adjusted to account for the difference between the Allowance and the actual or estimated Cost of the Work for that item in an amount that is mutually agreeable to the Owner and Construction Manager. Following the adjustment, that part of the Work will no longer be an Allowance item.

§ 1.0.3 An Application for Payment is described in Section 9.3 of the revised General Conditions and Section 7.1 of this Agreement. There will be separate Applications for Payment for each Component. An Application for Payment is generally a document the Construction Manager submits to the Owner and the Architect itemizing amounts due for and operations completed in a Component in accordance with the Contract for Construction.

§ 1.0.4 The Architect, listed above, is the entity with which the Owner has contracted in a separate agreement; the Architect is described in Section 3.3 of this Agreement and defined in Section 4.1 of the revised General Conditions. The "Architect" may be a licensed engineer rather than an architect.

§ 1.0.5 A Change Order is defined in Section 7.2.1 of the revised General Conditions and is generally a written instrument prepared by the Architect and signed by the Owner, the Construction Manager and the Architect that modifies the Contract for Construction and states their agreement upon a Change in the Work, the amount of the adjustment, if any, in the GMP; and the extent of the adjustment, if any, in the Contract Time.

§ 1.0.6 A Claim is defined in Section 15.1.1 of the revised General Conditions and generally consists of a demand or assertion by one of the parties seeking, as a matter of right, adjustments or interpretations of Contract terms, payment of money, extension of time or other relief. The term "Claim" includes disputes and matters in question between the Owner and the Construction Manager arising out of or relating to the Contract Documents.

§ 1.0.7 A Component is a defined portion of the Project for which there is a separate GMP Amendment that contains a GMP and Contract Time for the Component.
§ 10.8 A Construction Change Directive is defined in Section 7.3 of the revised General Conditions as a written order prepared and signed by the Architect and the Owner, with or without the agreement of the Construction Manager, directing the Construction Manager to perform a change in the Work, or perform Work the Construction Manager contends to be a change in the Work, prior to agreement of the basis for adjustment, if any, to the Contract for Construction.

§ 10.9 The Construction Manager is the entity identified above as the party to this Agreement responsible for performing the Preconstruction Services and, upon successful negotiation and execution of a GMP Amendment for a Component, responsible for construction of the Work in that Component through its own services as well as through Subcontractors. The Construction Manager is identified as the "Contractor" in the General Conditions and shall provide the services of a General Contractor/Construction Manager as defined in RCW 39.10, including its 2014 Heavy Civil amendments.

§ 10.10 A Construction Phase is defined in Section 2.3 of this Agreement and any Special Conditions, and generally consists of the period of the Contract during which the Construction Manager performs construction of the Work on a Component after the earlier of execution of the GMP Amendment for that Component or the Owner’s issuance of a Notice to Proceed with that Component.

§ 10.11 The Construction Schedule is the schedule defined in Section 3.10 of the revised General Conditions and prepared, revised and utilized by the Construction Manager for its performance under the Contract for Construction.

§ 10.12 The Contract Documents are defined in Section 1.1.1 of the revised General Conditions and Section 1.1 of this Agreement, and generally consist of this revised A133-2009 Agreement between Owner and the Construction Manager and its attachments and exhibits, the revised A201-2007 General Conditions and other conditions of the Contract, Drawings, Specifications, Addenda, other documents listed in this Agreement and Modifications and Amendments issued after execution of the Contract.

§ 10.13 The Contract for Construction (sometimes referred to as the Contract) is the agreement between the Owner and the Construction Manager and is formed by the Contract Documents.

§ 10.14 The Contract Sum is defined in Section 5.1 of this Agreement and Section 9.1 of the revised General Conditions that the Owner agrees to pay the Construction Manager for its performance of the Work in a Component under the Contract for Construction. The Contract Sum consists of the Cost of the Work for a Component as well as the Construction Manager’s Fee, and it shall not exceed the GMP. Neither the Preconstruction Services Cost nor the sales tax is included in the Contract Sum.

§ 10.15 The Contract Time is the time defined in Section 8.1.1 of the revised General Conditions and specified in a GMP Amendment to achieve Substantial Completion of the Work of a Component.

§ 10.16 The term Contractor means the Construction Manager.

§ 10.17 The Cost of the Work is the amount defined in Article 6 of this Agreement reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work of a Component under the Contract for Construction. The Costs of the Work are to be separately recorded for each Component. The Cost of the Work includes the Subcontractor bid packages, Negotiated Self-Performed Work, the Specified General Conditions and the Negotiated Support Services but does not include the Construction Manager’s Fee or sales tax on progress payments.

§ 10.18 The Design Development documents include all design documents from the conceptual level and through the 30%, 60%, and 90% levels of completion, and include the procurement documents for all equipment, including but not limited to the Ultraviolet Disinfection and Membrane Bioreactor equipment. Contractor shall review Design Development documents at all levels of completion, and such review shall be a first order of priority following the execution of this Agreement.

§ 10.19 Drawings are defined in Section 1.1.5 of the revised General Conditions and generally are the graphic and pictorial portions of the Contract Documents showing the design and location of the Work, and generally include plans, elevations, sections, details, dimensions, schedules and diagrams.

§ 10.20 The Estimated Cost of the Work ("ECW") generally consists of the sum to which the Owner and the Construction Manager agree in writing as an estimate of the Cost of the Work reimbursable under Article 6 of this Agreement for a Component, including but not limited to the Subcontractor bid packages. Negotiated Support

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User Notes:
Services, the Specified General Conditions, the Negotiated Self-Performed Work for that Component. The FCW does not include the Contingency, the Construction Manager’s Fee, Preconstruction Services, or sales tax on progress payments. A final ECW for each Component will be established as part of the GMP negotiation in accordance with this Agreement.

§ 1.0.21 The Construction Manager’s Fee is the amount specified in a GMP Amendment based on the calculation contained in Section 5.1.1 of this Agreement that the Construction Manager is to receive under this Contract in addition to the Cost of the Work for its performance of the Work in a Component. The Fee compensates the Construction Manager for all aspects of its performance other than the Cost of the Work, and it includes its profit and all overhead expenses not otherwise reimbursable under this Agreement, including home office overhead and all taxes except sales tax on progress payments. The Fee is applied to the Costs of the Work, including the Specified General Conditions, the Negotiated Support Services, and the Negotiated Self-Performed Work.

§ 1.0.22 Final Completion is defined in Section 9.10.1 of the revised General Conditions and generally occurs when the Owner finds that the Work in a Component has been concluded, the required occupancy permit has been issued, the commissioning process and any validation process have been successfully concluded, incidental corrective or punch list work and final cleaning have been completed, the Construction Manager has submitted or delivered all specified items, the Construction Manager has submitted a final Application for Payment for the Component, and the Owner has approved a final Application for Payment for the Component. Final Completion may separately occur for each Component that is part of the entire Work.

§ 1.0.23 The General Conditions of the Contract are defined in Section 1.3 of this Agreement and are the revised 2007 Edition of AIA Document A201, General Conditions of the Contract for Construction, which is incorporated herein by reference. All references to the A201 General Conditions in the Contract Documents are to the revised document.

§ 1.0.24 Guaranteed Maximum Price ("GMP") for a Component is defined in Section 2.2, described in Section 5.2 of this Agreement, and established in a GMP Amendment. The GMP is based on an estimate of the Contract Sum for a Component. The GMP consists of the sum that the Owner and the Construction Manager establish in a GMP Amendment, separately for each Component, as the fixed limit for all Costs of the Work reimbursable under Article 6 of this Agreement, the Contingency, and the Construction Manager’s Fee. A GMP does not include sales tax on progress payments or the Preconstruction Services Cost. The Owner is not obligated to pay the Construction Manager more than the GMP for the performance of the Work in a Component.

§ 1.0.25 A GMP Amendment is described in Section 2.2.6 of this Agreement and generally is an amendment to this Contract setting forth the Guaranteed Maximum Price for a Component, the information and assumptions upon which it is based, and separate amounts for the Negotiated Self-Performed Work to be performed in the Component, for the Negotiated Support Services and for the Specified General Conditions for the Component, the Contract Time for the Component, and other information upon which the parties agree.

§ 1.0.26 Heavy Civil Work is Work defined in RCW 39.10.210 as a civil engineering project, the predominant features of which are infrastructure improvements.

§ 1.0.27 Negotiated Self-Performed Work is Heavy Civil Work (and Work directly related thereto) that the Construction Manager performs by or through its own forces as specified in a GMP Amendment for a Component. The Owner must approve all categories of Negotiated Self-Performed Work. The Owner shall reimburse the Construction Manager for the Costs of the Work of Negotiated Self-Performed Work for a Component, which, when added to other Costs of the Work for the Component, shall not exceed the GMP. Negotiated Self-Performed Work does not include Negotiated Support Services or Specified General Conditions. The combined Costs of the Work for Negotiated Self-Performed Work for all Components shall not exceed fifty percent (50%) of the Costs of the Work for all Components. The Owner may restrict the amount of Negotiated Self-Performed Work to a lower percentage of the Cost of the Work.

§ 1.0.28 Negotiated Support Services are defined in Section 6.7.5 of this Agreement and generally are items the Construction Manager normally would manage or perform on the Work in a Component, including, but not limited to, surveying, hoisting, temporary toilets, temporary heat, cleanup and trash removal, street cleaning, maintenance of traffic on public street and roads, and Builder’s Risk insurance. Approved Negotiated Support Services are reimbursable, consistent with the Contract Documents, to the extent they are Costs of the Work within the GMP. There is a separate Negotiated Support Service amount for each Component.
§ 10.29 The Notice to Proceed is described in Section 2.3.1 of this Agreement and is generally a written notice the Owner submits to the Construction Manager that initiates the Construction Phase for that Component and generally permits construction, or a designated portion thereof, to commence upon the Construction Manager’s compliance with conditions expressed in the notice. A Notice to Proceed will not be effective until the Construction Manager has provided certificates of insurance for all insurance the Construction Manager is required to provide by the Contract Documents. There may be separate Notices to Proceed for each Component.

§ 10.30 The Owner’s Designated Representative, identified above, is a representative but not agent of the Owner. His or her duties and responsibilities are specified in the Contract Documents. The Owner’s Designated Representative is not empowered to waive any terms or conditions of the Contract Documents. The Owner’s Designated Representative may commit the Owner to additional costs or time but only with the concurrence of the city engineer or public works director and only up to the limit of the management reserve if so authorize by the owners city council. The Owner’s Designated Representative may appoint personnel to perform various functions on behalf of the Owner, such as a construction administration manager. Such personnel may or may not be an employee of the Owner.

§ 10.31 The Preconstruction Phase is defined in Section 2.1 and generally consists of the initial portion of the Construction Manager’s services and performance under the Contract prior to execution of a GMP Amendment for a Component and issuance of a Notice to Proceed with a Component. Preconstruction Services may continue for subsequent Components after the Construction Phase commences for a prior Component.

§ 10.32 The Preconstruction Services generally consist of those services provided by the Construction Manager under Sections 2.1 and 2.2 of this Agreement.

§ 10.33 The Preconstruction Services Cost is defined in Section 4.1.2 of this Agreement and is the compensation payable by the Owner to the Construction Manager for Preconstruction Services.

§ 10.34 The Project is defined on the cover page above and in Section 1.1.4 of the revised General Conditions. The Project includes all its Components.

§ 10.35 The Project Team consists of the Construction Manager, the Owner, and the Architect, and all consultants and Subcontractors of any tier employed or retained by each of them.

§ 10.36 Specifications are defined in Section 1.1.6 of the revised General Conditions and generally consist of the portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 10.37 Specified General Conditions are defined in Article 6 and generally mean certain selected general conditions work and services specified in the Contract Documents to be provided by the Construction Manager for the fixed Specified General Conditions price as a part of the Cost of the Work for each Component. The Specified General Conditions are to be performed by the Construction Manager with its own forces in most instances. The Specified General Conditions include the Preconstruction Services on a Component that occur after the GMP is established for that Component through execution of the GMP Amendment for the Component. The Specified General Conditions include but are not limited to all costs associated with the subcontractor bidding process, such as developing solicitations, site tours, responding to questions from bidders, providing a bid opening facility, bidding in accordance with the requirements of the Contract Documents and subcontract award. Reproduction of bid sets as required for bidding is not included in the Specified General Conditions. The Specified General Conditions shall be allocated among the Components in the GMP Amendments.

§ 10.38 The Subcontracting Plan is defined in Section 2.1.6 and is prepared by the Construction Manager for the Owner’s approval prior to conclusion of the Design Development phase. It addresses each Component and identifies all proposed subcontract bid packages, any contemplated alternative subcontractor selection process permitted by RCW 39.10, all subcontract bid packages for which the Construction Manager expects to compete, all subcontractor scopes of work, all Negotiated Self-Performed Work, the allocation of Negotiated Support Services and Specified General Conditions to the Components, the timing of solicitation of subcontractor bids for the packages to meet the Construction Schedule, major coordination issues with other packages, and means to enhance the opportunity for local businesses to participate in performing the Work.

§ 10.39 A Subcontractor is defined in Section 5.1 of the revised General Conditions and is generally a person or entity that has a direct contract with the Construction Manager. A Subcontractor of any tier is a Subcontractor or a...
lower tier subcontractor that performs a portion of the Work of the Project at the site or supplies materials or equipment.

§ 1.0.40 Substantial Completion is defined in Section 9.8.1 of the revised General Conditions. The date of Substantial Completion is established in the GMP Amendment for each Component and generally is the stage in the progress of the Component or other portion thereof designated and approved by the Architect and the Owner when the construction of a Component is sufficiently complete, in accordance with the Contract Documents, so that the Owner can fully occupy or utilize the Work (or portion thereof designated by the Owner) in a Component for its intended use, subject to commissioning, in accordance with Section 9.8 of the revised General Conditions. There may be separate Dates of Substantial Completion specified in the Contract Documents for each Component and/or for various phases or portions of the Work.

§ 1.0.41 The Work is defined in Section 1.1.3 of the revised General Conditions and generally means the construction and services performed in a Construction Phase as required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill its obligations for a Component.

§ 1.1 The Contract Documents
The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment for a Component and revisions prepared by the Owner with the assistance of the Architect and furnished by the Owner as described in Section 2.2.8. The Contract 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 Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties
The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager’s skill and judgment in furthering the interests of the Owner; to furnish efficient and competent construction administration, management services and supervision; to furnish at all times an adequate supply of qualified, competent and experienced workers and of materials; and to perform the Work in an expeditious, expeditious, workmanlike and economical manner consistent with the Owner’s interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The parties shall endeavor to promote harmony and cooperation among the Owner, the Architect, the Construction Manager, and other persons or entities employed by them to the fullest extent possible in order to further the interests of the Owner in the Project and to effect prompt and successful completion of the Project and its Components within the requirements of the Contract Documents, the Contract Time and the GMP.

§ 1.3 General Conditions
For the Preconstruction Phase, Phases, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, Phases, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term “Contractor” as used in A201–2007 shall mean the Construction Manager.

§ 1.4 The Construction Manager shall perform the Preconstruction Services, shall be responsible for coordinating the activities of construction during a Construction Phase if a GMP Amendment is signed for that Component, shall be fully responsible for discharging all of the Construction Manager’s obligations under the Contract Documents, and, during the Preconstruction and Construction Phases, shall advise and work with other members of the Project Team to make recommendations for alternate or substitute technologies, construction techniques, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies. The Owner will be responsible for coordinating the activities of the Project Team during the Preconstruction Phase.
ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

The Construction Manager’s Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager’s Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Preconstruction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall participate as a part of the Project team to provide a preliminary evaluation of the Owner’s program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

1. The Construction Manager shall jointly schedule and conduct meetings with the Architect and Owner on a weekly basis to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall actively and cooperatively advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also actively and collaboratively provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements; requirements, sequencing and scheduling for procurement, installation and construction; and phasing and site work planning; traffic planning; factors related to construction quality, local market trends, bidding strategies, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions and value analysis.

2. Design Review. The Construction Manager shall review the Design Development Documents and Construction Documents, Specifications, and other Contract Documents as they are developed and completed. The Construction Manager shall also review all other documents provided by the Owner, including but not limited to the Facilities Plan, associated environmental documents, and all record drawings of existing facilities. The Construction Manager shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Construction Manager has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues. Design review activities are to be a cooperative and collaborative effort with the Architect and its consultants. The Construction Manager shall recommend changes and alternatives to the Architect, without, however, assuming any of the Architect’s design responsibilities, except to the extent the Construction Manager or a Subcontractor performs design-build services.

3. Constructability. The Construction Manager shall work with the Owner and Architect to prepare a constructability plan for the Project to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. Key objectives of the constructability program will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. A primary objective of these efforts will be to assist the Owner to ensure that the final GMP for a Component does not exceed the Owner’s budget for that Component and the Project and its Components are completed on time. The Construction Manager shall perform actions designed to minimize adverse effects of labor or material shortages or delays; time requirements for procurement, installation and construction completion; and factors related to construction cost. As part of this effort, the Construction Manager shall participate in and provide written comments as a part of formal constructability reviews throughout all phases of the Design Development Documents and shall confirm prior to solicitation of the first subcontract bid package that a constructability analysis has been performed.

4. Value Analysis. The Construction Manager will participate in value analysis of the Design Development documents and on a continuing basis with the Architect in subsequent phases up to 90% Construction Documents. At the completion of each of its reviews, the Construction Manager will provide the Owner and Architect with a formal record of its findings and recommendations. The Architect and the Construction Manager will brief the Owner and any value engineers and answer their questions to determine the advisability of changes in the design documents. Value analysis will include

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selecting building systems, with final selection of systems to occur prior to the start of the Construction Documents Phase.

5 Site Investigation. The Construction Manager shall suggest to the Owner and shall perform as agreed with the Owner and as a non-labor cost under Section 4.1.2, site investigation to assist in development of the design and construction planning.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, and by no later than 30% of the Design Development phase, the Construction Manager shall prepare and periodically update at each level of Design Development a Project schedule for the Architect's and Owner's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's and Owner's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; proposals; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The Construction Manager will be responsible for the Construction Schedule, including a plan for construction of the Components as defined in the Contract Documents.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall execute construction contracts, cost reduction strategies, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.4.1 The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration occupancy needs, cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.4.2 It is likely that the entire Work of the Project will be divided into several Components, each of which will be conducted through a separate GMP Amendment for that Component. A GMP Amendment for a Component will include its respective GMP, fixed-Fee calculation, Contract Time, and specific portions of the Negotiated Support Services, Specified General Conditions, and Negotiated Self-Performed Work for that Component. The Owner may, but is not required, to contract with the Construction Manager for one or more of the Components.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall, for each Component, prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's and Owner's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 For each component, the Construction Manager will prepare detailed cost estimates in collaboration with the Architect and the Owner at each level of the Design Development Phase, including a "GMP Estimate" when the Construction Documents are 90% complete, and following completion of the Construction Documents Phase. As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work for each Component of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's and Owner's review and the Owner's approval. The Construction Manager 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, including participation in preparing a list of proposed cost savings equal to or greater than the overage, and the Architect will, if authorized by the Owner, modify the design to meet the Owner's budget.

§ 2.1.5.3 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect, including participation in
§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders’ interest in the Project. § 2.1.6.1 The Construction Manager shall develop bidders’ interest in the Project. The Construction Manager shall prepare and submit a construction management and subcontracting plan ("Subcontracting Plan") to the Owner and the Architect for approval prior to conclusion of the Design Development phase. The Subcontracting Plan shall, for and within each Component, identify:

1. All subcontract bid packages, specifying those upon which the Construction Manager or its affiliates intend to bid;
2. The timing of solicitation of bids for the packages to meet the Construction Schedule;
3. Major coordination issues with other packages;
4. The scope of work and cost estimates for each bid package;
5. Whether the Construction Manager intends to select a mechanical Subcontractor, an electrical Subcontractor, or both, in accordance with the alternative procedure specified in RCW 39.10.385;
6. Proposed scopes of work and estimated costs for the Negotiated Self-Performed Work in each Component demonstrating that the combined Cost of the Work for Negotiated Self-Performed Work in all Components shall not exceed fifty percent (50%) of the total Cost of the Work for all Components;
7. The basis used by the Construction Manager to develop all cost estimates, including the Negotiated Self-Performed Work in each Component;
8. The allocation of Negotiated Support Services and Specified General Conditions for each Component; and
9. The Construction Manager’s updated outreach plan and means to enhance the opportunity to participate of local businesses, small business entities, disadvantaged business entities, and any other disadvantaged or underutilized businesses as the Owner may designate in the public solicitation of proposals, as Subcontractors and suppliers for the Project (e.g., through development of small and multiple subcontract bid packages).

§ 2.1.6.2 As a part of the negotiation of the GMP for a Component, the Owner and the Construction Manager shall negotiate the items in Section 2.1.6.1. At least thirty percent (30%) of the total sum of the ECW less Specified General Conditions for all Components must be procured through subcontract bid packages in which bidding by the Construction Manager or its subsidiaries is prohibited.

§ 2.1.6.3 The Negotiated Self-Performed Work for the Project as a whole shall not exceed fifty percent (50%) of the Cost of the Work to construct the Project.

§ 2.1.6.4 If the Owner is unable to negotiate to its reasonable satisfaction any aspect of Sections 2.1.6.1 or 2.1.6.2, then the Owner may terminate negotiations with the Construction Manager. The Owner may, but is not obligated to, solicit bids or negotiate with the next highest scored proposer and continue until an agreement is reached or terminate the process.

§ 2.1.6.5 The Construction Manager shall consider prebid determination of Subcontractor eligibility to the extent permitted by statute and Federal requirements and shall furnish to the Owner and Architect for their information as a part of the submittal of its Subcontracting Plan a list of possible eligible Subcontractors, including suppliers who would furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Owner will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such Subcontractor or supplier. The receipt of this list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it or the lack of any objection waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.
§ 2.1.7 The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. _Long-Lead Time Procurement_

§ 2.1.7.1 The Construction Manager shall prepare, for the Architect’s and Owner’s review and the Owner’s acceptance, and shall update at least monthly, a procurement schedule for items and/or associated services that must be ordered well in advance of construction, and the Construction Manager shall expedite and coordinate the ordering and delivery of these items and/or services. The Construction Manager ordinarily will contract directly for these items and/or services. If the Owner agrees, consistent with RCW 39.10.390, to procure any items prior to the establishment of a Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager. Upon the establishment of the applicable Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager, and the Construction Manager shall assume full responsibility for them.

§ 2.1.7.2 The Construction Manager shall identify and estimate the value of any items that require off-site storage, together with proposed locations for storage during the course of the Work acceptable to Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.

§ 2.1.7.3 If authorized by the Owner, an Application for Payment may include a request for payment for material delivered to the Project site and suitably stored, for completed preparatory Work and, provided the Construction Manager complies with or furnishes satisfactory evidence of the following, for material stored off the Project site:

1. The material will be placed in a bonded warehouse that is structurally sound, dry, lighted, secure and suitable for the materials to be stored.
2. The warehouse is approved in writing by the Owner. The Owner generally will not approve locations outside the State of Washington absent special circumstances.
3. Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project).
4. The Construction Manager furnishes the Owner a certificate of insurance extending the Construction Manager’s insurance coverage for damage, fire and theft to cover the full value of all materials stored, or in transit.
5. The warehouse (or secure portion thereof) is continuously under lock and key, and only the Construction Manager’s authorized personnel shall have access.
6. The Owner shall at all times have the right of access to stored materials in the possession of the Construction Manager.
7. The Construction Manager assumes total responsibility for the stored materials.
8. The Construction Manager furnishes to the Owner proofs of title, satisfactory evidence that the Construction Manager has paid for the materials in question, certified lists of materials stored, bills of lading, invoices and other information as may be required, and shall also furnish notice to the Owner when materials are moved from storage to the Project site.

§ 2.1.8 Extent of Responsibility

1. The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications prepared by the Architect are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

2. The Construction Manager shall carefully review upon receipt all Drawings and Specifications submitted to it at each level of design. The Construction Manager shall promptly report to the Owner...
and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and shall recommend changes and alternatives. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor and not as a licensed design professional, except to the extent the Construction Manager or a Subcontractor has design-build responsibilities.

§ 2.1.9 Notices and Compliance with Laws
The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, and in consultation with the Architect, and when the Drawings and Specifications for a Component are at least 90% complete, the Owner will submit a "GMP set" of Construction Documents for that Component to the Construction Manager, and within twenty-one (21) days of receipt, and in consultation with the Owner and Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for that Component for the Owner’s review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager’s estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager’s Fee. Fee for the Component. The Construction Manager shall promptly notify the Owner if it does not consider the Drawings and Specifications to be at least 90% complete and shall not propose a GMP until the applicable Drawings and Specifications are at least 90% complete.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom, from the Contract Documents and will also provide for market conditions at the time of bidding and possible estimating inaccuracies. Such further development does not include such things as material changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. A Change in the Work will not be warranted if the Work in question was reasonably inferable from or contemplated by, or a prudent contractor should have realized that the Work was necessary and appropriate under, the Contract Documents referenced in the applicable GMP Amendment.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;

.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, divided into the proposed subcontract bid packages and including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager’s Fee, systems (the ECW, including specific amounts for Specified General Conditions, Negotiated Support Services, and Negotiated Self-Performed Work, and other Article 6 Costs of the Work); the Contingency; and the Construction Manager’s Fee (any Allowances must be limited and pre-approved by the Owner);

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include an contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.4.1 In preparing the Construction Manager's Guaranteed Maximum Price proposal for a Component, the Construction Manager shall include its Contingency, not to exceed 5% of the ECW for that Component. The
Contingency shall be for the Construction Manager’s exclusive use to cover those costs considered reimbursable as a Cost of the Work but not qualified for inclusion in a Change Order. The Construction Manager may use the Contingency to pay for Project issues that are within its control, such as design issues that a reasonable construction manager should have resolved during the Preconstruction Services Phase, items in Drawings but not in the Specifications, items on one Drawing but not another, items specified but not drawn, non-specified items within Specifications, buy-out errors or shortfalls, scope gaps, ambiguities in the Construction Documents, damaged work not covered by insurance (including, to the extent permitted by the Contract Documents, a deductible), unanticipated general conditions expenses, interdisciplinary design coordination, Subcontractor performance, and expediting costs for critical materials. The Contingency may also be used for issues beyond the Construction Manager’s control such as lost time, increases in bid contracts, Subcontractor performance or failure, and expediting costs for critical materials. The Construction Manager must give the Owner notice and supporting cost backup when applying to use the Contingency. The Contingency is not available for Owner-directed design or scope changes, unforeseen or differing site conditions, and design errors or omissions beyond the reasonable inferences described in Section 2.2.2, as they normally are scope changes. The Construction Manager shall use the Contingency only with the Owner’s prior written consent, which shall not unreasonably be withheld. Any balance remaining in the Contingency shall be returned to the Owner in a deductive Change Order as part of Final Payment for the Component.

§ 2.2.4.2 The ECW for a Component shall consist of the Negotiated Self-Performed Work in the Component, all Subcontractor scope of work for the Component by bid package consistent with the Subcontracting Plan, including Work the Construction Manager will self-perform through the Subcontractor bidding process, the Specified General Conditions for the Component, and the Negotiated Support Services for the Component and other Article 6 Costs of the Work. Upon completion of the buyout of subcontract bid packages, the Construction Manager shall ascertain whether any scope changes beyond those specified in Section 2.2.2 have occurred in the subcontract bidding documents as a result of completion of the Construction Documents to the 100% level. In the event that these scope changes were required for the Project and approved by both the Construction Manager and the Owner, any balance in the ECW may be accessed. Any amounts remaining in the ECW thereafter shall be added to Contingency for that Component. It is the intent of the parties that when a GMP is set, the Construction Manager will have participated in and be aware of the existing conditions and proposed design for the Project. It is further intended that a GMP will include all elements necessary to complete the Component in accordance with the Contract Documents, and that Change Orders adjusting the GMP will therefore not be necessary except in limited circumstances as set forth below. Accordingly, a GMP shall be adjusted principally for the following events:

1. **Scope Changes.** Owner revisions on scope items previously approved by the Owner and incorporated in the pricing of the GMP. Examples: The Owner approves use of MC cable in lieu of conduit for branch wiring runs and later decides to change back to conduit, or bid alternates not included in the GMP.

2. **Concealed or Unknown Conditions** as described in Section 3.7.4 of the revised A201-2007 General Conditions. For example, during a Construction Phase, substantially differing site conditions are encountered that could not have been reasonably anticipated or discovered by the Construction Manager during the Preconstruction Phase.

3. **Regulatory Agency Changes.** Costs incurred as a result of changes in regulatory requirements but only where such requirements change after execution of the applicable GMP Amendment. (This shall not include costs incurred as a result of inspections or other enforcement that are based upon pre-existing requirements of the building permit.)

4. **Significant Design Errors or Omissions.** Significant errors or omissions in the Drawings or Specifications that could not reasonably have been anticipated or discovered by the Construction Manager before the GMP was established. However, design errors and omissions do not include, for example: (1) failure to coordinate between trades; (2) requirements of the Specifications that are not specifically shown in Drawings; (3) requirements of the Drawings that are not specifically described in the Specifications; or (4) design changes made at the request of the Construction Manager in order to facilitate the constructability of the Project. The failure of the Architect to specify every detail in the Construction Documents does not eliminate the requirement for the Construction Manager to provide at least a standard commercially available detail that can serve the basic functions of the design.

5. **Changes required by governmental inspectors to meet requirements beyond those contained in regulations.** Changes required by the inspector of a governmental authority having jurisdiction beyond those contained in regulations or previously communicated.

6. **Allowance adjustments.**
§ 2.2.4.3 Examples of events for which the GMP shall not be adjusted include but are not limited to:

1. **Subcontractor Gaps.** Gaps in scope coverage between Subcontractors, including self-performed Work.
2. **Scope Gaps.** An item indicated in the Drawings or Specifications that was not picked up in the GMP.
3. **Ambiguities, latent and patent, in the Construction Documents that the Construction Manager knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the GMP.
4. **Interdisciplinary Coordination.** Coordination inconsistencies and errors between design disciplines that the Construction Manager knew of, caused or contributed to, or reasonably should have known of.
5. **Subcontractor Failure.** A Subcontractor fails to perform or goes bankrupt.
6. **Escalation of materials, equipment or labor prices.**
7. **The Construction Manager’s Estimating errors.**
8. **Expediting costs for critical materials.**
9. **Coordination Claims.** Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Construction Manager or among Subcontractors.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the each Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. If the Owner does not accept a Guaranteed Maximum Price proposal for a Component, the Owner may, in its sole discretion, continue to negotiate the GMP with the Construction Manager or may take any other action under the Contract Documents, including but not limited to termination of some or all of the Construction Manager’s services for convenience. Work on other Components shall continue, and the Owner shall continue to pay for such Work, unless otherwise directed by the Owner in accordance with the Contract Documents.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect promptly and in writing of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications, and shall comply with the contractual procedure in providing notice and asserting and pursuing any Claim that may arise therefrom. If the Construction Manager does not provide this notification within thirty (30) days of its receipt of the revised Drawings and Specifications, the revisions shall be considered accepted with no change in the GMP or Contract Time.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. The only taxes excluded from the GMP and separately reimbursable by the Owner are state and local sales taxes on progress payments on account of the Contract Sum.
§ 2.2.10 If, upon establishing the final GMP, the GMP for the entire Project varies more than 15% from the budget specified in the RFP due to changes in the scope requested and approved by the Owner, the percentage applied to the final GMP to determine the Fee shall be renegotiated when that GMP is negotiated.

§ 2.3 Construction Phase
§ 2.3.1 General
§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work in a Component shall mean the date of commencement of the Construction Phase Phase for that Work.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal by executing the GMP Amendment for that Component or the Owner’s issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Although it will not cause a Construction Phase to commence, the Owner may at any time approve the Construction Manager’s (a) award of a subcontract, (b) undertaking construction Work with its own forces, or (c) issuance of a purchase order for materials or equipment and/or associated services required for the Work. Any work so approved and undertaken shall comply with and be subject to this Contract and the revised A201 General Conditions.

§ 2.3.2 Administration
§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall assemble the bidding materials, manage the bidding process, and obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect, the Owner, and the Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Unless all bids are rejected, subcontract bid packages shall be awarded to the "responsible" and responsive bidder submitting the low responsive bid. Determination of "responsibility" shall comply with the requirements of RCW 39.10 and Washington law.

1. Other than Work under the Specified General Conditions, Negotiated Support Services and Negotiated Self-Performed Work, all Work on the Project shall be competitively bid as required by RCW 39.10. The Construction Manager may, subject to RCW 39.10, organize and solicit bids for the subcontract work in whatever combinations or packages it chooses, but the Construction Manager may not use alternates without approval of the Owner.

2. The Construction Manager shall bid out the subcontract bid packages in accordance with its approved Subcontracting Plan. The Construction Manager shall document and report monthly to the Owner on its procurement process. The Owner’s written approval is required for changes to the Subcontracting Plan.

3. Before initially soliciting bids for the first subcontract bid package for a Component, the Construction Manager shall submit, and the Owner shall reasonably approve, final bid package estimates for all subcontract bid packages in the approved Subcontracting Plan. The sum, for a Component, of the Negotiated Self-Performed Work plus all the final bid package estimates in the Subcontracting Plan plus any other described Article 6 Costs of the Work, including Negotiated Support Services and Specified General Conditions, shall not exceed the FCW for that Component.

4. When in the best interests of the Project and when critical to the successful completion of a subcontract bid package, the Owner and Construction Manager may make a prebid determination of Subcontractor eligibility in accordance with RCW 39.10. If the anticipated subcontract value will exceed $3 million and the Owner consents, the Construction Manager may select a mechanical Subcontractor, an electrical Subcontractor, or both, in accordance with the alternative procedure specified in RCW 39.10.385.
5 As part of its Subcontracting Plan, the Construction Manager shall promptly notify the Owner of Work (other than Negotiated Support Services, Negotiated Self-Performed Work and Specified General Conditions) that it will seek to self-perform. The Construction Manager, including its subsidiaries and affiliates, may bid on a subcontract bid package if the Work within the subcontract bid package is customarily performed by the Construction Manager, if the Construction Manager has, in the Owner's reasonable opinion, aggressively sought competition, if the bid opening is managed by the Owner, if notification of the Construction Manager’s intention to bid is included in the public solicitation of bids for the bid package, and if the Construction Manager otherwise complies with RCW 39.10. At least thirty percent (30%) of the Cost of the Work included in the ECW less Specified General Conditions must be procured through competitive sealed bidding in which bidding by the Construction Manager or its subsidiaries is prohibited. The Construction Manager must provide staff to superintend and manage work it performs in subcontract bid packages with individuals separate and distinct from the staff involved in the overall management of this Contract. The Construction Manager shall coordinate subcontract bid package work it performs with the Work of Subcontractors.

6 The Construction Manager shall require a bid bond from Subcontractors bidding work expected to cost more than $300,000, and all Subcontractors awarded a subcontract in excess of $300,000 shall provide a performance and payment bond for the subcontract amount.

7 The Construction Manager's solicitations of subcontract bid packages shall be made in accordance with the following procedures:
   - A representative from the Owner will be present at each bid opening to observe the procedure.
   - Solicitations for bids will be advertised at least fourteen (14) days in advance in the Daily Journal of Commerce and at least one other local newspaper.
   - Bidders may obtain the bid results by telephone from the Construction Manager.
   - Responsiveness requirements and bidding procedures will be described in each solicitation and may be reviewed with the Owner prior to a bid opening.

8 The Construction Manager shall ensure compliance with RCW 39.10 and with all the above requirements for Subcontractor solicitation, and subcontracts shall conform to the requirements of RCW 39.10.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Price and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a fee, except for any contracts awarded under the alternative procedure of RCW 39.10.385, which shall include a maximum allowable subcontract cost. If mechanical and/or electrical subcontracts are awarded in accordance with the alternative procedure specified in RCW 39.10.385 on a cost-plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below. These Subcontracts shall be audited prior to final payment in accordance with Section 7.2.2.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct weekly progress meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.
§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect, for each Component, a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007, A201-2007 and other Contract Documents. The Construction Manager shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as Work progresses.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner, Owner and as required by Specification Section 01324, Progress Schedules and Reports. To the extent that there is any conflict between this Section 2.3.2.7 and Specification Section 01324, the latter shall control.

The reports shall:

1. Include information concerning the entire Project, each Component and each subcontract bid package.
2. Identify variances between scheduled and probable completion dates, and recommend action required to meet schedule completion dates.
3. Review the schedule for portions of the Project not started or incomplete and recommend to the Owner alternate procedures or adjustments to meet the scheduled completion dates.
4. Provide summary reports of each schedule update.
5. Document all significant changes in the schedule and any Owner's approval of them and reflect the reasons for them.
6. Record in writing and by photographs the progress of the Project.
7. Identify significant problems in scheduling together with recommended corrective action.
8. Maintain and report a QC log.
10. List outstanding submittals and risks associated with delayed responses.
12. The status of permits that the Construction Manager is required to obtain.

The Construction Manager shall also keep, and make available to the Owner and Architect with its monthly Application for Payment or more frequently as requested by the Owner, a daily log containing a record for each day of weather, Subcontractors working at the site, deliveries. Work accomplished, portions of the Work in progress, number and employer of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The information on the log does not constitute notice of a potential or actual Claim to the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, Work by Component, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. The Construction Manager shall include a Project status report in a format acceptable to the Owner, listing (i) all pending and/or approved Change Orders and Construction Change Directives (including amounts), (ii) an analysis of the Specified General Conditions, Negotiated Self-Performed Work and Negotiated Support Services budget with an explanation of substantial variances from previous budgets, (iii) projected cash flow of construction costs, (iv) an allocation by subcontract bid package and schedule of values line item, (v) expenditures to date, (vi) estimates to complete, (vii) forecast at completion, (viii) variances with budget and commitment, and (ix) the items for which the Owner has authorized the Construction Manager to use Contingency, the cost of those approved items, and the balance of funds remaining in the Contingency account.

§ 2.3.2.9 The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis (at least as often as described in the Construction Manager’s approved quality management plan) for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any material defects or deficiencies and recommend remedial action. The Construction Manager shall take the lead role in negotiating and resolving any disputes with Subcontractors and obtain the Owner's concurrence or approval of all settlements before executing change orders with Subcontractors.

§ 2.3.2.10 The Construction Manager shall maintain, in good order and on a current basis, a record copy of all
subcontracts, purchase orders, Drawings marked to record all changes made during construction. Specifications, addenda, Change Orders, and other Modifications; shop drawings; product data; samples; submittals; inspection reports; purchases, materials, equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of subcontracts or Work, and as more explicitly described in Specification Section 01720. Record Drawings. These records shall be available to the Owner, and, at completion of the Project, delivered to the Owner.

§ 2.3.2.11 As part of the Specified General Conditions, the Construction Manager shall provide an adequate and experienced staff consistent with or in excess of that specified in response to the RFP. The staff shall include necessary and appropriate project managers, superintendents, field engineers, engineers, quality control specialists, scheduling engineers, cost engineers, clerical, accounting, and data processing personnel, and others so that, among other things:

- The Work is performed and coordinated in a timely manner in compliance with the Contract Documents;
- Change Order Proposals and responses to Construction Change Directives are submitted to the Owner within seven (7) days after the Construction Manager's receipt;
- Replies to correspondence from the Owner, Subcontractors, and governmental agencies are answered within seven (7) days, and
- Substantial and Final Completion are achieved within the time specified in the Contract Documents and consistent with the General Conditions.

§ 2.3.2.12 Apprenticeship

1. Pursuant to RCW 39.04.320, the Construction Manager shall achieve apprentice participation of at least fifteen percent (15%) of the total construction labor hours.

2. Apprentice hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.

3. "Labor hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the Construction Manager and all Subcontractors working on the Project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are subject to neither the prevailing wage requirements of RCW 39.12 nor Davis-Bacon wages.

4. During the term of this Contract, the Owner may adjust the apprentice labor hour requirement upon its finding or determination that includes:
   (1) A demonstration of lack of availability of apprentices in the geographic area of the Project;
   (2) A disproportionately high ratio of material costs to labor hours that does not make feasible the required minimum levels of apprentice participation;
   (3) Demonstration by participating contractors of a good faith effort to comply with the requirements of RCW 39.04.320 through .320;
   (4) Small contractors or subcontractors (e.g., small or emerging businesses) would be forced to displace regularly employed members of their workforce;
   (5) The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required level (e.g., the number of skilled workers required and/or limitations on the time available to perform the Work preclude utilization of apprentices); or
   (6) Other criteria the Owner deems appropriate, which are subject to review by the office of the Governor.

5. The Construction Manager shall report apprentice participation to the Owner at least quarterly, on forms provided or approved by the Owner. In addition, copies of quarterly certified payroll records may be requested to document the goal. The reports will include:
   (1) The name of the Project;
   (2) The dollar value of the Project;
   (3) The date of the Construction Manager's notice to proceed;
   (4) The name of each apprentice and apprentice registration number;
   (5) The number of apprentices and labor hours worked by them, categorized by trade or craft;
   (6) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and
   (7) The number, type, and rationale for the exceptions granted.
§ 2.4 Professional Services
Section 3.12.10 of A201–2007-A201–2007, as revised, shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials
Section 10.3 of A201–2007-A201–2007, as revised, shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES
§ 3.1 Information and Services Required of the Owner
§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments of undisputed amounts to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change due and the Owner agrees. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, requested and upon its approval, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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User Notes:
§ 3.1.4.4 During the Construction Phase, Phases, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

§ 3.2 Owner’s Designated Representative
The Owner shall identify a representative 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 or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner’s authorized representative. Any decisions and approvals which involves a change in the scope of the Work, a change in the GMP which is greater than the limit of the management reserve authorized granted to the Owner’s Designated Representative by the Owner’s City Council, and/or the Contract Time, or involving modification or waiver of the terms of the Contract Documents must be approved by the Owner’s City Council or the Owner’s Public Works Director.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests.

§ 3.3 Architect
The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™ 2007, Standard Form of Agreement Between Owner and Architect, responsibilities including any additional services requested by the Construction Manager and authorized by the Owner that are reasonable and necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
§ 4.1 Compensation
§ 4.1.1 For the Construction Manager’s Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager’s Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation for the Preconstruction Services (the "Preconstruction Services Cost") shall not exceed $50,050.00 and shall be allocated among the Components and paid on an hourly basis at the rates and for the individuals specified in Exhibit 1 to this Agreement. In addition, the Construction Manager shall receive compensation for any pre-approved non-labor costs incurred to perform the Preconstruction Services, including equipment at the hourly rates specified in the attachment. Non-labor costs include but are not limited to costs of testing, intrusive investigation, selective demolition and restoration, copying, blueprints and courier costs. The Preconstruction Services rates include personnel and consultant costs and benefits, materials, equipment, taxes, profit and overhead. Costs that would cause the not-to-exceed amount to be exceeded shall be the responsibility of the Construction Manager without reimbursement by the Owner.
The Construction Manager’s Fee in Section 5.1.1 does not apply to Preconstruction Services, and any savings from any not-to-exceed amount for Preconstruction Services will not be subject to any Savings Bonus provision.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within — months —One Hundred Thirty (130) weeks of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager’s compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager’s personnel providing Preconstruction Phase services on the Project and the Construction Manager’s costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.
§ 4.2 Payments
§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. The invoice will contain detail of and support for the services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid thirty (30) days after the invoice due date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Inset rate of monthly or annual interest agreed upon.)

Pursuant to RCW 39.76, not to exceed the Bank of America prime rate plus 1.00% per annum

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
§ 5.1 For the Construction Manager’s performance of the Work of a Component as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum for that Component in current funds. The Contract Sum for a Component is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee. Article 6 for that Component plus the Construction Manager’s Fee for that Component.

§ 5.1.1 The Construction Manager’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

The Construction Manager’s Fee for the Work in a Component during a Construction Phase shall be a fixed, lump sum amount that will be calculated as the percentage specified in response to the RFP (Four point Two-Eight percent (4.28%)) times the ECW for that Component negotiated as part of the GMP for the Component.

§ 5.1.2 The method of adjustment of the Construction Manager’s Fee for changes in the Work:
In the event a Change Order is issued for a Change in the Work, the change in the Construction Manager’s Fee will be the percentage specified above in Section 5.1.1.

§ 5.1.3 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:
The fee for changed Work for which the Owner is responsible and which is directly performed by a Subcontractor of any tier, including overhead and profit, is specified in Section 7.5 of the A201-2007 General Conditions. If a lower-tier Subcontractor performs changed Work, the fee of upper-tier Subcontractors is also specified in Section 7.5 of the A201-2007 General Conditions.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed Seventy-five percent (75.00%) of the standard rate paid at the place of the Project-Project, as further described in Section 6.5.2.

§ 5.1.5 Unit prices, if any;
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
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<tbody>
<tr>
<td>None</td>
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§ 5.1.6 The Specified General Conditions are in the fixed amount of $2,007,490.00 and will be allocated to each Component.

§ 5.1.7 The amount for Negotiated Support Services will be negotiated for each Component at the time of establishing the ECW for that Component.

§ 5.1.8 The estimated amount for Negotiated Self-Performed Work will be negotiated for each Component at the time of establishing the ECW for that Component.
§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time, for each Component. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, and the Construction Manager’s Fee exceeds the Guaranteed Maximum Price for a Component, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. The Guaranteed Maximum Prices for individual Components may not be combined in any manner. (Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect or Owner may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time consistent with the requirements of the Contract Documents as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3 of revised AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in Section 7.5 of revised AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement–Agreement, except for Section 5.1.3. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts and the Contract Documents.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price–Price for changed Work performed by the Construction Manager, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the actual, net costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work–Work, without overhead, profit, fee or markup. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.
§ 6.1.3 The Construction Manager shall separately account for the Cost of the Work within each Component.

§ 6.2 Labor Costs
§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops or transporting materials, equipment or personnel to and from the Project site.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval, are included in the Specified General Conditions and not separately reimbursable.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work, are included in the Specified General Conditions and not separately reimbursable.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. Section 6.2.1. Costs paid or incurred by the Construction Manager for vacations, bonuses, travel, stock options, deferred compensation, or discretionary payments to employees are not directly reimbursable. As part of a GMP Amendment, the parties may agree to a wage burden rate for workers under Section 6.2.1, which will be fully burdened, including all the wage-based costs, and fixed for the duration of the Contract Time.

§ 6.2.5 Bonuses, profit-sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior approval. [deleted]

§ 6.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall maintain a procedure for the review, processing and payment of applications by the Subcontractors for progress and final payments, all in accordance with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and assemble and check all supporting documentation required by the Contract Documents or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

§ 6.4 Costs of Materials and Equipment Incorporated In the Completed Construction
§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold or returned by the Construction Manager. Any amounts realized from such sales or returns shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4.3 Notwithstanding the above, costs of material and equipment procured by the Construction Manager but not incorporated in the completed construction will generally be included in Negotiated Support Services after approval by the Owner.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items
§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment (as described in the Contract Documents) and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are
not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges (not to exceed the local fair market rental costs) actually paid to non-related third parties for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the local fair market rental costs or seventy-five percent (75%) of the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

Rentals from the Construction Manager or any entity in which the Construction Manager or one or more of its owners has a direct or indirect ownership interest ("CM Equipment") shall be separately accounted for and the rental costs shall not exceed Rental Rate Blue Book by Data Quest, San Jose, California, or fair market rental costs, whichever are lower. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. When rental rates payable do not include fuel, lubrication, maintenance and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. The rate for CM Equipment necessarily standing by for future use on the Work shall be 50% of the rate established above. If CM Equipment is required for which a rental rate is not established by the Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 6.5.3 Costs of street cleaning, removal of rubbish and debris from the site of the Work and its proper and legal disposal disposal are included under Negotiated Support Services and not otherwise reimbursable.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office are included in Specified General Conditions and are not separately reimbursable.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work with the Owner’s prior written approval, but not including commuting or travel costs from the Construction Manager’s office, which are included in Specified General Conditions and are not separately reimbursable.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner’s prior approval.

§ 6.5.7 Notwithstanding the above, costs of other material and equipment, temporary facilities and related items procured by the Construction Manager will generally be included in Negotiated Support Services, but some may be designated for inclusion in the Specified General Conditions. Reference the Cost Responsibility Matrix (Exhibit 4) for clarification of such items. All furniture, technology, communication (including cell phones), personal transportation (including pickup trucks) and clerical equipment therein, temporary controls (except cleaning and erosion controls), Project identification and temporary signage, and delivery by the Construction Manager, on-site storage, sheds and handling are Specified General Conditions.

§ 6.6 Miscellaneous Costs
§ 6.6.1 Premiums-The actual, net costs of premiums for that portion of Builder’s Risk insurance and bonds required by the Contract Documents that can be directly attributed to this Contract—Contract, after taking into consideration cost adjustments including, for example, experience modifiers, premium discounts, policy dividends, rebates, and refunds, retrospective rating plan premium adjustments, and assigned risk pool rebates are Negotiated Support Services. All other premiums are not Costs of the Work but are included within the Construction Manager’s Fee as are portions of deductibles not reimbursable under the Contract Documents. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner’s prior approval.
§ 6.6.2 Sales, use or similar taxes, B&O and income taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable are included in the Fee and so are not reimbursable. Sales tax on the Contract Sum is based upon and paid with each progress payment.

§ 6.6.3 Fees and assessments for the building permit and for other project-specific permits, licenses and inspections of governmental authorities having jurisdiction for which the Construction Manager (but not Subcontractors) is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required of the Construction Manager by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.9.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner’s consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager’s Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are included by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval are included in Specified General Conditions and are not separately reimbursable.

§ 6.6.7 Deposits lost for causes other than the Construction Manager’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner’s prior approval, expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work. These are included in Specified General Conditions and are not separately reimbursable.

§ 6.6.10 The cost of pre-approved warehousing of stored materials or equipment subsequently incorporated into the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance by the Owner. Temporary heat and temporary hookups and temporary meter installation for water, utilities, natural gas, sewer and storm sewers necessary for proper execution and completion of the Work and included in Negotiated Support Services.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors of any tier or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.
§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8 or are listed as covered by the Fee or the Specified General Conditions.

§ 6.7.5 Negotiated Support Services
Negotiated Support Services by the Construction Manager may be accomplished and will be reimbursed as Costs of the Work within the GMP, consistent with Exhibit 3, only as follows:

- Negotiated Support Services described and included in the GMP,
- Units of Negotiated Support Services may be accomplished by the Construction Manager during a Construction Phase, subject to prior written Owner approval, if the Cost of the unit of the Work is less than $35,000,
- Subcontractor bidding requirements are not applicable to Negotiated Support Services,
- The Fee is applied to the Costs of the Work within the Negotiated Support Services.

§ 6.7.6 Specified General Conditions
The fixed, lump sum contained in the Construction Manager's response to the RFP for certain detailed, selected and identified general conditions work and services, consistent with Exhibit 3, to be provided by the Construction Manager as Specified General Conditions. The Specified General Conditions Work is to be performed by the Construction Manager with its own forces in most instances, is to be reasonably allocated among the Components, and is to include the Preconstruction Services and activities that occur after a GMP is established through execution of the GMP Amendment for a Component.

§ 6.7.7 Negotiated Self-Performed Work
Costs of the Work for a Component's Negotiated Self-Performed Work are reimbursable under Sections 6.1 through 6.7 above. The combined Cost of the Work of Negotiated Self-Performed Work for all Components shall not exceed fifty percent (50%) of the total Cost of the Work for all Components.

§ 6.7.8 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract that may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed
§ 6.8.1 The Cost of the Work shall not include the items listed below:
1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
2. Expenses of the Construction Manager's principal office and offices other than the site office;
3. Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
5. Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors of any tier and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
6. Any cost not specifically and expressly described in Sections 6.1 to 6.7;
7. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
8. Costs for services incurred during the Preconstruction Phase except as specifically allowed herein;
9. Direct payments by the Owner (if any) for the building permit and related permits, reserve capacity fees, and plan-check fees, including SEPA, design review, and land use fees not a part of the Cost of the Work or the GMP;
10. Overtime wages, unless pre-approved by the Owner;
11. Data processing, software, hardware or computer-related costs not included in the Specified General Conditions;
§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments, otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. If the Construction Manager is offered discounts and/or rebates based upon prompt payment, the Construction Manager shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity the Construction Manager may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Construction Manager does not provide the Owner the opportunity to participate then the Construction Manager may only charge the net costs after consideration of discounts and rebates. The Construction Manager shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager and its cost-reimbursable Subcontractors shall keep full and detailed records and accounts related to the cost of the Work separately for each Component and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, copy (including electronically), the Construction Manager’s and Subcontractors’ original records and accounts, including complete documentation supporting accounting entries, books, ledgers, computerized records, daily reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, invoices of Subcontractors of any tier, memoranda and other data relating to this Contract The Construction Manager Project or any Claim. The Construction Manager and its Subcontractors shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.
ARTICLE 7  PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect and the Owner in compliance with the Contract Documents by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. The Construction Manager’s submission of this Application constitutes a certification that the Work is current on the Construction Schedule, unless otherwise noted on the Application. The Application shall be in a form acceptable to the Owner. The payment process shall be separate for each of the Components that comprise the Work.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Not applicable

§ 7.1.3 Applications for Payment

1. Draft Application. At the last scheduled meeting of each month, the Construction Manager shall submit to the Owner the reports required in Section 2.3 and a draft, itemized applications for payment for Work performed during that calendar month on a form supplied or approved by the Owner. There shall be separate Applications for Payment for each of the Components. This shall not constitute a payment request. The Construction Manager, the Owner and the Architect shall confer prior to the last working day of the month regarding the current progress of the Work and the amount of payment to which the Construction Manager is entitled. The Architect or Owner may request the Construction Manager to provide data substantiating the Construction Manager’s right to payment as the Architect or the Owner may require, such as copies of invoices from Subcontractors of any tier, lien releases and certified payrolls. The Construction Manager shall not be entitled to make a payment request, nor is any payment due the Construction Manager, until such data is furnished.

2. Payment Request. After the Construction Manager, the Owner and the Architect have met and conferred regarding the updated draft Application(s), and the Construction Manager has furnished all progress information required and all data requested by the Owner or the Architect, the Construction Manager may submit a payment request separately for each Component by the last working day of the month following the meeting in the agreed-upon amount, in the form of separate notarized, itemized Application(s) for Payment for Work properly performed on each of the Components during that calendar month on a form supplied or approved by the Owner, along with a lien release on a form furnished by the Owner from each Subcontractor for whose Work the Owner paid the Construction Manager for the prior month. The Applications shall also state that Davis-Bacon or prevailing wages, as applicable, have been paid in accordance with the pre-filed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner’s payment the prior month have been made.

3. Payment. Provided that an Application for Payment is received by the Architect-Owner not later than the last working day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the last day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect-Owner receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)

4. Disputed Amounts. If the Construction Manager believes it is entitled to payment for Work performed in addition to the agreed-upon amount, the Construction Manager may, also by the last working day of that month and after the meeting described in Section 7.1.3.1, submit to the Owner and the Architect along with the approved Application for Payment a separate written payment request specifying the exact additional amount due, the category in the schedule of values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, pursuant to WAC 296-127-320, the Construction
Manager and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records relating to the additional amount sought.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit the reports required in Section 2.3 and its current detailed computerized substantiation (such as a detailed job cost report) and lien releases. The Construction Manager shall also submit payrolls, petty cash accounts, receipted invoices or vouchers with check vouchers attached, and any other evidence required by the Owner or Architect. The Construction Manager shall separately account for each Component on a monthly basis as part of its Application(s) for Payment. Upon request, the Construction Manager shall demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager’s Fee, plus payrolls for the period covered by the present Application for Payment. The Construction Manager shall promptly, following the date of execution of a GMP Amendment, prepare a comprehensive list of equipment that it anticipates to use on the Component, whether owned or rented. The Construction Manager shall maintain and submit to the Owner monthly a detailed equipment inventory of all equipment it has purchased and charged as a Cost of the Work or job-owned through aggregate rentals and shall prepare an equipment rental report that identifies the equipment rented for the month and identifies the source of the rented equipment. The inventory shall include (1) the original acquisition cost and date, (2) the Owner-approved fair market value of the equipment when first used on the Project, and (3) the final disposition.

§ 7.1.5 At least fourteen (14) days before the first Application for Payment for a Component, the Construction Manager shall submit to the Owner and Architect a schedule of values for the Component allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. These schedules, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Construction Manager’s Applications for Payment. Mobilization shall be a maximum of one-half of one percent (0.5%) of the GMP, and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner; the schedule of values shall allocate at least one percent (1%) of the GMP to Commissioning, as defined in the Contract Documents; and the schedule of values shall also allocate at least two percent (2%) of the listed value of each line item in the schedule of values to that portion of the Work between substantial completion and final completion of that line item, to be earned and become payable in the next Application for Payment upon final completion of that line item. Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values for each Component shall allocate the entire Guaranteed Maximum Price for that Component among the various portions of the Work, except that the Construction Manager’s Fee shall be shown as a single separate line item. Fee, Negotiated Support Services, Specified General Conditions, Negotiated Self-Performed Work and Contingency shall each be shown as separate line items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Architect, Owner, shall be used as a basis for reviewing the Construction Manager’s Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment for a Component shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
3. Add the Construction Manager’s Fee, less retention of percent (—%)—Fee. The Construction Manager’s Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

4. Subtract the amount of percent (—%) from that portion of the Work that the Construction Manager self-performs.

5. Subtract the aggregate of previous payments made by the Owner;

6. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.14 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and

7. Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment or the Owner has withheld payment as provided in Section 9.5 of AIA Document A201-2007;

8. Subtract the statutory retention of Five percent (5%) of the completed Cost of the Work as a fund for the protection and payment of the claims of any person or entity arising out of the Work and the state with respect to taxes pursuant to RCW 60.28.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retention held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner’s prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager’s Applications for Payment, the Architect and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect or Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.14 or other supporting data; that the Architect or Owner has made exhaustive or continuous on-site inspections; or that the Architect or Owner has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner. Payment by the Owner shall not constitute final approval of the Work done or the amount due.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, except for statutory retention, shall be made by the Owner to the Construction Manager within 30 days of the Owner’s Final Acceptance of all the Work under the Contract, which shall occur when

.1 the Construction Manager has fully performed the Contract except for the Construction Manager’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work (including final accountings from cost-reimbursable Subcontractors) and a final Application for Payment; and

.3 Final Completion has been achieved;

.4 a final Certificate for Payment has been issued by the Architect— the Architect; and

.5 the requirements for Final Acceptance in the revised A201-2007 General Conditions are met.

The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

in accordance with the Contract Documents.

§ 7.2.2 The Owner’s auditors will review and report in writing on the Construction Manager’s final accounting (including the final accountings of any mechanical and/or electrical subcontracts under RCW 39.10.385) within 30 days after delivery of the final accounting to the Architect—Owner by the Construction Manager. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Construction Manager’s final accounting, and
provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager’s final accounting. The Owner’s final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of this Contract.

§ 7.2.3 If the Owner’s auditors report the Cost of the Work as substantiated by the Construction Manager’s final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation invoke the dispute resolution procedure of Article 15 of the revised General Conditions. Commencement of the dispute resolution procedure for the disputed amount shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation commence the dispute resolution procedure within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate undisputed amount in the final Application for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

§ 7.2.5 Statutory retainage will be withheld separately from Applications for Payment for each Component. Notwithstanding anything to the contrary in the A201 General Conditions, the Owner and the Construction Manager intend that each of the Components will be considered its own separate "contract" to the extent that term is used in RCW 60.28. If and only if the requirements of this Section 7.2.5 are met, the parties intend that the retainage for each Component may be released separately and distinctly from the overall Project. Thus, it is the parties’ intent that the Owner shall issue a separate Final Acceptance and final payment for each Component. So long as (a) the Owner receives the certificates of the Department of Revenue, the Employment Security Department, and the Department of Labor and Industries for an individual Component, (b) the requirements of RCW 60.28.021 are met for that Component, (c) the Construction Manager’s surety agrees in writing to the release of retainage for that Component, and (d) the Construction Manager agrees to defend, indemnify, and hold harmless the Owner from any claims made against the bond and retainage, all in a form agreeable to the Owner, then the Owner shall separately release the retainage in accordance with RCW 60.28 for an individual Component that achieves Final Completion and Acceptance notwithstanding the completion status other Components.

ARTICLE 8 INSURANCE AND BONDS
For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, shall purchase and maintain insurance as set forth in the attached Exhibit 5. Indemnification / Hold Harmless and Insurance Requirements, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. (State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

<table>
<thead>
<tr>
<th>Type of Insurance or Bond</th>
<th>Limit of Liability or Bond Amount ($0.00)</th>
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ARTICLE 9 DISPUTE RESOLUTION
§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as
a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.
the revised A201-2007.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007,
the method of binding dispute resolution shall be as follows:
(Check the appropriate box: If the Owner and Construction Manager do not select a method of binding dispute
resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation,
Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201-2007[deleted]

[ X] Litigation in a court of competent jurisdiction in Island County, Washington

[ ] Other (Specify)
[deleted]

§ 9.3 Initial Decision Maker
The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document
A201-2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the
parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
A201-2007.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if
other than the Architect.)

N/A

ARTICLE 10 TERMINATION OR SUSPENSION
§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price
§ 10.1.1 Prior to the execution of the first Guaranteed Maximum Price Amendment, the Owner may terminate this
Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience
and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’
written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007. Notwithstanding anything
herein to the contrary, the Owner shall at all times maintain the right to terminate for cause or for convenience as

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be
equitably compensated for Preconstruction Phase services reasonably and necessarily performed prior to receipt of a
notice of termination—termination, not to exceed the Preconstruction Services Cost. In no event shall the Construction
Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the
g-Construction Phase but prior to the execution of the any Guaranteed Maximum Price Amendment, the Owner shall
pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any
compensation paid to the Construction Manager under Section 10.1.2:
.1 Take the Cost of the terminated Work incurred by the Construction Manager to the date of termination;
.2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at
the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that
Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of
termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services; and
.4 Adjust for statutory retainage in accordance with RCW 60.28.
The Construction Manager is not entitled to any payment, including but not limited to Fee or markup, for Work not performed on a terminated Component for which no GMP Amendment has been executed.

The Owner shall also pay the Construction Manager fair compensation, compensation to the extent permitted in Section 6.1 and not excluded by Section 6.2 of this Agreement, either by purchase or rental at the election of the Owner, for any equipment purchased for the Project and now owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price
Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager’s Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed, above.

§ 10.3 Suspension
The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 Section 5.1 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS
§ 11.1 Terms in this Agreement shall have the same meaning as those in revised A201–2007.

§ 11.2 Ownership and Use of Documents
Section 1.5 of revised A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law
Section 13.1 of revised A201–2007 shall apply to both the Preconstruction and Construction Phases.
§ 11.4 Assignment
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without 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.

§ 11.5 Other provisions:

§ 11.5.1 PROJECT INFORMATION
The Construction Manager and all Subcontractors shall submit Project information required by the state Capital Projects Advisory Review Board.

ARTICLE 12 SCOPE OF THE AGREEMENT
§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:
   .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
   .2 AIA Document A201–2007, General Conditions of the Contract for Construction
   .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
   .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
   .5 Other documents:
      (List other documents, if any, forming part of the Agreement.)
      Exhibit 1: Preconstruction Work Plans, Rates and Schedule
      Exhibit 2: Federal Requirements
      Exhibit 3: Not used
      Exhibit 4: Cost Responsibility Matrix
      Exhibit 5: Indemnification / Hold Harmless and Insurance Requirements

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)  CONSTRUCTION MANAGER (Signature)

(Printed name and title)  (Printed name and title)
Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, Graham C. Wallace, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 16:25:29 on 06/19/2014 under Order No. 1337858007_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A132™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

>Title

(Dated)
Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)

Oak Harbor Clean Water Facility

THE OWNER:
(Name, legal status and address)

City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, Washington 98277

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Hoffman Construction Company of Washington
1505 Westlake Avenue N, Suite 500
Seattle, Washington 98109

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price, authorize the Construction Manager to engage Zenon Environmental Corporation d/b/a GE Water & Process Technologies ("GP") for the MBR System Equipment and Engineering Support ("MBR Systems") and to engage Engineered Treatment Systems, LLC ("ETS") for the UV Disinfection Equipment and Engineering Support ("UV System") and to establish a Guaranteed Maximum Price for these MBR and UV Systems. The Owner and Construction Manager anticipate subsequent amendment(s) to the Agreement to establish a Guaranteed Maximum Price for the remainder of the Work. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed; exceed for the MBR and UV Systems. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed ($—); Two Million One Hundred Forty-Nine Thousand Dollars ($2,149,000.00) for the MBR System and not to exceed Two Hundred Ninety-Nine Thousand Five Hundred Twenty Dollars ($299,520.00) for the UV Disinfection System, plus the Construction Manager’s Fee of 4.28%, for a total Guaranteed Maximum Price for this Amendment of Two Million Five Hundred Fifty-Three Thousand Three Hundred Seventeen Dollars ($2,553,317.00), subject to additions and deductions by Change Order as provided in the Contract Documents. This GMP amount is for system procurement only and not installation.

The Construction Manager initially intends to engage GE and ETS for shop drawings and engineering support only, with options to exercise full equipment purchases for the prices quoted by GE and ETS. Construction Manager is required to include language in its respective subcontract agreements with GE and ETS to lock in the respective quoted prices and that will ensure that these subcontract agreements are fully assignable to the Owner in
the event that the Owner and the Construction Manager are unable to agree upon a MACC for the remainder of the project. Construction Manager shall further provide in these subcontract agreements that the operation and maintenance costs quoted by GE and ETS shall be provided to the Owner at prices equal to or less than those quoted for three (3) years from Final Acceptance and that these quoted prices and all representations, warranties and guarantees provided by GE and ETS in their respective proposals shall be assigned to the Owner upon completion of the Project.

§ 4.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager’s Fee, and other items that comprise the Guaranteed Maximum Price. (Provide below or reference an attachment.)

See the GE and ETS proposals.

§ 4.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(Which numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

None.

§ 4.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Idenify allowance and state exclusions, if any, from the allowance price.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

§ 4.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

None.

§ 4.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

§ 4.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)


<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

§ 4.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

Oak Harbor Wastewater Treatment Plant MBR System Equipment Procurement Drawings and Disinfection Equipment Procurement Drawings (Carollo Engineers, March 2014).

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
</table>

§ 4.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)
Bidder's Question/Response Log.
Oak Harbor Wastewater Treatment Plant Disinfection Equipment Procurement Addendum No. 1 (Carollo Engineers, October 15, 2014).
Oak Harbor Clean Water Facility Disinfection Equipment Procurement Addendum No. 2 (Carollo Engineers, October 29, 2014).
Oak Harbor Wastewater Treatment Plant Disinfection Equipment Procurement Addendum No. 3 (Carollo Engineers, November 5, 2014).

ARTICLE A.2
§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:
December 29, 2017.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)
Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, Graham C. Wallace, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 13:54:41 on 11/20/2014 under Order No. 1337858007_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

>Title

(Dated)
November 18, 2014

City of Oak Harbor
1400 NE 16th Avenue
Oak Harbor, WA 98277

Attention: John Piccone

RE: Oak Harbor Clean Water Facility - Preconstruction
Hoffman Project No. 5109314

John,

At the request of the City of Oak Harbor and utilizing documents provided by Carollo Engineers, Hoffman has directly solicited pricing from named vendors for the UV disinfection equipment and the Membrane Bio Reactor (MBR) equipment. The early procurement of this equipment will make the design process more efficient for Carollo by allowing them to arrange the facility around the specific characteristics of the chosen equipment.

Proposals received from vendors for the equipment included total capital costs and additional data that supported a calculation of a 15 year operations and maintenance life cycle for the equipment. The capital cost components included a breakout for the initial shop drawing and engineering support services.

Hoffman proposes to procure this equipment under the ‘Heavy Civil’ provision of RCW39.10.370 as an element of our negotiated self-performed work. Ultimately, the installation of this equipment will be assigned to a process mechanical contractor, or will be performed by Hoffman, should we determine that self-performance of certain mechanical work is in the best interest of the project. Hoffman will retain the warranty responsibility in behalf of the vendor, whereas the installation contractor will warrant their own workmanship.

For the MBR equipment, we are recommending an award to GE/Zenon. The total capital cost quoted by GE/Zenon was lowest at a total of $2,149,000. The initial award to GE Zenon would be for shop drawings and engineering support only in the amount of $249,000 with options to exercise full equipment purchase for the prices quoted.

For the UV disinfection equipment, we are recommending an award to Engineered Treatment Systems (ETS). The total capital cost quoted by ETS was the lowest total at $299,520. The initial award to ETS for shop drawings and engineering support will be $12,450 with options to exercise full equipment purchase for the prices quoted.
For both vendor agreements, we will include language to ensure that the respective agreements are assignable, in the unlikely event that the City and Hoffman are unable to arrive at a mutually agreeable MACC.

To allow Hoffman to enter into agreement with GE/Zenon and ETS, we are requesting Oak Harbor issue GMP amendment No. 1 to our contract. This first amendment would include the following:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1- MBR Equipment and Engineering Support</td>
<td>$2,149,000</td>
</tr>
<tr>
<td>2- UV Disinfection Equipment and Engineering Support</td>
<td>$299,520</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>$2,448,520</strong></td>
</tr>
<tr>
<td><strong>GCCM Fee @4.28%</strong></td>
<td><strong>$104,797</strong></td>
</tr>
<tr>
<td><strong>Amendment No. 1 Total</strong></td>
<td><strong>$2,553,317</strong></td>
</tr>
</tbody>
</table>

Amount does not include Washington State Sales Tax.

Attached are detailed comparisons for the equipment for your use and review. Please call with any questions you may have.

Sincerely,

[Signature]

Trevor H. Thies
Sr. Project Manager