

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 8.b
Date: October 20, 2015
Subject: Clean Water Facility - General
Contractor/Construction Manager
GMP Amendment #5

FROM: Cathy Rosen, Public Works Director and Joe Stowell, City Engineer

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

- Scott Dudley, Mayor
- Doug Merriman, City Administrator/Finance Director
- Nikki Esparza, City Attorney, as to form

RECOMMENDED ACTION

Authorize the Mayor to sign AIA Document A133 – 2009 Exhibit A (GMP #5) in the amount of \$2,028,222 plus Sales Tax (\$176,455) with Hoffman Construction for pre-purchase of a biosolids dryer.

BACKGROUND / SUMMARY INFORMATION

An integral component of the City’s new Clean Water Facility involves stabilization and beneficial reused of the solid waste, called biosolids, generated by the process. The project team evaluated various technologies and recommended use of a biosolids dryer. The City Council accepted this recommendation in Resolution 15-33.

Previously Hoffman Construction issued a request for proposals for solids dryers. 4 qualified manufactures submitted proposals with the results summarized below:

Manufacturer	Amount
Haarslev Industries	\$1,879,205.00
Huber Technologies	\$2,650,000.00
Andritz	\$3,964,685.00
J. Kruger	\$5,119,000.00
Package Estimate	\$3,500,000.00

A review committee consisting of Hoffman, Carollo, and City Staff reviewed the proposals. In addition to purchase cost, the units were reviewed for operations and maintenance cost, design and quality of the machine, local service availability, ease of installation, and number of installations. Based on this comprehensive review, the reviewers recommend award to the low bidder Haarslev Industries.

Hoffman Construction recommends award to Haarslev, in the amount of \$1,879,205.00 (attached is a recommendation of award). This amount reflects the cost of the equipment, startup services and ancillary tasks. The cost to install the equipment will be included in the later mechanical portion of the project.

In accordance with the base agreement with Hoffman Construction, a Guaranteed Maximum Price Agreement (GMP #5) was prepared by Perkins Coie, the contracted legal counsel for the project. This GMP amount includes the direct cost of the work, Negotiated Support Services, contingency, GC/CM fee, Specified General Conditions. These amounts are summarized in Attachment B. At the advice of Perkins Coie, GMP Amendments do not specifically state the Sales Tax amounts but those amounts are included in the contract.

GMP #5 totals to \$2,028,222 plus \$176,455 in Sales Tax. The budget for this work is included in the overall Clean Water Facility Project Budget.

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.
 - December 2, 2014 - GMP#1 approved by council for early procurement of Membrane Bioreactor (MBR) and Ultraviolet Disinfection equipment for an amount of \$2, 533,317.
 - April 21, 2015-GMP #2 approved by council for construction of the Outfall Diffuser in the amount of \$2,337,687.
 - June 16, 2015—GMP #3 approved by council for construction of Site Prep B in the amount of \$908,872
 - Anticipated Subsequent GMP Components as follows will be combined for the total project GMP:
 - Additional early equipment procurement (solids equipment, data processing equipment, etc.)
 - WWTP construction
 - Site work improvements (landscape, parking, etc.)

FISCAL IMPACT

Funds Required: \$2,028,222 + Sales Tax (\$176,455)

Appropriation Source: Wastewater Fund

PREVIOUS COUNCIL / BOARD / CITIZEN INPUT

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 Contractor / Construction Manager (GC/CM) for the new wastewater treatment plant project.

2-18-2014 - Authorized the Mayor to sign and submit the Application for Project Approval – GC/CM Delivery for construction of the new wastewater treatment plant to the State of Washington Capital Projects Advisory Review Board – Project Review Committee.

7-1-2014 - Authorized the Mayor to sign the A-133 agreement with Hoffman Construction in connection with the new wastewater treatment plant (WWTP) project.

12-2-14 - Authorized GMP #1 for procurement of Membrane Bioreactor (MBR) and Ultraviolet (UV) equipment in the amount of \$2,553,317.00

4-21-15 - Authorized GMP #2 for construction of the wastewater outfall in the amount of \$2,337,687

6-16-15 - Authorized GMP #3 for construction of Site Preparation B in the amount of \$908,872

CITY COUNCIL WORKSHOPS

11-13-2013 – Project funding and alternative project delivery were discussed.

11-19-2013 – Project delivery options were discussed.

02-26-2014 – Established the GC/CM contractor selection and review team.

06-25-2014 – Selection of the GC/CM was discussed.

11-19-2014 – GMP#1 bids for UV and MBR were discussed

04-07-2015 – Council review of the 30% cost estimate

05-17-2015 – Council review of site selection process

05-27-2015 – Council review of GMP #3

09-30-2015 – Council review of the 60% Cost Estimate and solids options

ATTACHMENTS

1. [Attachment A - A-133 - 2009 Exhibit A - Guaranteed Maximum Price Amendment \(GMP#5\)](#)
2. [Attachment B - GMP #5 Summary of Amendment Costs](#)
3. [Attachment C - Hoffman Recommendation of Award for GMP #5](#)
4. [Attachment D - A-133 Agreement \(base agreement\)](#)
5. [Attachment E - A-133 - 2009 Exhibit A - Guaranteed Maximum Price Amendment \(GMP #1\)](#)
6. [Attachment F - A-133 - 2009 Exhibit A - Guaranteed Maximum Price Amendment \(GMP#2\)](#)
7. [Attachment G - A-133 - 2009 Exhibit A - Guaranteed Maximum Price Amendment \(GMP#3\)](#)



AIA[®]

Document A133™ – 2009 Exhibit A

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

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.

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 proceed with the Work of Pre-Purchase of Biosolids Dryer and to establish a Guaranteed Maximum Price for the Pre-Purchase of Biosolids Dryer Work and related Negotiated Support Services and Specified General Conditions.~~ The Owner and Construction Manager anticipate subsequent amendment(s) to the Agreement to establish a Guaranteed Maximum Price for the remainder of the Work. This is the Fifth GMP Amendment for this Project. 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 Pre-Purchase of Biosolids Dryer and related Negotiated Support Services and Specified General Conditions. 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 Twenty-Eight Thousand Two Hundred Twenty-Two Dollars (\$2,028,222.00)~~ for the Pre-Purchase of Biosolids Dryer Work and includes all related Negotiated Support Services, Specified General Conditions, Contingency, and the Construction Manager's Fee of 4.28%, subject to additions and deductions by Change Order as provided in the Contract Documents. Sales tax is not included in the above amount and will be added to the Cost of the Work.

§ A.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.)

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User Notes:

See the Hoffman Construction Company GMP Amendment No. 5 Recapitulation for Pre-Purchase of Biosolids Dryer.

§ A.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:
(State the 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.)

Subcontractor Payment and Performance Bond, included within the above price.

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
<u>None</u>	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See the Hoffman Construction Company GMP Amendment No. 5 Recapitulation for Pre-Purchase of Biosolids Dryer.

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

1. Addenda 1 through 4.
2. Haarslev Dryer Proposal.
3. Hoffman Recommendation of Award.
4. Biosolids Dryer Request for Proposal.

Document	Title	Date	Pages
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§ A.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.)

Oak Harbor Wastewater Treatment Plant Biosolids Belt Dryer System Technical Specifications dated April 2015.

Section	Title	Date	Pages
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§ A.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 Biosolids Belt Dryer System Equipment Drawing Procurement dated April 2015.

Number	Title	Date
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§ A.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.)

Construction Manager shall comply with Washington Department of Ecology funding requirements including the Water Pollution Control Revolving Fund Specifications Insert dated 10/30/13. Construction Manager will perform

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construction activities in accordance with the City of Oak Harbor Cultural Resources Memorandum of Agreement approved April 21, 2015.

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

December 29, 2017.

Executed this day of October, 2015.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Graehm 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 16:37:25 on 10/07/2015 under Order No. 1248342233_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)



HOFFMAN CONSTRUCTION COMPANY
OF WASHINGTON

City of Oak Harbor, Washington
Clean Water Facility Project

1-Oct-15

Hoffman Project Number 5100014

Rev 1 -10/2/15

GMP Amendment No 5 Recapitulation
Pre-Purchase of Bio Solids Dryer

1	<u>Direct Cost of Work</u>		
2	Solids Dryer Pre-Purchase, including Alt 2	Haarslev	\$ 1,682,390
3	Bid Alternate No. 2 -- Additional Equipment		\$ 196,815
4			
5	Bonds		Included
6		Total Direct Costs	\$ 1,879,205
7			
8	<u>Negotiated Support Services</u>		
9		NA	\$ -
10			
11		Total NSS	\$ -
12			
13		Total NSS and Direct Costs	\$ 1,879,205
14			
15	GMP Risk Contingency at 3.5%		\$ 65,772
16			
17		Total Direct+NSS+Risk Conting.	\$ 1,944,977
18			
19	Specified General Conditions	NA	\$ -
20			
21		Sub-Total	\$ 1,944,977
22			
23	GCCM Fee at 4.28%		\$ 83,245
24			
25		Total GMP Cost	\$ 2,028,222
26	Washington State Sales Tax @ 8.7%		\$ 176,455
27			
28		Total Amendment No 5 (Incl. Sales Tax)	\$ 2,204,678

Previously Issued Amendments

Preconstruction Services	\$	790,050
GMP Amendment No 1 -- Early Purchase MBR-UV	\$	2,553,317
Washington State Sales Tax on Amendment 1	\$	222,139
GMP Amendment No. 2 - Outfall Construction	\$	2,164,488
GMP Amendment No. 3 - Site Prep A	\$	908,872
GMP Amendment No. 4 - Site Prep B	\$	5,554,080
Total GC/CM Contract with this Amendment	\$	14,397,623



HOFFMAN CONSTRUCTION COMPANY
OF WASHINGTON

October 2, 2015

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

Attention: Brett Arvidson

RE: Oak Harbor Clean Water Facility
Hoffman Project No, 5100014

Brett,

At the request of the City of Oak Harbor and utilizing documents provided by Carollo Engineers, namely specification section 11365A, Hoffman has directly solicited pricing from named vendors for the Biosolids Drying 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. These would be the only costs realized prior to construction of the facility.

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 mutually 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 Biosolids Dryer equipment, we are recommending an award to Haarslev. The total capital cost quoted by Haarslev was lowest at a total of \$1,879,205. This amount includes the larger 3000lb/hr capacity dryer and additional conveying equipment defined in Bid Alternate No. 2. In addition to lowest capital cost of the equipment, the Haarslev proposal outlined total operations and maintenance costs over a 15 year operation span that was the lowest of all responding vendors.

To allow Hoffman to enter into agreement with Haarslev, we request that the City of Oak Harbor approve GMP amendment No. 5 to our contract, submitted under separate cover.

Attached is a detailed bid comparison for the equipment for your use and review. Please call with any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "Trevor H. Thies".

Trevor H. Thies
Sr. Project Manager

Attachment



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

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.

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

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

The Owner and Construction Manager agree as follows.

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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.

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§ 1.0.8 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.

§ 1.0.9 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.

§ 1.0.10 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.

§ 1.0.11 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.

§ 1.0.12 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.

§ 1.0.13 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.

§ 1.0.14 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.

§ 1.0.15 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.

§ 1.0.16 The term Contractor means the Construction Manager.

§ 1.0.17 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.

§ 1.0.18 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.

§ 1.0.19 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.

§ 1.0.20 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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Services, the Specified General Conditions, the Negotiated Self-Performed Work for that Component. The ECW 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.

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§ 1.0.29 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.

§ 1.0.30 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.

§ 1.0.31 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.

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

§ 1.0.33 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.

§ 1.0.34 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.

§ 1.0.35 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.

§ 1.0.36 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.

§ 1.0.37 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.

§ 1.0.38 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.

§ 1.0.39 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

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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 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.

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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 Construction 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

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 take into consideration cost reductions, 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 instituted 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

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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.

§ 2.1.6 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.

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~~§ 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 service. 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

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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 -Manager, 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 a 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 its 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

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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.**

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§ 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 a~~ 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 a~~ 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 a~~ 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.

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§ 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 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 comply with the applicable requirements of RCW 39.10, the provisions of which shall take precedence over any inconsistent provisions of the Contract Documents. Except as specified below, 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 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 ECW 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. In addition, 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.

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- .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 Time 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. [deleted]~~

~~§ 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 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 a 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; below and these Subcontractors 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. [deleted]~~

~~§ 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.~~

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§ 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~~ 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.
- .9 Document any outstanding RFIs and risks associated with delayed responses.
- .10 List outstanding submittals and risks associated with delayed responses.
- .11 Document any outstanding Change Orders and any 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~~ 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

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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 to 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 39.04.300 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.

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§ 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 a~~ a 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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§ 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 \$540,050.00 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 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.

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§ 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.
(Insert 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.)

Item	Units and Limitations	Price per Unit (\$0.00)
None		

§ 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.

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§ 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~~ 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.)

None

§ 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 7.3.3.3 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~~ 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.

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§ 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, 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

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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-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-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.

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~~§ 6.6.2 Sales, use or similar~~ 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 13.5.3 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 excluded 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.~~ 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~~ 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. Work 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 in writing by the Owner. Temporary heat and temporary hookups and temporary meter installation for water, utilities, natural gas, sewer and storm sewer, 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.~~

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§ 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, 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 are 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;

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- .12 Penalties and fines imposed by a governmental entity;
- .13 Safety costs not included in the Negotiated Support Services or Specified General Conditions;
- .14 Liquidated damages;
- .15 Except as included within the Specified General Conditions, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office;
- .16 Legal, consultant, or claims-related expenses except as specifically provided in Section 6.6.8;
- .17 Warehousing in the Construction Manager's facility; and
- .18 Business licenses.

§ 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.

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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

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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 invoices with check vouchers attached, and any other evidence required by the Owner or Architect to 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 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 Architect-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;

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- .3 Add the Construction Manager's Fee, less retainage 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 retainage of percent () from that portion of the Work that the Construction Manager self-performs; [deleted]~~
- .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 7.1.4 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. A201-2007; and
- .8 Subtract the statutory retainage 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 retainage 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 7.1.4 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, Sum except for statutory retainage,~~ 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: made:~~

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

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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.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)

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~~

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~~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]~~

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~~ There shall be no 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 described in Article 14 of AIA Document A201-2007.

§ 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 ~~a~~ 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-~~ services; and
- .4 Adjust for statutory retainage in accordance with RCW 60.28.

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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~~ a 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~~ a 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~~ a 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.

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§ 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)

DEVERE SCOTT DUDLEY, MAYOR
(Printed name and title)

Thome G. Peterson - VP
(Printed name and title)

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General Conditions of the Contract for Construction

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

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 ARCHITECT:

(Name, legal status and address)

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

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

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9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7,
9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, 13.3,
14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2,
14.3.1, 15.1.2



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the ~~Architect~~-Architect or Owner. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. In the event of a conflict or discrepancy among or in the Contract Documents that cannot be resolved by interpreting the Contract Documents as a single, integrated document and giving effect to each provision therein, interpretation shall be governed in the following priority, with an Addendum or a revision to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

- .1 Agreement (revised A133-2009, including exhibits) (written amendments having precedence)
- .2 Any Special Conditions
- .3 Any Supplementary Conditions
- .4 These revised General Conditions (A201-2007)
- .5 Specifications
- .6 Schedules
- .7 Drawings (large-scale having precedence over small-scale, and written or computed dimensions having precedence over scaled dimensions).

In the event that Work is shown on Drawings but not contained in Specifications, the Work as shown shall be provided at no change in the GMP or Contract Time, according to specifications consistent with and reasonably inferable from the Work shown on the Drawings to be issued by the Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a ~~Sub-subcontractor~~, Sub-subcontractor (although the Owner does not waive any third-party beneficiary rights it may otherwise have as to Subcontractors of any tier). (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services 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 Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that 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.

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§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar ~~materials~~ materials through which the Work to be executed by the Contractor is described.

§ 1.1.8 INITIAL DECISION-MAKER PROJECT MANUAL

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. Project Manual is a volume or volumes assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, Specifications, and other related materials such as construction details and schedules.~~

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any ~~trade~~ trade, nor shall it eliminate the Contractor's obligation to complete all of the Work when coordination between the Specifications and the Drawings or coordination between subcontracts is required.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words not defined in the Contract Documents that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If the Contractor discovers that the Specifications, Drawings, or Project Manual fail to particularly describe the material or kind of goods to be used in any place or discovers an inconsistency or ambiguity between the Specifications, Drawings, or Project Manual or an inconsistency or ambiguity arises internally within the Specifications, Drawings, or Project Manual, then the Contractor shall make inquiry of the Architect as to what is best suited. The material that a competent contractor, having participated in a preconstruction phase and following accepted construction industry standards, would use in its place to produce first quality finished Work shall be considered a part of the Contract. If the Contractor discovers such inconsistency or ambiguity and fails to notify the Architect, there shall be no adjustment to the GMP or Contract Time.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles ~~or~~ and identified references to Sections in this document (3) the titles of other documents published by the American Institute of ~~Architects~~ Architects, or (4) published codes and standards.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants ~~shall~~ shall, subject to any right of the Owner, be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and ~~will~~ will, subject to any right of the Owner, retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. All copies of the Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Contractor may retain one record set. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents. Any electronic files provided will be for the convenience of the Contractor. Neither the Architect nor the Owner shall be liable for any inaccuracy or incompleteness in information contained in an electronic copy of an Instrument of Service. Electronic files are not Contract Documents and cannot be relied upon as identical to the Contract Documents. Use of information contained in electronic files is at the Contractor's risk and without liability to the Architect or the Owner.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner ~~or the Owner's authorized representative.~~ Owner's City Council or the Owner's Mayor. Neither any other employee of the "Owner," nor any other persons, are authorized to act or make decisions on behalf of the Owner as it relates to the Agreement and the Contract Documents except as specifically authorized by the Contract Documents, the Owner's City Council, or the Owner's Mayor. No officer, agent, representative, or employee of the Owner shall be personally responsible for any liability arising under this Agreement.

~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. Provisions of the Contract Documents can be waived only in writing and by the Owner's City Council. No other person is authorized to grant such waiver on behalf of the Owner.~~

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 ~~Prior to commencement of the Work, the Contractor 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 Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor 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. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. [Not used; see Section 3.1.2 of the A1333 Agreement.]~~

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary environmental approvals, easements, assessments and related charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor is responsible to secure and pay for licenses and all other permits.

§ 2.2.3 The Owner ~~shall~~ may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of

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information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor should assume that the locations of any underground or hidden utilities, active or abandoned underground tanks, plumbing or electrical runs indicated in the surveys or Contract Documents are shown in approximate locations, but the Contractor is responsible for making all utility location checks and verifications. The Contractor is responsible for performing all utilities investigation and location work to determine the precise locations thereof. The Contractor shall not damage or interrupt utilities or utilities services of any kind. The Contractor shall bear the risk of loss arising out of its Work which directly or indirectly damages or interrupts any utilities or utilities services, or causes or contributes to damages of any nature.

§ 2.2.4 ~~The Owner~~ Owner, upon written request, 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 Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such reasonable information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Additional copies may be obtained at the cost of reproduction. Electronic files may be available from the Architect and may be subject to its terms. The Contractor will be responsible as a Cost of the Work for the duplication costs for Subcontractor bid packages (including those on which it bids) and will furnish, as a Cost of the Work, such copies of Drawings and Project Manuals to the Owner and the Architect as are reasonably necessary.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly or materially fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ seven (7) day period after receipt of written notice from the Owner to commence and continue to make reasonable progress toward the correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. The right of the Owner to correct the Work pursuant to this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, ~~if required bonded, and insured~~ in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract ~~Documents~~ Documents and submittals approved or accepted pursuant to Section 3.12.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.1.4 The Contractor shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract and a GMP Amendment by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. By executing this Contract and a GMP Amendment, the Contractor represents and acknowledges that the GMP will be reasonable compensation for all the Work of that Component, that the Contract Time is adequate for the performance of the Work of that Component, and that it has carefully examined the Contract Documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the physical labor, materials, equipment, goods, products, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other foreseeable matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, local regulations, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and observable ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor fully to acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work of that Component in accordance with the Contract Documents and within the Contract Time and the GMP and shall not be the basis of a Claim.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Drawings, Specifications and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions and verify any existing conditions, including all general reference points and any interfering existing conditions, related to that portion of the Work, and shall observe any conditions at the site affecting it-it and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. The Contractor shall not perform Work without applicable Drawings, Specifications, or written Modifications, or, where required, Shop Drawings, unless instructed to so in writing by the Architect or the Owner. Any inspection by the Contractor done pursuant to this Section shall be for purposes of facilitating construction and not for the purpose of verifying design integrity and/or code compliance. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. The Contractor shall comply with all applicable Federal, State, County and City laws, ordinances, rules and regulations, including, but not limited to all standards, orders, or requirements under the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq. as amended), as well as the latest applicable versions of:

1. International Building Code (with Washington State Amendments);
2. Uniform Plumbing Code;
3. Uniform Mechanical Code;
4. International Fire Code
5. National Electrical Code;
6. Washington State Energy Code;

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7. Washington State Rules and Regulations for Barrier-Free Design;
8. Americans with Disabilities Act ("ADA");
9. Federal and State Safety Codes as adapted and/or modified by State and Local Ordinances;
10. All rules, regulations, and directions applicable to the site; and
11. Any applicable municipal code.

§ 3.2.4 If Subject to the restrictions in Section 2.2.4.2.4 of the A133 Agreement as to what constitutes a compensable design error or omission, if the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues any design errors or omissions or inconsistencies noted by the Contractor, or clarifications or instructions issued by the Owner or the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make any Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Owner and the Architect. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents or reports referenced therein without such notice to the Owner and the Architect, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

§ 3.2.5 The Contractor will participate in recommending necessary investigations of hidden or subsurface conditions. The results of these investigations will be available for the convenience of the Contractor but are not a part of the Contract Documents. While the Contractor may reasonably rely upon such investigation results, there is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. The Contractor is solely responsible for reasonably interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location.

§ 3.2.6 The Contractor shall do no Work without applicable Drawings, Specifications, or written modifications or, where required, Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences -sequences, assembly details and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give The Contractor shall review any such specific instructions concerning construction means, methods, techniques, sequences -sequences, assembly details, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, -sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required and shall advise the Owner and Architect (a) if the specified instruction or procedure deviates from what the Contractor considers to be good construction practice or jeopardizes jobsite safety, (b) if following the instruction or procedure will negatively affect any warranties, or (c) if the Contractor objects to the instruction or procedure. The Contractor shall propose alternative instructions or procedures acceptable to the Contractor, for which no increase in the GMP or Time will be made. The Contractor shall not proceed with such alternative instruction or procedure without the written acceptance of the Owner and the Architect, and the Contractor shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

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§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's principals, agents, employees, Subcontractors of any tier and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Subcontractors of any tier.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no condition shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times. The Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive its work and has notified the Contractor (who shall notify the Owner and Architect in writing) of any defects or imperfections in preparatory work that will, in any way, affect satisfactory completion of the Work. The lack of such notification or the failure of the Contractor to inspect such portions of the Work shall constitute an acceptance of preparatory work and a waiver of any later claim of defect therein.

§ 3.3.4 The Contractor shall perform such detailed examination, inspection and quality control and surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the then current issue of the Drawings, Specifications, and accepted shop drawings. The Contractor shall be responsible for examination, inspection and quality control and surveillance of all Work performed by any Subcontractor of any tier. The Contractor shall determine when it is necessary to perform, and shall perform, tests (as a Cost of the Work and in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents. The Contractor shall report known errors, omissions, or inconsistencies to the Architect and the Owner before commencing Work. Inspections by or on behalf of the Owner shall not constitute approval of the Work.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. The Contractor shall establish and maintain existing lot lines, survey markers, restrictions and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to initially lay out and be responsible for the accuracy of the Work and to create and submit to the Owner an as-built survey and accurate utility as-builts for use by the Owner. The Contractor shall provide an as-built surveyed site plan noting all site improvements, including but not limited to building corners, edge of pavement, signs, markings, back of curb, sidewalks, and type and grade of all wet utilities including existing utilities exposed during construction.

§ 3.3.6 The Contractor shall maintain and contemporaneously provide the Owner with copies of daily reports of the activities related to the Work, including but not limited to numbers of workers by trade, equipment in use and stored, inspections, and performance of Change Order and Construction Change Directive Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the After a GMP Amendment has been executed, the Owner and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents for that Component only under exceptional circumstances, as described in the Specifications, following the procedures of the Contract Documents. The written request must include the specifications for the material or product and any proposed change in the GMP or Contract Time. The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified (or if not equal or better in all respects, the Contractor shall identify such deficiencies), that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other

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known or unknown Claim for an increase in the GMP or Contract Time, that it has coordinated with affected Subcontractors, and the substitution will not impact other parts of the Work, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. The Contractor will be responsible for the reasonable costs of any time the Owner and/or the Architect expend in reviewing a substitution request.

~~§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Personnel.~~

§ 3.4.3.1 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work, including observance of drug testing and all smoking, tobacco, alcohol, parking, safety, weapons and other rules governing the conduct of personnel at the Project site. The Contractor shall not permit employment of persons or persons not properly skilled in tasks assigned to them or otherwise unfit. The Contractor shall ensure that all persons performing the Work comply with the Owner's tobacco-free policy (copies of which will be made available to the Contractor upon request), chemical use and weapons prohibitions policies and will not and do not engage in inappropriate conduct or inappropriate contact with the Owner's staff. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable without change in the Contract Sum or Contract Time. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the Contract Sum or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section 3.4.3. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 3.4.3.2 No employees of either the Contractor or any of its Subcontractors of any tier shall harass, intimidate, have physical contact with, or engage in other verbal or physical conduct or communication of a sexual, intimidating or harassing nature with the Owner's staff, nor create an intimidating, hostile or offensive environment. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the Contract Sum or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 3.4.4 Wages.

§ 3.4.4.1 This Contract and this Project are subject to RCW 39.12, Washington's Prevailing Wage Act and Subchapter IV of chapter 31 of title 40, United States Code, the Davis-Bacon Act. Applicable workers must be paid the State prevailing wage rate, and are entitled to coverage under the Washington State prevailing wage and labor standards laws. Analysis must be done on a trade classification basis for each worker to ensure that proper wages are paid.

§ 3.4.4.2 The Contractor shall comply with Subchapter IV of chapter 31 of title 40, United States Code (the Davis-Bacon Act) and Exhibit 2. In the event of any conflict between the wage rates set forth in the Davis-Bacon Act wage determination of the U.S. Secretary of Labor and the prevailing rate of wage as determined by the Industrial Statistician of the Washington State Department of Labor and Industries, the Contractor and its Subcontractors of any tier shall pay the highest applicable wage rate.

§ 3.4.4.3 Pursuant to RCW 39.12, Washington's Prevailing Wage Act, no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where this contract will be performed is attached to the executed contract and made a part of the Contract Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the bid date for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the Owner's office and a hard copy will be mailed upon request. The Contractor shall also keep a paper copy at the Project site. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the GMP. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid. The Contractor shall provide the respective Subcontractors with

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a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing Department of Labor and Industries
Address: Prevailing Wage Office
PO Box 44540
Olympia, WA 98504
Telephone: (360) 902-5335
Facsimile: (360) 902-5300

§ 3.4.4.4 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries of the state, and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

§ 3.4.4.4 The Contractor shall defend, indemnify and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of the Davis-Bacon Act, RCW 39.12 ("Prevailing Wages on Public Works") and Chapter 51 RCW ("Industrial Insurance"), including without limitation RCW 51.12.050.

§ 3.4.5 The Contractor shall comply with all applicable provisions of RCW 49.28 ("Hours of Labor").

§ 3.4.6 Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-307-560 et seq., the Contractor shall provide the Owner copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project Site. The Contractor shall not be entitled to an increase in the Contract Time or Cost of the Work arising from its failure or alleged failure to comply with this statute or regulation.

§ 3.4.7 Certified Asbestos-Free and Lead-Free Products: All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards. At Final Completion of each Component, the Contractor shall submit Certifications of Asbestos-Free and of Lead-Free Materials certifying that all materials and products incorporated into the Work meet the requirements of this section.

§ 3.4.8 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony.

§ 3.4.9 Materials shall conform to the manufacturer's standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturer's instructions, specifications and directions. The Contractor shall, if required in writing by the Owner or the Architect, furnish satisfactory evidence regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Contract Documents.

§ 3.4.10 Apprenticeship.

§ 3.4.10.1 Pursuant to RCW 39.04.320, no less than fifteen percent (15%) of the Labor Hours shall be performed by apprentices, unless a different amount is permitted or otherwise required by law.

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

§ 3.4.10.3 "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 Contractor and all Subcontractors working on the Project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of RCW 39.12.

§ 3.4.10.4 During the term of this Contract, the Owner may adjust the apprentice labor hour requirement upon its finding or determination that includes:

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- (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 39.04.300, 39.04.310 and 39.04.320;
- (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.

§ 3.4.10.5 The Contractor 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 Contractor'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.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or explicitly permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized is considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse by the Owner, alterations to the Work not executed or supervised by or through the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance and final payment.

§ 3.5.2 The Contractor shall secure, assign if requested by the Owner, and furnish directly to the Owner all written warranties required by the Contract Documents, first executed by the applicable Subcontractor and those suppliers and manufacturers furnishing materials for the Work, and subsequently countersigned by the Contractor, which shall extend to the Owner all rights, claims, benefits and interests that the Contractor may have under express or implied warranties or guarantees against the Subcontractor, supplier or manufacturer for defective or non-conforming Work. Prior to furnishing Owner with written guarantees and warranties, the Contractor shall provide copies to the Architect for review.

§ 3.5.3 Warranty language shall comply with the Contract Documents and shall be submitted to the Owner and Architect at least thirty (30) days prior to ordering the warranted material or equipment.

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§ 3.6 TAXES

The Contractor shall pay sales, consumer, ~~use-use, business and occupation, income~~ and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the ~~Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses.~~ Owner will pay only for:

- Initial Building Permit fees, City grading permit fees, and City flood plain permit fees; and
- Inspection fees covered under the initial Building Permit fees, City grading permit fees, and City flood plain permit fees.

The Contractor shall secure and pay for all other permits, fees, and licenses necessary for the execution of the Work, including without limitation all utility connection fees, Subcontractor permits and fees including plan check fees for deferred submittals, the application fees and review fees for any and all Shop Drawings or bidder designed systems, any inspection fees not covered by the initial building permit fee, including re-inspection fees, renewals and penalties, miscellaneous, ancillary and governmental fees, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner will not pay, and the Contractor will be responsible for and will not be reimbursed for, license fees or any renewals or penalties not caused by the Owner.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall coordinate and schedule all Work with entities with jurisdiction over the site, permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Contractor shall keep the Owner informed of communications from these authorities and utilities. The Owner will assist the Contractor with such coordination and scheduling, but the Owner is not responsible for any delays caused by such permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority. The Contractor shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority within thirty (30) days after issuance of the Notice to Proceed to the extent necessary for site access and, for other purposes, as soon as necessary to obtain and coordinate permits, utility and other such connections. The Contractor shall obtain all permit renewals during the course of the Work. The Contractor is responsible for providing information and fees to the Department of Labor and Industries.

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in any soils reports made available to the Contractor by the Owner or in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days the time period required in Article 15 after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect both, consistent with the requirements of the Contract Documents. If the Owner, after consultation with the Architect, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect-Owner shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No increase to the GMP or the Contract Time shall be allowed if the Contractor knew or reasonably should have known of the concealed conditions prior to its execution of the GMP Amendment for that Component.

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites ~~or wetlands as defined in reference materials provided by the Owner~~ not indicated in the Contract Documents, the Contractor shall immediately ~~suspend any operations that would affect them and shall notify the Owner and Architect.~~ Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue meet all requirements of the archaeological Monitoring and Treatment Plans and any additional requirements of the Washington State Department of Archaeology and Historic Preservation ("DAHP") and the Army Corps of Engineers and shall immediately notify the Owner and Architect. The Contractor shall continue with all other operations that do not affect those remains ~~or features or features unless otherwise directed by the Owner, DAHP, or the Army Corps of Engineers.~~ Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has made reasonable and timely written objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required ~~taxes, taxes except sales tax on progress payments,~~ less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between ~~actual~~ actual, reasonable costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

Allowances are defined in the Contract Documents due to the uncertainty in the scope, price and quantity of the Allowance items at the time the Contract was executed. Whenever actual costs are more or less than the allowance, the GMP will be adjusted accordingly by Change Order. The Contractor must provide the Owner with written notice of its intent to exceed an allowance amount with estimates and justification (providing the Owner with the opportunity to approve or reject the excess costs) before exceeding an allowance amount.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a ~~competent superintendent and necessary assistants~~ competent, computer literate, experienced project manager, superintendent and necessary assistants as identified in the Contractor's proposal who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor, ~~as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14-day period shall constitute notice of no reasonable objection.~~ Superintendent, project engineer and project manager shall be employees of the Contractor. The superintendent shall remain on the Project site whenever Subcontractors of any tier are present and not less than eight (8) hours per day, five (5) days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the Contract in accordance with the Contract Documents or unless Substantial Completion is attained. After Substantial Completion of a Component, a qualified, experienced representative of the Contractor with authority to bind the Contractor shall remain on site full-time until Final Completion of that Component is attained. Neither the

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superintendent nor the Contractor's project manager or project engineer nor any other individual identified in the Contractor's proposal shall be changed without the approval of the Owner, which shall not be unreasonably withheld. The superintendent shall not be employed on any other project during the course of the Work. The Contractor shall also have available for work on site experienced, skilled employees, such as carpenters, laborers, erection specialists, etc., to perform work as needed.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Upon execution of a GMP Amendment, the Contractor shall also furnish to the Owner and the Architect

- .1 A chain-of-command organizational chart which includes all supervisory personnel, including all personnel identified in the Contractor's response to the RFFP, the project manager, and the superintendent, assistant superintendent, lead foreman, and testing and start-up coordinator that the Contractor intends to use on the Component. The chart shall specify any limits of authority for each person, including any limitation on his/her ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, Contract Time, and issues affecting quality of the Work.
- .2 Complete resumes, including all past and current projects completed within the past five years, for all personnel included in Contractor's organizational chart. The Owner intends to review the resumes and verify references, and it reserves the right to reject personnel reasonably believed to be unsuitable or incompatible for the Project. The Contractor shall replace any rejected personnel with an agreeable replacement at no increase in the GMP or Contract Time.
- .3 A list of telephone numbers for all key personnel of the Contractor and its principal subcontractors for purposes of contacting personnel after hours in the event of an emergency. The list shall be periodically updated as necessary to ensure the Owner and the Architect have the most current information.

§ 3.9.4 The Contractor shall not employ a proposed superintendent, or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent, or project manager without the Owner's consent, which shall not unreasonably be withheld or delayed. The Contractor shall have available for work on site experienced, skilled employees, such as carpenters, laborers, and erection specialists, to perform work as needed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, as specified in the A133 Agreement, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. Work, which shall be consistent with the requirements of the Contract Documents. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and and keep current a submittal schedule for each Component coordinated with the construction schedule, promptly after executing the GMP Amendment for that Component and provide updates thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Owner's and Architect's review. The Owner's and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner reasonable time to review submittals. If the Contractor fails to submit a acceptable submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of review of submittals. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Architect and shall promptly notify the Owner of any substantial deviations from those schedules. The Contractor's Construction Schedule shall be based upon a critical path method ("CPM") analysis of construction activities and sequence of operations needed for the orderly performance and completion of all separable parts of the Work, in the form of a precedence diagram and activity listing and time-scaled, all in accordance with the

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Contract and within the Contract Time. The Contractor shall utilize scheduling software for its CPM scheduling. The Schedule shall be resource loaded and provided to the Owner in electronic, readable format. It shall reflect the Components and include the Date of Commencement, any milestone dates identified in the Specifications, the Date(s) of Substantial Completion, and the Date(s) of Final Completion in accordance with the Contract Documents. The Schedule shall be updated monthly and submitted with the Contractor's Application for Payment. The Critical Path shall be clearly indicated on the Contractor's Construction Schedule.

§ 3.10.4 The Contractor shall not be entitled to any adjustment in the Contract Time, the Contractor's Construction Schedule, or the Contract Sum, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Contractor's Construction Schedule. To ensure that the Owner is substantively aware and effectively able to mitigate any Project delays, the Contractor shall not be entitled to any extension of time, compensable or otherwise, for any delay that occurred during any time the Contractor has not timely submitted an updated Construction Schedule as required by the Contract Documents.

§ 3.10.5 The Contractor shall attend and participate in and ensure applicable Subcontractors of any tier attend and participate in:

- .1 A preconstruction meeting;
- .2 Regular weekly on-site Project status meetings scheduled by the Owner or by the Architect to review progress of the Work, to discuss the Contractor's progress reports, to obtain necessary Owner's or Architect's approvals, and generally to keep the Owner and Architect informed and involved in the progress of the Project; and
- .3 Other meetings scheduled from time to time by the Owner or by the Architect to review progress of the Work and other pertinent matters.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner and update at least weekly one record copy of the Drawings, Specifications, Addenda, Change Orders-Orders, Construction Change Directives and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved or accepted Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and the Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The record drawings shall be in accordance with Specification Section 01720, Record Drawings.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review and acceptance or approval of such submittals by the Owner or the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the 4.2.7 and shall not constitute an approval of the Contractor's means and methods or a waiver or modification of any requirement of the Contract Documents. Informational submittals upon which the Owner or the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the (but are not required to be) returned by the Owner or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, note any deviations from the Contract Documents, approve in writing, and submit to the Architect-Architect, Shop Drawings, Product Data,

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Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule ~~approved by~~ accepted by the Owner and the Architect or, in the absence of an approved-accepted submittal schedule, with reasonable promptness and frequency and in such sequence and uniform flow rate consistent with the submittal schedule as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action, which will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall inform the Architect in writing of any deviation in the Shop Drawings, Product Data, or Samples from the requirements of the Contract Documents. So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated Work shall be submitted at approximately the same time. Unless otherwise directed in writing, the Contractor shall submit one reproducible copy and five black line print copies to the Architect for its use and distribution. The Architect will retain the reproducible copy. The Contractor shall keep accurate records of the receipt, review and delivery of all submittals and shall submit to the Owner monthly reports on the status of their review, identifying the location and the causes of any failure to promptly receive such submissions and suggesting responsibility.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

- .1 Each submittal shall bear a stamp or specific written indication that the Contractor has satisfied its responsibilities under the Contract Documents with respect to the review of the submission. The Contractor's superintendent must initial each submittal. Submittals that are simply passed through by the Contractor's clerical staff are not sufficient to meet these requirements
- .2 Each submittal shall be accompanied by a completed Submittal Cover Sheet, as included in the Project Manual or provided by the Architect, which shall clearly identify applicable Specification Section and paragraph number(s), material, supplier, pertinent data such as catalog numbers and the use for which it is intended.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review and acceptance of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect-reviewed and accepted by the Architect with no exceptions taken.

§ 3.12.8 The Work shall be in accordance with ~~approved-accepted~~ submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's ~~approval~~ review or acceptance of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to acceptance of the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof, approval, review or acceptance thereof. Any corrections or modifications to Shop Drawings made by the Architect shall be deemed accepted by the Contractor, without change in Contract Sum or Contract Time, unless the Contractor provides the Architect with written notice at least three (3) working days before commencing any Work from such Shop Drawings and complies with the change procedures in the Contract Documents. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected submittal without change in the Contract Sum or Contract Time.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval or acceptance of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to

provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must ~~satisfy~~ satisfy, including but not limited to providing evidence of professional liability coverage in accordance with the Contract Documents. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, ~~approve~~ accept or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, permits, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Portions of the site may be occupied and in use during construction. The Contractor is responsible to coordinate its Work with any such occupation or use at no increase to the GMP or Contract Time and at no disruption to the occupancy or use.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Any existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction operations of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Contractor shall abide by such regulations and it shall pay for such work at no additional cost to the Owner.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding ~~area~~ area, including roads, free from accumulation of waste materials or rubbish caused by operations under the Contract. The Contractor shall furnish portable containers on site for use by all trades. At the Owner's request and, in any event, at the completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. Contractor for any clean up costs.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

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§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

~~§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. [Not used; see Exhibit 5. Indemnification / Hold Harmless and Insurance Requirements.]~~

~~§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.~~

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect or engineer lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative and does not include any employees of the Owner.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the ~~Owner, Contractor~~ Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect ~~as to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 ~~The Architect will provide~~ Owner's Designated Representative or designee will administer the Owner-Construction Manager contract. The Architect will assist in providing administration of the Contract as described in the Contract Documents and will be an Owner's representative Documents, during construction until the date the Architect issues the final Certificate for Payment for Payment and with the Owner's concurrence from time to time during the one (1) year period for correction of the Work. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. The Architect is not the agent of the Owner, and is not authorized to agree on behalf of the Owner to changes in the Contract Sum or Contract Time, nor to direct the Contractor to take actions that change the GMP or Contract Time, nor to receive notice or Claims on behalf of the Owner. To the extent that the Contract Documents provide for administration by the "Architect," the Owner may elect to have such administration be performed by the Owner, an Owner representative, a separate construction administrator, or a separate architect or engineer.

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§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with and to keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ~~The Architect will not~~ Neither the Architect nor the Owner will have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. ~~The Architect will not~~ Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not Neither the Architect nor the Owner will have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the ~~Architect-Owner's~~ Designated Representative about matters arising out of or relating to the Contract. The Contractor also shall provide the Owner with a direct copy of all written communications to the Architect, including all notices, requests, substitutions, RFIs, Claims, and potential changes in the GMP or Contract Time but not including Shop Drawings, Product Data or Samples. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through ~~the Contractor~~ the Contractor except as provided in the Contract Documents. Communications by and with separate contractors shall be through the ~~Owner~~ Owner's Designated Representative. Communications may be simultaneously copied to other recipients.

§ 4.2.5 Based on the Architect's observations and evaluations of the Work and the Contractor's Applications for Payment, the Architect will ~~review and certify~~ make recommendations to and otherwise assist the Owner to determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 ~~The Architect has~~ Owner and the Architect have authority to reject Work that does not conform to the Contract Documents. Whenever the Owner or the Architect considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect and the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner or their representatives to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and ~~approve~~ accept, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with reasonable promptness in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review

shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor shall clearly note any deviations from the Contract Documents. Regardless of how a submittal is marked, the Contractor should not presume that the Architect has reviewed a submittal in every aspect.

§ 4.2.8 The Owner, with the assistance of the Architect or other designee, will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will ~~conduct inspections~~ make observations, make recommendations and otherwise assist the Owner to determine the date or dates of Substantial Completion and the date of ~~final completion~~; Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and ~~related other~~ documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents and pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.~~

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the ~~Contract Documents~~ Drawings and Specifications on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable to the Contractor for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents~~ Documents and agreeable to the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within a reasonable time and any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the ~~site~~ site or to supply materials or equipment. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the ~~site~~ site or to supply materials or equipment. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 A Subcontractor of any tier is a Subcontractor or Sub-subcontractor.

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§ 5.1.4 The designation of terms in this Article 5 is not meant to change or alter the definitions contained in RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works," RCW 39.12, "Prevailing Wages on Public Works," or other statutory definitions of a subcontractor for the purposes of such statutes.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, ~~each Subcontractor bid package~~, shall furnish in writing to the Owner through ~~and the Architect~~ the names of all persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect~~ Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the ~~Architect~~ Architect, after due investigation, has reasonable objection to any such proposed person or entity or (2) that the Owner or Architect requires additional time for review. "Reasonable objection" shall include without limitation lack of "responsibility" of the proposed Subcontractor, as defined in RCW 39.04.350 or lack of qualification as required within the Specifications, or as otherwise described in Section 5.2.3. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. If the Owner or Architect makes a reasonable objection, the Contractor shall replace the Subcontractor with no increase to the GMP or Contract Time. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work and compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made a timely and reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the ~~Contractor~~, the Contractor or a Subcontractor, the Contractor or Subcontractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was qualified, "responsible" and reasonably capable of performing the Work, the Contract Sum and Contract Time for that Component shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in ~~submitting names as required~~, (no more than seven (7) days) and responsively in submitting qualified names as required and no increase in the Contract Sum or Contract Time shall be allowed for such change (1) if the Owner reasonably concludes that a proposed Subcontractor has materially failed to perform satisfactorily (such as submitting a false or frivolous claim, causing a material delay or failing to close out its work in a timely manner) on one or more projects for the Owner within five (5) years of the bidding date or is otherwise not "responsible" as defined in the Contract Documents, the bidding documents, RCW 39.04.350 and RCW 39.10, (2) if the proposed Subcontractor is not qualified as required within the technical sections of the Project Manual, or (3) if the proposed lower-tier Subcontractor is different from the entity listed with the first-tier Subcontractor's Bid. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the GMP and Contract Time. The Contractor's listing or use of any Subcontractor that is not "responsible" shall be sufficient cause for the Owner to declare that the Contractor is not a responsible bidder, unless the Contractor agrees to substitute a responsible Subcontractor at no change to the GMP or Contract Time.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being performed in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. This removal shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract, within the GMP and Contract Time, nor shall the Owner be obligated to so request.

§ 5.2.5 The Contractor shall verify responsibility criteria for each first-tier Subcontractor. A Subcontractor of any tier that engages lower-tier Subcontractors must verify responsibility criteria for each of its lower-tier Subcontractors. Verification shall include that each lower-tier Subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in the bidding documents for the bid package.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor,

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~~to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any Subcontractor on request.

§ 5.3.2 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any assigned Subcontracts. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The Contractor will be responsible for any scope gaps in its subcontracts with Subcontractors, including gaps that result from Subcontractor exclusions. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower-tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship.

§ 5.3.3 The Contractor agrees to diligently, and using its best efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor that is defective in material or workmanship or otherwise fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If a Subcontractor of any tier defaults in its obligation promptly to correct any such deficiency, the Contractor shall be responsible for correcting the deficiency.

§ 5.3.4 The Contractor shall, and shall cause its Subcontractors of any tier to, comply with the Davis-Bacon and prevailing wage requirements set forth in the Contract Documents, give all required notices and comply with all applicable health and safety laws, rules, regulations, codes and lawful orders of public authorities and of quasi-governmental authorities relating to the Work, including without limitation all OSHA and WISHA requirements, and the Contractor shall, and shall cause applicable Subcontractors of any tier to, indemnify, defend and hold harmless the Owner from and against any and all claims, liabilities, fines and attorneys' fees arising from any failure of the Contractor or a Subcontractor of any tier to have complied with any such requirements in any respect.

§ 5.3.5 The Owner reserves the right to enter into one or more contracts ("Assigned Subcontracts") with certain entities as may be described in the Contract Documents or a GMP Amendment. The Owner will assign all of its rights in any

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such Assigned Subcontract to the Contractor, without recourse. The Owner shall provide to the Contractor copies of any written Owner-Supplier agreements to any early procurement contracts and any agreements between the Owner and any Assigned Subcontractors.

§ 5.3.6 After a subcontract is assigned, the Contractor will be fully responsible in all respects for the performance and payment of that assigned subcontract under any Assigned Subcontract to the same extent as all other Subcontractors of any tier, and the Work under any Assigned Subcontracts will become part of the Work of the Contractor on the Project.

§ 5.3.7 The GMP shall include the amount(s) specified for any such Assigned Subcontracts and reflect and include any expenses of any kind, including but not limited to fee, markup, supervisory or administrative expenses, etc., associated with any Assigned Subcontracts.

§ 5.3.8 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any Assigned Subcontractors. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner ~~for cause~~ pursuant to Section 14.2 or 14.4 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract, but only for events and payment obligations that occur after the date of the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than ~~30~~ thirty (30) days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.5 LIENS

§ 5.5.1 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier) to the extent that the Owner has paid the Contractor for such. The Contractor shall furnish to the Owner such releases of liens and claims and other documents monthly with its Application for Payment to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor may provide other security acceptable to the Owner, such as a bond, in lieu of paying disputed liens or claims.

§ 5.5.2 The Contractor shall defend, indemnify, and hold harmless the Owner from any liens, including all expenses and Architect's and attorneys' fees, except to the extent a lien has been filed because of failure of payment by the Owner for the Work in any such lien.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those

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portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Contractor shall not be entitled to claim for such separate construction or operations to the extent that the separate construction and operations are disclosed in the Contract Documents or known to the Contractor prior to execution of the GMP Amendment for that Component.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules, and coordinating their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual ~~agreement.~~ agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, its Subcontractors, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. If the Contractor receives items from a separate contractor or from the Owner for storage, erection or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse and indemnify the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction. If such a separate contractor sues or initiates any proceeding against the Owner on account of any damages or delays alleged to have been caused solely by the Contractor, the Owner shall notify the Contractor. The Contractor shall defend all such proceedings at its own expense, and shall defend, indemnify and hold the Owner harmless from any damages awarded on such claims, including all attorneys' fees and other costs incurred by the Owner.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14. The Owner and each separate contractor shall promptly remedy damage they cause to the Work.

§ 6.2.6 The Contractor shall be liable to the extent it or any of its Subcontractors of any tier cause damage of any kind, including but not limited to delay, to any other contractor on the Project, and the Contractor shall, after notice to the Owner, promptly attempt to settle with such other contractor by agreement or otherwise to resolve the dispute.

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§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Architect~~ will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect or Owner alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Before effectuating a change in the Work, the Owner may request the Contractor to propose the amount of change in the GMP, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible and within fourteen (14) days, and shall in good faith specify the components and amounts by which the GMP and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Section 7.5 for the Contractor and major Subcontractors. If the Contractor fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included promptly in a future Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not effectuate the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Owner and Architect may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

§ 7.1.5 If the Contractor adds a reservation of rights that has not been initialed by the Owner to any Change Order, Construction Change Directive, Change Order proposal, Application for Payment or any other document, all amounts and all work therein shall be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner to indicate agreement with the reservation, and if the Contractor negotiates the check for such payment, then the reservation of rights shall be deemed waived, withdrawn and of no effect.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Owner, with the assistance of the Architect or other designee, and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner, with the assistance of the Architect or other designee, and signed by the ~~Owner and Architect~~, Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time for that Component being adjusted accordingly. The Owner's use of a Construction Change Directive does not constitute agreement that the directive constitutes a change in the Work, the GMP or the Contract Time.

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§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following ~~methods~~ methods or as mutually agreed by the Owner and Contractor:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be proposed by the Owner and determined in a manner agreed upon by the parties (with or without a cost limitation) and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed (e.g., more than fifty percent) in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices but not the Contract Time or any other portion of the Contract Sum shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the ~~change in the Work involved and advise the Architect directed Work involved.~~ As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the Architect in writing of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. The Contractor's response shall specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Owner, with the assistance of the Architect, in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the larger amount submitted.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be ~~recorded as incorporated into~~ a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, ~~the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect or if cost is to be determined under Section 7.3.3.3, the Contractor shall provide a not-to-exceed price for the Construction Change Directive within fourteen (14) days of receipt of the Construction Change Directive, and the Contractor shall keep and present, itemized in the categories of Section 7.5 for Subcontractors of any tier and the categories of Article 6 of the Agreement for the Contractor, and in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:~~

- .1 ~~Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~
- .2 ~~Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~
- .3 ~~Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~
- .4 ~~Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~
- .5 ~~Additional costs of supervision and field office personnel directly attributable to the change.~~ In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment, material and subcontract costs, in the manner described in Section 7.5 for Subcontractors of any tier and of Article 6 of the

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Agreement for the Contractor. When major cost items arise from Subcontractors of any tier, these items shall also be similarly itemized. Approval may not be given without such itemization. Failure to provide initial data within twenty-one (21) days of the Owner's request shall constitute waiver of any Claim for changes in the Contract Time or Contract Sum. The total cost of any change, including a Claim under Article 15, shall be limited to the reasonable value, as determined by the Architect (subject to appeal through the dispute resolution procedure of Article 15), of the items in Section 7.5 for Subcontractors of any tier and of Article 6 of the Agreement for Work performed by the Contractor. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. The Architect and the Owner may communicate directly with Subcontractors of any tier concerning costs of any Work included in a Construction Change Directive. If the Contractor disagrees with the method or the adjustment in the Contract Time, the adjustment or method shall be referred to the Architect for determination, and any adjustment shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be the largest of (1) the reasonable and prevailing value of the deletion or change, (2) the line item value in the Schedule of Values, or (3) the actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, and provided that any reservations of rights in respect to the Construction Change Directive have been signed by the Owner, the Contractor may request payment for the undisputed Cost of the Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the ~~Architect-Owner~~ concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and ~~the Architect will prepare a~~ will be recorded by preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

~~The Architect has and the Owner's Designated Representative have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that such order causes an increase in the Contract Sum or Contract Time, the Contractor must properly submit a notice and Claim pursuant to Article 15.~~

§ 7.5 PRICING COMPONENTS

§ 7.5 For the Contractor, the value of any changed Work or of any Claim for an increase or decrease in the GMP shall be limited to the Cost of the Work defined in the revised A133-2009 Agreement. For Subcontractors of any tier, the total cost of any Change in the Work or of any other increase or decrease in the GMP, including a Claim, shall be limited to the following components:

§ 7.5.1 Direct labor costs: These are the actual labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work. The hourly cost shall be based upon the following:

- 1 Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Subcontractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless

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pre-approved in writing by the Owner. Costs paid or incurred by the Subcontractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Subcontractor shall provide to the Owner copies of certified payroll statements upon the Owner's request.

- 2 Workers' insurances: Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
- 3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Owner. If the Contractor is offered discounts and/or rebates based upon prompt payment, the Contractor 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 Contractor may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Contractor does not provide the Owner the opportunity to participate then the Contractor may only charge the net costs after consideration of discounts and rebates.

§ 7.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment necessary and appropriate for the Work that will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in *The Rental Rate Blue Book* by Data Quest, San Jose, California, as modified by the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. Mobilization and standby costs shall not be charged for equipment already present on the site. If more than one rate is applicable, the lowest available rate will be utilized. The rates in effect at the time of the performance of the changed 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. 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. The rate for equipment necessarily standing by for future use on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by *The Rental Rate Blue Book*, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.4 Lower-Tier Subcontractor costs: These are payments a Subcontractor makes to lower-tier Subcontractors for changed Work performed by such lower-tier Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5 and, among other things, shall not include consultant costs, attorneys' fees, or claim preparation expenses.

§ 7.5.5 Subcontractor's Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including facilities, purchasing, clerical, project manager, project engineer or other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, layout and control, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim and Change Order preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise), added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements by the Owner after Substantial Completion of Subcontractor claims. The Fee shall be limited in all cases to the amount specified in the Subcontractor's bid to the Contractor and approved by the Owner; if no amount is specified, the following schedule:

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- .1 The Subcontractor shall receive 12% of the cost of any materials supplied or work properly performed by the Subcontractor's own forces.
- .2 The Subcontractor shall receive 6% of the amount owed (less fee) directly to a lower-tier Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier.
- .3 Each lower-tier Subcontractor of any tier shall receive 12% of the cost of any materials properly supplied or work performed by its own forces.
- .4 Each lower-tier Subcontractor of any tier shall receive 6% of the amount it properly incurs for materials supplied or work properly performed by its suppliers or subcontractors of any lower tier.
- .5 The cost to which this Fee is to be applied shall be determined in accordance with Section 7.5.1 through 7.5.4. None of the fee percentages authorized in this Paragraph 7.5.5 may be compounded with any other fee percentage or percentages authorized in this paragraph.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section 7.5.6 are substantially greater than the fees and overhead normally included in determining the Subcontractor's bid; that these higher percentages are a sufficient amount to compensate the Subcontractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Subcontractor for some Changes compensates the Subcontractor for any Changes for which the Subcontractor believes the percentage is otherwise insufficient.

§ 7.5.6 Cost of change in insurance or bond premium. This is defined as:

- .1 Subcontractors' liability insurance: The actual cost (expressed as a percentage and subject to audit) of any changes in the Subcontractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The actual cost (expressed as a percentage and subject to audit) of the change in the Subcontractor's premium for the Subcontractor's statutorily required performance and payment bond arising directly from the changed Work.

Upon request, the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the ~~Work~~ Work in a Component.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement by the Owner in its notice to proceed issued for each Component of the Work. Work on the site may begin for a Component when the Contractor complies with the requirements of the notice to proceed.

§ 8.1.3 The date of Substantial Completion (or a designated portion or Component thereof) is the date certified by the Architect and set by the Owner in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement and the GMP Amendment for a Component, the Contractor confirms that the Contract Time for that Component is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time of a Component within the Contract Time for that Component and shall achieve Final Completion of that Component within sixty (60) days thereafter unless otherwise specified in the Contract Documents.

§ 8.2.4 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial damages if Substantial Completion of a Component does not occur within the Contract Time; however, it would be difficult if not impossible to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, governmental fees, storage costs, portable rental costs, loss of use, and lost opportunities. Consequently, provisions for liquidated damages as a reasonable estimate of loss may be included in the Contract Documents. The Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to insure the completion of the Work in a Component in accordance with the date of Substantial Completion and the approved Contractor's Construction Schedule. If the Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) of any tier fails to meet the Contractor's Construction Schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work or other means and methods, all without additional cost to the Owner.

§ 8.2.5 Since the Work is to be performed in Components, with separate dates set forth for Substantial Completion elsewhere in the Contract Documents, the specified liquidated damages shall apply separately to each such Component unless otherwise specified.

§ 8.2.6 Any provisions in the Contract for liquidated damages shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors.

§ 8.2.7 It is the Contractor's option, but not its right, to attempt to complete the Project earlier than the dates specified in the Contract Documents or construction schedule. However, any Claim based upon delay will be evaluated based upon the dates specified in the Contract Documents, not an earlier projected completion that the Contractor may propose.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work (1) by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, (2) by changes ordered in the Work only to the extent reflected in approved Change Orders providing for specific extensions of the Contract Time; or (3) by unanticipated, abnormal weather; or (4) by unexpected industry-wide labor disputes, fire, seismic event, unusual delay in deliveries beyond the control of the Contractor and Subcontractors of any tier, governmental delays (including unanticipated permit delays not caused by the Owner or the Contractor), unavoidable casualties or other causes beyond the Contractor's control; or (5) by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect-litigation; or (6) by other causes that the Owner, in consultation with the Architect, determines may justify delay, then the Contractor shall reasonably attempt to mitigate the delay, and the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, time, limited to the change in the actual critical path of the Contractor's construction schedule directly caused thereby, as the Owner, in consultation with the Architect, may determine consistent with the provisions of the Contract Documents. In no event, however, shall the Contractor be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the construction schedule, so as to actually delay the Project completion beyond the date of Substantial Completion, or (2) delay transforming an activity into the critical path of the construction schedule, so as to actually delay the Project completion beyond the date of Substantial Completion.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and shall include any proposed changes in the Contractor's construction schedule or the Contract Time, a description of any event that could delay performance or supplying of any item of the Work, the expected duration of the delay, the anticipated effect of the delay on the Contractor's construction schedule, and the action being taken to correct the

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delay situation. That the Owner or Architect may be aware of the occurrence or existence of a delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

- .1 If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not an increase in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP. The Contractor shall be entitled to a change in the GMP only if the delay was caused by the Owner or anyone acting on behalf of it. The Contractor shall not recover damages, an equitable adjustment or an increase in the GMP or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence. The Contractor shall be able to recover an increase in the GMP, provided it is consistent with the terms of the Contract Documents, only if the delay was in the critical path, was unreasonable and was caused by the Owner or anyone acting on its behalf as permitted under the Contract Documents. The Owner is not obligated directly or indirectly for damages, an equitable adjustment, or an increase in the GMP for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.
- .2 In the event the Contractor (including any Subcontractors of any tier) is held to be entitled to damages from the Owner for delay beyond the payment permitted in Section 7.5, it is agreed that the total combined damages to the Contractor (and any Subcontractors of any tier) for each day of delay shall be limited to the same daily liquidated damage rate specified in the Contract Documents due the Owner for the Contractor's delay in achieving Substantial Completion. By submitting its Proposal and by signing a GMP Amendment, the Contractor represents that it would be difficult if not impossible to determine the amount of any delay damages due it, that it has taken this provision for liquidated damages into consideration in its GMP, and that the liquidated damages in a GMP Amendment are a reasonable estimate of its loss. No damages will be allowed for any time prior to fourteen (14) days before receipt of written notice of the Claim of the delay pursuant to Article 15.
- .3 The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; rescheduling of work, schedule compression, concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended or expanded overhead or general conditions; profit upon damages for delay; impact damages including cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Contractor or its Subcontractors of any tier is fully compensated through the Cost of the Work and the percentage Fee on Change Orders paid through Section 7.5.5 and any liquidated damages paid hereunder.
- .4 The Contractor shall not be entitled to any adjustment in the Contract Time or the GMP, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time not on the critical path or between the Contractor's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Contractor's Construction Schedule.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work of a Component under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner and the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum of that Component to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect, the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Progress payments will be made monthly for Work duly certified, approved, and performed during the calendar month preceding the application in accordance with the Contract Documents. These amounts are paid in trust to the Contractor for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment. There will be separate Applications for Payment for each of the Components that comprise the Work.

§ 9.3.1.1 Draft Application. Within the first ten (10) days of each month, the Contractor shall submit to the Owner and Architect a report on the current progress of the Work as compared to the Contractor's Construction Schedule, and a draft, itemized application for payment for Work performed during the prior calendar month on a form supplied or approved by the Owner. This shall not constitute a payment request. The Contractor, the Architect and the Owner shall meet within the next ten (10) days and confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Architect or the Owner may request the Contractor to provide data substantiating the Contractor's right to payment as the Owner or the Architect may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished. As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Owner, with the assistance of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Payment Request. Within seven (7) days after the Contractor, the Owner and the Architect have met and conferred regarding the updated draft application, and the Contractor has furnished all progress information required and all data requested by the Architect or Owner under Section 9.3.1.1 above, the Contractor has submitted current meeting minutes, as-built drawings and commissioning logs (if requested) and an updated construction schedule, the Contractor may submit a payment request by the 10th day of the following month in the agreed-upon amount, in the form of a notarized, itemized Application for Payment, in triplicate, for Work properly performed during the prior calendar month on a form supplied or approved by the Owner. The Application shall also state that prevailing wages 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. THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION BY THE CONTRACTOR THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, UNLESS OTHERWISE NOTED ON THE APPLICATION. The Application shall be accompanied by lien releases on a form furnished or approved by the Owner from each Subcontractor for whose Work the Owner paid the Contractor for the prior month. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.3 Disputed Amounts. If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may, also within the same seven (7) days after the meeting in Section 9.3.1.1, submit to the Owner and the Architect along with the approved payment request 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 Contractor and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records relating to the additional amount due.

§ 9.3.1.4 Validity of Payment Requests. A payment request shall not be valid unless it complies with the requirements of the Contract Documents. If a separate payment request concerning a disputed amount does not comply with the requirements of the Contract, the Owner will provide a written statement to the Contractor.

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§ 9.3.1.5 Payments to Subcontractors. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of a lower-tier Subcontractor), the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of project-specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Retainage.

§ 9.3.4.1 In accordance with RCW 60.28, a sum equal to five percent (5%) of each approved Application for Payment shall be retained for the Work in that Component. Separate retainage shall be withheld for each of the Components. After award of a Contract for public improvements, or work for which retained percentages are required to be reserved under the provision of RCW 60.28, the Owner shall require the Contractor to exercise, in writing, one of the options listed below:

- .1 Retained percentages will be retained in a fund by the Owner not subject to release until sixty (60) days following the Final Acceptance of the Component as completed and as provided in Section 9.10.4; or
- .2 Deposited by the Owner in an interest-bearing account in a bank, mutual savings bank or savings and loan association and not subject to release until sixty (60) days following Final Acceptance of the Component as completed and as provided in Section 9.10.4; or
- .3 Placed in escrow with a bank or trust company and not subject to release until sixty (60) days following the Final Acceptance of the Component as completed and as provided in Section 9.10.4.
- .4 If the Contractor provides a bond in place of retainage, it shall be in an amount equal to 5% of the GMP plus Change Orders. The minimum requirements for the bond are that it must be on a form acceptable to the Owner, with an A.M. Best rating of "A minus" or better and a financial rating of no less than "VII," signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the Owner may be applied.

§ 9.3.4.2 The Contractor or a Subcontractor may withhold payment of not more than five percent (5%) as retainage from the monies earned by any Subcontractor or Sub-subcontractor per RCW 60.28, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of retainage and interest due a Subcontractor.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's approved Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect

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determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Owner may, with or without the Architect's concurrence, withhold payment, and the Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, or subsequent observations, it may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims (except where an insurer has unconditionally accepted coverage) filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate ~~contractor;~~ contractor (except where an insurer has unconditionally accepted coverage);
- .6 reasonable evidence that the Work in a Component will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8 delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Contractor's Construction Schedule requirements, or imposition of liquidated damages;
- .9 failure to submit affidavits pertaining to wages paid as required by statute;
- .10 failure to submit a properly updated Construction Schedule;
- .11 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .12 liquidated damages;
- .13 failure to properly maintain as-builts
- .14 failure to properly submit daily construction records; or
- .15 failure to properly submit certified payrolls.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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~~§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.~~

§ 9.5.3 Pursuant to RCW 39.12, "Prevailing Wages on Public Works," the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier for whom payment is sought have submitted state-approved "Statements of Intent to Pay Prevailing Wage" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the Owner. The statement must include the Contractor's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Contractor agrees to provide each Subcontractor of any tier with a schedule of applicable State and Davis-Bacon prevailing wage rates. The Contractor and the respective Subcontractors of any tier shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them. This Contract and this Project is also subject to the Davis-Bacon Act, and the Contractor shall comply with all applicable requirements thereof.

§ 9.5.4 The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, and it has been approved by the Owner, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Documents. The Owner will make a progress payment within thirty (30) days of its receipt of and approval of the Architect's Certificate for Payment. The Owner shall be entitled to withhold payment to the extent provided by the Contract Documents, notwithstanding the issuance of a Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) days after receipt of payment from the Owner the Owner, out of the amount paid to the Contractor on account of the Subcontractor's portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not receive payment for any cause that is not the fault of a particular Subcontractor but does receive payment for materials supplied or Work performed by that Subcontractor, the Contractor shall pay that Subcontractor in accordance with its subcontract for its satisfactorily completed Work, less the retained percentage.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the The Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. Work.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by

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the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect ~~does not improperly fails to~~ issue a Certificate for Payment, through no fault of the Contractor, within ~~seven-fifteen (15) days~~ after receipt of the Contractor's ~~Application for Payment, timely and complete Application for Payment under Section 9.3.1.2 (subject to the approved payment schedule),~~ or if the Owner does not pay the Contractor within ~~seven-fifteen (15) days~~ after the date established in the Contract Documents the amount due and owing to the Contractor certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon ~~seven-fifteen (15) additional days'~~ written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and ~~start-up, plus interest as provided for in the Contract Documents.~~ start-up.

§ 9.8 SUBSTANTIAL COMPLETION AND OCCUPANCY

~~§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.~~

§ 9.8.1.1 Substantial Completion is the stage in the progress of the Work, or portion or Component thereof designated and approved by the Architect and Owner, when the Work or designated portion or Component thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can fully occupy or utilize the Work, or the designated portion thereof, for its intended use. There may be a separate Date of Substantial Completion specified in the Contract Documents for each Component, for phases of the Work within a Component and/or for completion of one or more receiving areas, if any, to be used by the Owner for receiving, assembly and delivery of Owner-supplied items. The fact that the Owner may occupy the Work or a Component or designated portion thereof does not indicate that the Work has achieved Substantial Completion or is acceptable in whole or in part. All Work other than incidental corrective or punch list work and final cleaning shall be completed, including but not limited to the following:

- (1) Obtain applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- (2) Submit the Contractor's punch list of items to be completed or corrected and written request for inspection.
- (3) Complete final start-up, testing, and commence instruction and training sessions on all major building systems including controls, data communications, fire alarm, telephone, fire sprinkler, security and clocks, and establish a Date of Commissioning.
- (4) Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- (5) Discontinue or change over and remove temporary facilities and services from the project site.
- (6) Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- (7) Complete final cleaning.

A Component is not Substantially Complete unless the Owner and Architect reasonably judge that the Work in that Component can achieve Final Completion within sixty (60) days (or such other period of time as is specified in the Contract Documents), appropriate cleaning has occurred, all designated systems and parts are commissioned and usable, utilities are connected and operating normally and training sessions have occurred, all required temporary occupancy permits, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access to the Work have been issued, O & M manuals have been submitted for review, and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

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§ 9.8.1.2 Date of Commissioning of Selected Equipment and Systems. The equipment and systems so designated in the Contract Documents are considered "Selected Equipment and Systems." When the Contractor considers that all Selected Equipment and Systems are complete, fully functional, ready for normal operation and functional performance testing, and all pre-commissioning checklists are completed, the Contractor shall so notify the Architect in writing a minimum of forty (40) days prior to the Date of Substantial Completion of a Component (or such other date as may be established in the Contract Documents). A reasonable period shall be allowed for the Architect and commissioning agent to schedule and observe the functional performance tests identified in the Contract Documents. If the inspection discloses that the Selected Equipment and Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Commissioning, complete or correct such item upon notification by the Architect or commissioning agent. The Contractor shall then submit a request for another inspection to determine completion of those Selected Equipment and Systems and pay the costs associated with the re-inspection, including fees of the Architect, commissioning agent and their consultants. When all the Selected Equipment and Systems are complete, the Owner's commissioning agent will notify the Owner in writing, which shall establish the Date of Commissioning. Training of Owner personnel shall begin immediately after the Date of Commissioning and shall be conducted by appropriate Subcontractor personnel on site who are knowledgeable with the construction and operation of each system prior to departure of the installing entity from the site. Warranties on any Selected Equipment and Systems required by the Contract Documents shall commence on the Date of Commissioning, unless otherwise provided, but the Contractor shall retain the responsibility to maintain the system until Final Acceptance.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list and shall immediately clean-up any dust or debris created through punchlist work activities. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and, at its option, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractor shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection.

§ 9.8.4 When the Work or Component or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that, upon approval of the Owner, shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or Component or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion, except that warranties for equipment shall commence with acceptance of the Commissioning Report by the Owner's City Council. The Contractor shall attach and submit with the executed Certificate of Substantial Completion, the Certificate of Occupancy, as well as a written list of each outstanding and unresolved Claim; any Claim not so submitted and identified, other than retainage and the undisputed balance of the Contract Sum, shall be deemed waived and abandoned. If the Owner or Architect determines that the Work or Component or designated portion has not achieved Substantial Completion, the Contractor shall expeditiously complete the Work or Component or designated portion, again request an inspection, and pay the costs associated with the re-inspection.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and Any items not recorded by the Architect but required or necessary for Final Completion of the Component and included in the Contract Documents shall be supplied and installed by the Contractor as a part of the Contract Sum for that Component,

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notwithstanding their not being recorded by the Architect. Upon written acceptance of the Certificate of Substantial Completion by the Owner and the Contractor, and upon the Contractor's Application for Payment and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof, as provided in the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. No further payment will be due or owing until the payment following Final Completion.

§ 9.8.6 The Contractor shall prepare, continue to monitor with the Architect, and cause to be completed, all punch lists with respect to the activity of each Subcontractor of any tier and report weekly to the Owner on outstanding punch list items. Beginning ninety (90) days before the scheduled date of Substantial Completion of a Component, the Contractor shall prepare reports weekly, identifying items to be completed in order to obtain necessary occupancy certificates and permits, and make recommendations to the Owner with respect to effectuating the earliest possible completion.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may, upon written notice to the Contractor, take possession of, operate, occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and stage, and the Contractor shall cooperate with such occupancy and use. Occupancy shall not occur until such occupancy or use is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of the risk of loss or any of its obligations under the Contract, nor establish a Date of Substantial or Final Completion, nor establish a date for termination or partial termination of the running of any liquidated damages, nor constitute a waiver of any Owner claims. If the Contractor fails to achieve Substantial Completion of a Component within the Contract Time, or fails to achieve Final Completion of the Component within the period of time specified in the Contract Documents, the Owner may take possession of, use or operate all or any part of the Work without an increase in the Contract Sum or the Contract Time on account of such possession or use. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner and the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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§ 9.10.1 Final Completion.

§ 9.10.1.1 The Contractor shall cause punch list items to be completed within sixty (60) days of Substantial Completion of each Component (or such other period of time as is specified in the Contract Documents) or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period) provided that the Contractor commences to correct the item within that period and thereafter diligently and in good faith pursues the corrective action to completion. If, at thirty (30) days after the Date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed within sixty (60) days of the Date of Substantial Completion of each Component (or such other period of time as is specified in the Contract Documents to achieve Final Completion), the Owner may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. If the Contractor fails to correct the deficiencies within the time period required, the Owner may deduct the actual cost of performing this punch list work, including any design costs, plus fifteen percent (15%) to account for the Owner's transaction costs from the Contract Sum.

§ 9.10.1.2 Upon receipt of the Contractor's written notice that the Contractor has inspected the punch list items, the punch list items are completed, and the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection accompanied by the Contractor (if requested by the Architect or Owner). If the Architect or Owner determines that some or all of the punch list items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspection to determine compliance with the punch list. When the Architect finds all punch list items complete and the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing that, to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. If the Architect determines that some or all of the punch list items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspection to determine compliance with the punch list. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.3 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all Architect, engineer or other design consultant fees and all Commissioning agent and construction management fees incurred by the Owner for services performed on a Component more than sixty (60) days after Substantial Completion of that Component (or such other period of time as is specified in the Contract Documents), whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.4 When the Architect finds that the Work has been concluded, a final occupancy permit has been issued, any commissioning process and validation process have been successfully concluded, and the Contractor has submitted all the items identified in Section 9.10.1.5 to the Architect, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a final Certificate for Payment stating that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment shall establish the date of Final Completion upon its execution by the Owner. There may be separate dates of Final Completion for each Component.

§ 9.10.1.5 "Final Completion" of a Component will be attained when the Contractor has accomplished the items listed in the Contract Documents, including the following certification process:

- (1) Complete all requirements listed in Section 9.8 for Substantial Completion of the Component.
- (2) Complete all remaining punch list items and remaining Work, and obtain approval by the Architect and the Owner that all Work is complete.
- (3) Obtain permanent occupancy permits (if only a temporary occupancy permit was previously issued).
- (4) Submit final Change Orders and final Application for Payment.
- (5) Submit record documents, any final property survey, and operation and maintenance manuals required by the Contract Documents.
- (6) Deliver any required tools, spare parts, extra stock of material and similar physical items to the Owner as required by the Contract Documents.

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- (7) Complete final cleaning, including cleaning after punch list work (in addition to the final cleaning that was required to obtain Substantial Completion).
- (8) Complete instruction and training sessions on all major building systems including data communications, fire alarm, telephone, fire sprinkler, emergency power, clocks and security.
- (9) Submit original warranties.
- (10) Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- (11) Discontinue or change over and remove temporary facilities and services from the project site.
- (12) Advise the Owner on coordination of any shifting insurance coverages, including proof of extended coverages as required.
- (13) Any required LEED certification (for which the Contractor is responsible) is completed.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that **Final Acceptance and Payment.**

§ 9.10.2.1 Neither final payment nor any remaining retained percentage shall become due until after the Owner's City Council has formally accepted the Component ("Final Acceptance"). To achieve Final Acceptance, and subject to the discretion of the Owner, the Architect must have issued a final Certificate for Payment under Section 9.10.1.4, an occupancy permit must have been issued, Final Completion of the Component must have occurred, and the Contractor must have submitted to the Architect the following:

- (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, **except for any claims that are specifically identified on the affidavit (Affidavit of Payment of Debts and Claims, AIA form G706 or equivalent).**
- (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least ~~30~~ **thirty (30) days'** prior written notice has been given to the Owner,
- (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- (4) consent of surety, if any, to final payment and ~~(5), if required by the Owner, (AIA form G707 or equivalent),~~
- (5) other data establishing payment or satisfaction of **or protection against** obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner.~~ **Owner (Contractor's Affidavit of Release of Liens, AIA form G706A or equivalent).** If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' ~~fees.~~ **fees.**
- (6) pursuant to RCW 39.12.040, an **"Affidavit of Wages Paid"** from the Contractor and from each **Subcontractor of any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor,**
- (7) a letter from the Architect indicating that the Work is complete and recommending **Final Acceptance of the Component by the Owner,**
- (8) certification that the materials in the Work are **"lead-free" and "asbestos-free,"**
- (9) a certified statement that the Contractor has closed all necessary permits or otherwise met the **requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health districts and utility districts, provided to Owner with a copy of all closed or signed off permits,**
- (10) record documents;
- (11) all warranties, guarantees, training, manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings and other documents, training or items required by the Contract Documents or local governmental entities; and

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(12) all submittals and information sufficient for the Owner to submit apprenticeship utilization data as required by RCW 39.04.320(5)(a).

§ 9.10.2.2 Pursuant to RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works," completion of the Contract Work shall occur upon Final Acceptance of a Component.

§ 9.10.3 If, after Substantial Completion of the Work, final completion a Component, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, Final Completion, and the Architect so confirms, the Owner shall, may, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
.2 failure of the Work to comply with the requirements of the Contract Documents; or
.3 terms of special warranties required by the Contract Documents. Release of Retainage. The retainage will be held and applied by the Owner as a trust fund in a manner required by RCW 60.28. Release of the retainage for a Component will be processed in ordinary course of business upon the expiration of sixty (60) days following Final Acceptance of that Component by the Owner provided that no notice of lien shall have been given as provided in RCW 60.28, that all lien releases on the Component have been submitted, that no claims have been brought to the attention of the Owner and that the Owner has no claims under this Contract; and provided further that release of retention has been duly authorized by the State: pursuant to RCW 60.28, a certificate from the Department of Revenue; pursuant to RCW 50.24, a certificate from the Department of Employment Security; and appropriate information from the Department of Labor and Industries.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.5 Waiver of Claims

§ 9.10.5.1 Final Payment by Owner. The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, statutory retainage, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5.2 Final Payment to Contractor. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled and attached to the Contractor's final Application for Payment.

§ 9.10.5.3 Change Orders. The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are initialed by the Owner.

§ 9.10.6 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain in the fund, account, or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or (b) accept a bond from the Contractor, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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§ 9.10.7 The Contractor shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, electronic data, emails and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. The Contractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owner's request, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives; failure to fully comply with this requirement shall constitute a material breach of contract and a waiver of all claims by the Contractor.

§ 9.10.8 Subcontractors of any tier shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. Each Subcontractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owner's request, a Subcontractor shall make available at the office of the Subcontractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives; failure to fully comply with this requirement shall constitute a material breach of contract and a waiver of all claims by that Subcontractor.

§ 9.10.9 The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under Chapter 42.56 RCW will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the Owner. Failure to fully comply with this requirement shall constitute a material breach of contract and shall constitute a waiver of all Claims by the Contractor or any Subcontractor of any tier that fails to comply.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

~~The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.~~

§ 10.1.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall have the right to control and shall be solely and completely responsible for conditions of the work site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner or the Architect of the Contractor's performance shall not be construed to include a review of the adequacy of the Contractor's safety measures in, on or near the site of the Work.

§ 10.1.2 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof will: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner or Architect to ensure the Contractor performs the Work safely or to provide such notice to the Contractor or any other person or entity; (4) affect the Contractor's sole and complete responsibility for performing the Work safely or the Contractor's responsibility for the safety and welfare of its employees; or (5) affect the Contractor's responsibility for the protection of property, staff, employees, and the general public.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on or involved in the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall comply with all notices and comply with all requests from the Owner regarding the safety and protection of the Owner's staff. The Contractor shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Washington State Department of Labor and Industries. The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall maintain at the work site office or other well known place at the work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to work on the site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care. The Contractor's and/or any Subcontractors shall ensure that at least one of such employees has a valid, effective first aid card.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

~~§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY~~

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

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§ 10.2.8 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief and shall bear the risk of any uninsured loss (including deductibles or self-insured retention) or destruction of, or injury or damage to, all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion.

§ 10.2.9 Any notice given to the Contractor by the Owner or the Architect of a safety or property protection violation will not: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or for sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; or (3) impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other persons or entity.

§ 10.2.10 INJURY OR DAMAGE TO PERSON OR PROPERTY

If the Contractor suffers injury or damage to person or property because of an alleged act or omission of the Owner or of others for whose acts the Owner may be legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This Section does not apply to Claims, damages for additional costs or time, acceleration, or delay.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, as defined by CERCLA, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall proceed with the Work in areas not affected.

§ 10.3.2 Upon receipt of the Contractor's written notice, and with the Owner's agreement, the Owner shall obtain the services of a licensed laboratory to reasonably verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be verified that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection, but the Owner shall not be responsible for any delay resulting from the Contractor's objection to such person or entity. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be for a Component maybe extended appropriately and the Contract Sum shall be for that Component maybe increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up; start-up, which adjustments shall be accomplished as provided in Articles 7, 8 and 15.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity; indemnity or if the removal of such material or substance was a part of the Contractor's Work.

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§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Contractor shall store all hazardous materials safely, whether or not required by Contract Documents. The Contractor shall not install hazardous materials, including without limitation asbestos or polychlorinated biphenyl (PCB), in the Work. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault-fault, misuse, or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without fault or negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 PUBLIC SAFETY AND CONVENIENCE

§ 10.5.1 The Contractor shall conduct its Work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and others in the vicinity of the Work and to ensure the protection of persons, property and natural resources. No road or street shall be closed to the public except with the permission of the Owner and the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, fire lanes, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE [Not used; see Exhibit 5. Indemnification / Hold Harmless and Insurance Requirements.]

~~§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

- ~~.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;~~
- ~~.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~
- ~~.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~
- ~~.4 Claims for damages insured by usual personal injury liability coverage;~~
- ~~.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~
- ~~.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~
- ~~.7 Claims for bodily injury or property damage arising out of completed operations; and~~
- ~~.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.~~

~~§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence~~

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~~or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.~~

~~§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.~~

~~§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

[Not used: see Exhibit 5, Indemnification / Hold Harmless and Insurance Requirements.]

§ 11.3 PROPERTY INSURANCE [Not used: see Exhibit 5, Indemnification / Hold Harmless and Insurance Requirements.]

~~§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.3.1.1 Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

~~§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

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~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ 11.3.2 BOILER AND MACHINERY INSURANCE~~

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~

~~§ 11.3.3 LOSS OF USE INSURANCE~~

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~

~~§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

~~§ 11.3.7 WAIVERS OF SUBROGATION~~

~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

~~§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~

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~~§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.~~

~~§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

~~§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering Contractor shall secure and pay for, from a surety company acceptable to the Owner, admitted and licensed in the State of Washington, possessing an A.M. Best rating of "A" or better and a financial rating of no less than "IX" and named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, bonds covering the faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract, under the Contract Documents, each in the full amount of the Contract Sum for each Component plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." All reinsurers that may be called upon to support or share in a surety's obligations specified in connection with the performance and payment bond obligations required of the Contractor by the Contract Documents must also have an A.M. Best rating of A or better and financial rating of no less than IX and must be named in the current list of "Surety Companies Acceptable in Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Within seven (7) days after the issuance of the Owner's notice of intent to award the Contract, the Contractor shall deliver evidence of its bondability to the Owner. Within seven (7) days after its execution of the Contract, the Contractor shall deliver copies of the bonds to the Owner and to the Architect. THE OWNER MAY DECLINE TO ENTER INTO THE CONTRACT IF THE REQUESTED EVIDENCE OF BONDABILITY IS NOT RECEIVED. THE CONTRACTOR SHALL NOT PROCEED WITH THE WORK UNTIL SUCH SURETY BONDS ARE RECEIVED. Evidence of bondability shall include the percentage to be paid by the Contractor for increases in the GMP. The bond(s) shall be in a form acceptable to the Owner.~~

~~§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~

~~§ 11.4.3 The Contractor shall require that all Subcontractors who are awarded a contract over three hundred thousand dollars (\$300,000) provide a performance and payment bond for the amount of their subcontracts. All other Subcontractors shall provide a performance and payment bond if required by the Contractor, provided that such requirement is set forth in the subcontract bid documents.~~

~~§ 11.5 If the Owner is damaged by the failure of the Contractor to maintain any of the bonds or insurance in this Article 11 or elsewhere in the Contract Documents or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance and bonds. Failure to withhold payment shall not constitute a waiver.~~

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

~~§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements request of the Architect or the Owner or to requirements of a governmental authority or as otherwise specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Owner or governmental authority, be uncovered~~

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for the ~~Architect's requesting party's~~ examination and be replaced at the Contractor's expense without change in the Contract ~~Time~~ Time or GMP.

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect~~ Architect, Owner or a governmental authority has not specifically requested to examine prior to its being covered, ~~the Architect covered and for which neither the Contract Documents nor governmental laws or regulations require inspection, the Architect, the Owner or the governmental authority~~ may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's ~~expense~~ expense and any change in the Contract Time caused thereby will be made. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense ~~without change to the Contract Time caused thereby, unless the condition was caused by the Owner or a separate contractor employed by the Owner, and in which event the Owner or the separate contractor, respectively, shall be responsible for payment of such costs and any change in the Contract Time caused thereby will be made.~~

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or ~~Component~~ designated portion thereof or after the date for commencement of warranties established under ~~Section 9.9.1, the Contract Documents, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it according to the requirements of this Section 12.2.2, with no change in the Cost of the Work, promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4 specific written acceptance of such condition. If the Contractor does not promptly in accordance with the provisions of this Section 12.2.2 initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work, the Owner may without further notice dispose of materials and equipment as it sees fit, and the Contractor will be liable for all associated costs. This correction period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.~~

1. If, in the Owner's opinion, the nonconforming Work either prevents the use of a portion of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), the Contractor shall initiate corrective work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete corrective action within 48 hours.
2. If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, of affecting internal security, or of limiting the use of the facility (e.g., potential loss of heat in a single room, failure of one or more plumbing fixtures, loose carpet seam in corridor, interior door locks not working, etc.), the Contractor shall initiate corrective work on site within two (2) working days and shall complete corrective action within five (5) working days.
3. If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed, (e.g., interior door closer broken, window cracked, wall covering

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seam coming loose, etc.), the Contractor shall initiate corrective work on site within fourteen (14) days and shall complete corrective action within twenty-eight (28) days.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable by the greater of the (1) cost of correction or (2) diminution of value of the Work that is not in accordance with the requirements of the Contract Documents. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the internal law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located, without regard to its choice-of-law provisions.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, 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.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 If a majority of the ownership or the control of Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty (30) days written notice of termination and the opportunity for the Contractor to cure prior to termination.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or the designated representative as identified in the A133-2009 Agreement, or to an officer of the

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corporation for which it was intended; or if delivered at, or sent by fax (with hard copy mailed), registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual receipt by fax, or three (3) calendar days after the date of postmark.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The Contractor's sole remedy for claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to, the Contract Documents or breach thereof, except claims that have been waived under the terms of the Contract Documents, however, is through and as described in the dispute resolution procedure of Article 15.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.4.3 If any portion of this Contract is held to be void or unenforceable, the remainder of the Contract shall be enforceable without such portion.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public ~~authorities~~ authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections and approvals, necessary tests, inspections and approvals, except that the Contractor will be responsible for any costs of retesting and any extra costs caused by the Contractor. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner and the Architect at least forty-eight (48) hours' notice prior to all tests and inspections.

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§ 13.5.7 If the Owner is responsible under the Contract Documents, law or regulation to pay only for an inspection of any inspector, consultant or Architect, the Owner shall be required to pay only for the first actual inspection. If the Contractor arranges for an inspection and an extra cost is incurred because the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or re-inspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within thirty (30) days of billing, the Owner has the option to pay the charges directly and backcharge the Contractor on the next progress payment for the amount paid.

§ 13.5.8 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failures to inspect or test by the Owner, the Owner's representatives, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery. Entities performing inspections and/or testing do not have the authority to direct the Contractor's means and methods and are not agents or representatives of the Owner or the Architect. Inspection results that meet code requirements shall not override more stringent requirements of the Contract Documents.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located as specified by RCW 39.76, not to exceed the Bank of America prime rate plus 2%.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within Agreement, and within the shorter of the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work, law and the time limits identified in this Agreement. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 STATUTES AND OTHER REQUIREMENTS

The Contractor shall abide by the provisions of all applicable Washington statutes and regulations. Although a number of statutes are referenced in the Contract Documents, these references are not meant to be a complete list and should not be relied upon as such.

§ 13.8.1 Contractor Registration and Related Requirements. Pursuant to RCW 39.06, "Registration, Licensing of Contractors," the Contractor shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27, "Registration of Contractors." The Contractor shall also have a current state unified business identifier number; have industrial insurance coverage for the Contractor's employees working in Washington as required in Title 51 RCW; have an employment security department number as required in Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW, and; not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

§ 13.8.2 Law against Discrimination. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 49.60, "Discrimination."

§ 13.8.3 Provisions for Aged and Handicapped Persons. Contractor shall comply with pertinent statutory provisions relating to public works of RCW 70.92, "Provisions in Buildings for Aged and Handicapped Persons," and the Americans with Disabilities Act.

§ 13.8.4 Safety Standards. The Contractor shall comply with pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Chapter 296-155 WAC, "Safety Standards for Construction Work."

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§ 13.8.5 Unemployment Compensation. Pursuant to RCW 50.24, "Contributions by Employers," in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Contract or arrange for a bond acceptable to the commissioner.

§ 13.8.6 Drug-Free Workplace. The Contractor and all Subcontractors of any tier shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-Free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work.

§ 13.8.7 Asbestos Removal. To the extent this Project involves asbestos removal, the Contractor shall comply with Chapter 49.26 RCW, "Health and Safety--Asbestos," and any provisions of the Washington Administrative Code promulgated thereunder, and the applicable section of the Specifications should be viewed for possible insurance required for the applicable Subcontractor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 ~~The~~ Except as provided by RCW 60.28.080, the Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has improperly not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and ~~Architect,~~ Architect (during which period the Owner has the opportunity to cure), terminate the Contract and recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, executed in accordance with the Contract Documents, including reasonable overhead and profit on Work~~ executed, costs incurred by reason of such termination, and damages. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP.

§ 14.1.4 If the Work is stopped for a period of ~~60~~ sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' written notice to the Owner and ~~the Architect,~~ the Architect (during which period the Owner shall have right and the opportunity to cure), terminate the Contract and recover from the Owner as provided in Section 14.1.3. The total recovery of the Contractor shall not exceed the unpaid balance of the GMP.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner ~~may terminate the Contract~~ may, upon seven (7) days' written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Contractor

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

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- .2 fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 ~~repeatedly disregards~~ fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority, authority having jurisdiction; or
- .4 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of a Component within the Contract Time; or
- .5 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency; or
- .6 otherwise is guilty of a material or substantial breach of or default under a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor on all or a portion of the Work and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in ~~finishing the Work;~~ the Work; and
- .4 Take or direct any or all of the actions in Section 14.5.1.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum of a Component exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess for that Component shall be paid to the Contractor. The remaining Contingency shall accrue to the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, ~~shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

§ 14.2.5 If the Owner terminates a portion of the Work, the Contractor shall continue the performance of the remainder of the Work in accordance with the Contract Documents to the extent not terminated.

§ 14.2.6 If, after the Contractor has been terminated pursuant to this Section 14.2 or otherwise for cause, it is determined that none of the circumstances set forth in Section 14.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Section 14.4.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for ~~increases~~ changes in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall ~~include profit.~~ be consistent with the terms of the Contract Documents. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is ~~made or denied~~ under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Contract for the Owner's convenience and without cause.

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§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment ~~for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed in accordance with the Contract Documents for Work properly executed, and costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders), along with reasonable profit on the Work not executed, not to exceed the lesser of the Fee in Section 7.5.5 or the percentage profit in the Contractor's bid. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the GMP as reduced by the amount of payments otherwise made, by the larger of (1) the actual value or (2) the scheduled value of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Sections 14.5.1.6 or 14.5.1.7.~~

§ 14.5 EFFECTS OF TERMINATION BY OWNER

§ 14.5.1 Unless the Owner directs otherwise, after receipt of a Notice of Termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;
- .3 procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, as directed by the Owner, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 with the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 use commercially reasonable efforts to sell any property of the types referred to in Section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 continue performance only to the extent not terminated.

§ 14.5.2 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

- .1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim the Owner may have against the Contractor;
- .3 an amount necessary to protect the Owner against outstanding or potential liens or claims;
- .4 the agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Section 14.5.1.7, and not otherwise recovered by or credited to the Owner; and

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.5 the remaining Contingency.

§ 14.5.3 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim by the Contractor for an equitable adjustment under this Section must be asserted within sixty (60) days from the effective date of the partial termination.

§ 14.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under the Contract Documents.

§ 14.5.5 The Contractor shall, from the effective date of termination until the expiration of three (3) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work. The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.6 The damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the ~~Contract Documents.~~ The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be initiated in writing and include the information and substantiation required by the Contract Documents. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor a Daily Report, nor any log entry, nor an Owner's request for or the Contractor's response to a Change Order proposal, nor a notice of a potential or future Claim shall constitute a Claim.

§ 15.1.2 NOTICE OF CLAIMS

~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~ [deleted]

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, including the dispute resolution process, and except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and maintain the Contractor's construction schedule, and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the ~~Work~~ Work, and a written notice and a written Claim must be made in accordance with this Article 15, or it will be waived. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 15. The Contractor shall not be entitled to an increase in the GMP or Contract Time arising out of an error or conflict in or among the Contract Documents where

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the Contractor failed adequately to review the Contract Documents or failed timely to report a known error or conflict to the Owner and the Architect in a timely manner consistent with the requirements of the Contract Documents. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be ~~given~~, given, and a written Claim must be made in accordance with Article 15, or it will be waived. The Contractor's Claim shall include an estimate of any cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Project directly caused thereby. If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled, to the extent otherwise permitted in the Contract Documents, to an increase in the Contract Time in accordance with the Contract Documents and in the Cost of the Work within the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, (based on historic climatic data), could not have been reasonably anticipated and had an adverse effect on the scheduled construction-construction., and that the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the GMP will be adjusted for normal inclement weather. The Contractor shall be entitled to a change in the Contract Time only (but not a change in the GMP) if the Contractor can substantiate to the reasonable satisfaction of the Owner and Architect that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten (10) year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. The change in Contract Time shall be provisional until Substantial Completion has been achieved, at which time the change in Contract Time shall be calculated as the total net accumulated number of calendar days lost due to inclement weather from commencement of the Work until Substantial Completion exceeds the total net accumulated number to be expected for the same period from the aforesaid data.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes but is not limited to:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal and home office overhead and expenses including but not limited to the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work, for losses on other projects, for loss of profit, and for interest or financing costs.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents; to limit or eliminate damages specified in the A133-2009 Agreement; or to preclude an obligation of the Contractor to indemnify the Owner for direct, indirect or consequential damages alleged by a third party.

§ 15.1.7 FALSE CLAIMS

The Contractor shall not make any negligent or fraudulent misrepresentations, concealments, errors, omissions, or inducements to the Owner in the formation or performance of this Agreement. If the Contractor or a Subcontractor of any tier submits a false or frivolous Claim to the Owner, which for purposes of this Section 15.1.6 is defined as a Claim based in whole or in part upon a materially incorrect fact, statement, representation, assertion, or record, the Owner shall be entitled to collect from the Contractor by offset or otherwise (without prejudice to any right or remedy of the Owner) any and all costs and expenses, including investigation and consultant costs, incurred by the Owner in investigating, responding to, and defending against such false or frivolous Claim.

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§ 15.2 INITIAL DECISION RESOLUTION OF CLAIMS AND DISPUTES

§ 15.2.1 ~~Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof, except claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following alternative dispute resolution procedure unless the parties mutually agree in writing otherwise. To the extent that the Owner and Contractor agree to a partnering process to help resolve disputes, such processes shall be in addition to, and not in place of, the mandatory dispute resolution procedures in the Contract Documents.~~

§ 15.2.2 ~~The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. Except for Claims requiring notice before proceeding with the affected Work as otherwise described in the Contract Documents, the Contractor shall submit a written notice of any Claim to the Owner and the Architect within fourteen (14) days of the occurrence of the event giving rise to such Claim and shall include a clear description of the event leading to or causing the Claim. For all Claims, the Contractor shall submit a written Claim as provided herein within thirty (30) days of submitting the notice. Claims shall include a clear description of the Claim and any proposed change in the GMP (showing all components and calculations) and/or Contract Time (showing cause and analysis of the resultant delay in the critical path and other information referenced in Section 8.3.2) and shall provide all data supporting the Claim, including but not limited to a complete explanation as to why the relief sought is not within the scope of the Contract Documents. The Contractor may delay submitting data by an additional fourteen (14) days if it notifies the Owner in its Claim that substantial data must be assembled. Failure to properly submit the notice or Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and Subcontractors of any tier) is entitled and may not contain reservations of rights without the Owner's written approval; any such unapproved reservations of rights shall be without effect. Any claim of a Subcontractor of any tier may be brought only through, and after review by, the Contractor. For the purposes of calculating such time periods, an "event giving rise to a Claim," among other things, is not a Request for Information but rather is a response that the Contractor believes would change the GMP and/or Contract Time. The fact that the Owner and the Contractor may consider, discuss or negotiate an untimely or waived Claim shall in no way be deemed to constitute a waiver of any notice or other provisions of the Contract Documents.~~

§ 15.2.3 ~~In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. Notice and Claims. All notices and Claims shall be made in writing as required by the Contract. Any notice of a Claim of the Contractor against the Owner and any Claim of the Contractor, whether under the Contract or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract. No act, omission, or knowledge, actual or constructive, of the Owner or the Architect shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless the Owner and the Contractor sign an explicit, unequivocal written waiver approved by the Owner's City Council. The fact that the Owner and the Contractor may consider, discuss, or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute a waiver of the provisions of the Contract~~

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Documents unless the Owner and Contractor sign an explicit, unequivocal waiver approved by the Owner's City Council. The Contractor expressly acknowledges and agrees that the Contractor's failure to timely submit required notices and/or timely submit Claims has a substantial impact upon and prejudices the Owner, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, the Contractor and Owner agree that the Owner is prejudiced by the Contractor's failure to timely submit required notices and/or Claims and the Owner shall not be required to prove or establish actual prejudice to enforce the notice or Claim provisions of the Contract.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part. Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but are not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but are not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution. If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to the resolution of the Claim by the Architect, by mediation or by litigation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. At any time following the Owner's receipt of the written Claim, and as a condition precedent to mediation, the Owner may require that an officer of the Contractor, a principal of the Architect, and the Owner's Mayor or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim. If the Claim is not resolved during such meeting, the Contractor may bring no litigation against the Owner unless the Claim is first subject to nonbinding mediation as described in this Article 15. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

~~§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. [deleted]~~

~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. [deleted]~~

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to the initiation of binding dispute resolution. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, mediation. A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a

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mediator within thirty (30) days of the request, either party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the parties mutually agree, with a copy to the other party, and the mediation shall be administered by the American Arbitration Association (or other agreed service) in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, currently in effect. A request for mediation shall be made in writing, writing and delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation Contract. Mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, the completion of mediation, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, Seattle, Washington, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.4 An officer of the Contractor must attend the mediation session with authority to settle the Claim and with authority to adjust pre-existing settlement authority if necessary. The Owner's Mayor or designee must also attend. To the extent there are other parties in interest, such as the Architect, insurers or Subcontractors, their representatives, also with authority to settle the Claim and with authority to adjust pre-existing settlement authority if necessary, shall also attend the mediation session in person. Unless the Owner and the Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion of all the Work but prior to Final Acceptance of all the Work by the Owner.

§ 15.4 ARBITRATION LITIGATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Litigation. The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures of this Article 15. The Contractor shall have the burden to demonstrate in any litigation that it has complied with all requirements of this Article 15. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion of all the Work approved in writing by the Owner or (b) sixty (60) days after Final Acceptance of all the Work. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of mediation (the time period between the non-requesting party's receipt of the written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the scheduled date of the mediation session. Neither the Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner (but may recover attorneys' fees from the bond or statutory retainage fund itself to the extent allowable under law).

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim. The Owner may join the Contractor as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of the Contractor or Subcontractor of any tier.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

~~§ 15.4.4 CONSOLIDATION OR JOINDER~~

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

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Certification of Document's Authenticity

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I, Graehm 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 11:06:53 on 05/21/2014 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 A201™ – 2007, General Conditions of the Contract for Construction, 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)

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Preconstruction Work Plan and Breakdown

Revision 2

Preconstruction Services - Workplan

Oak Harbor Washington
Clean Water Facility

Precon NTP Assumed 7/1/14



- Preconstruction Task Schedule:
- 01 Design / Coordination Meeting Attendance
 - 02 Value Engineering Studies
 - 03 Constructability Reviews
 - 04 Community Outreach
 - 05 Construction workplan development
 - 06 Site and Existing Facility Investigation Work
 - 07 Site Logistics Plan Development
 - 08 Safety & Environmental Assessment & Planning
 - 09 30% Estimate Development
 - 10 60% Estimate Development
 - 11 90% Estimate Development
 - 12 Early Bid Package Advertising and Award
 - 14 Schedule Updating and Development
 - 15 Plant Operations / Construction Coordination Mtgs

Month Count	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Project Management	[Gantt bars for Project Management tasks]															
Project Director	[Gantt bar for Project Director]															
Project Manager	[Gantt bar for Project Manager]															
Project Superintendent	[Gantt bar for Project Superintendent]															
Project Supl	[Gantt bar for Project Supl]															
Safety	[Gantt bars for Safety tasks]															
Safety / Environmental Mgr	[Gantt bar for Safety / Environmental Mgr]															
Project Engineering	[Gantt bars for Project Engineering tasks]															
ACS Engineer / COC	[Gantt bar for ACS Engineer / COC]															
Cultural Resource Engineer	[Gantt bar for Cultural Resource Engineer]															
Scheduling	[Gantt bar for Scheduling]															
Scheduling Engineer	[Gantt bar for Scheduling Engineer]															
Estimating	[Gantt bars for Estimating tasks]															
Architectural, Civil, Structural	[Gantt bar for Architectural, Civil, Structural]															
AC/S Estimating Support	[Gantt bar for AC/S Estimating Support]															
Mechanical	[Gantt bar for Mechanical]															
Electrical	[Gantt bar for Electrical]															
M/E Estimating Support	[Gantt bar for M/E Estimating Support]															
Purchasing / Expediting	[Gantt bars for Purchasing / Expediting tasks]															
Purchasing Manager	[Gantt bar for Purchasing Manager]															
BIM	[Gantt bars for BIM tasks]															
BIM Manager	[Gantt bar for BIM Manager]															
BIM Tech	[Gantt bar for BIM Tech]															

MANLOADER TOTALS	225	690	489	1269	1077	606	646	669	1505	798	342	338	10	552	280	10	5,528	M/H	Estimate Total
ESTIMATED PRECONSTRUCTION EXPENSES (OPTIONAL):	[Expense breakdown bars]																		
Additional Site Investigations	[Expense bar]																		
Temporary dewatering design	[Expense bar]																		
ECOM and MCCM Precon Expense	[Expense bar]																		
Early bid documents / advertisements	[Expense bar]																		
PRECONSTRUCTION SERVICES TOTAL	[Total expense bar]																		
Grand Total:	[Grand Total bar]																		

JJS
T&P



DEPARTMENT OF
ECOLOGY
State of Washington

WASHINGTON STATE DEPARTMENT OF ECOLOGY
WATER POLLUTION CONTROL REVOLVING FUND

SPECIFICATIONS INSERT

Revised 10/30/13

The following clauses will be incorporated into construction contracts receiving financial assistance from the Washington State Department of Ecology Water Pollution Control Revolving Fund. In the event of conflict within the contract these clauses shall take precedence

Required Bid Submittals

The following submittals are required to be submitted with the bid proposal:

- Certification Of Nonsegregated Facilities (attachment 3)
- DBE Subcontractor Utilization Form (EPA Form 6100-4)
- One copy of DBE Subcontractor Performance Form (EPA Form 6100-3) for each DBE subcontractor.
- Complete Bidders List.

Compliance with State and Local Laws

The Contractor shall assure compliance with all applicable federal, state, and local laws, requirements, and ordinances as they pertain to the design, implementation, and administration of the approved project.

State Interest Exclusion

It is anticipated that this project will be funded in part by the Washington State Department of Ecology . Neither the State Of Washington nor any of its departments or employees are, or shall be, a party to this contract or any subcontract.

Third Party Beneficiary

Partial funding of this project is being provided through the Washington State Department of Ecology Water Pollution Control Revolving Fund. All parties agree that the State of Washington shall be, and is hereby, named as an express third-party beneficiary of this contract, with full rights as such.

Access to the construction site and to records

The contractor shall provide for the safe access to the construction site and to the contractor's records by Washington State Department of Ecology and Environmental Protection Agency (EPA) personnel.

The Contractor shall maintain accurate records and accounts to facilitate the Owner's audit requirements and shall ensure that all subcontractors maintain auditable records.

These Project records shall be separate and distinct from the Contractor's other records and accounts.

All such records shall be available to the Owner and to Washington State Department of Ecology and EPA personnel for examination. All records pertinent to this project shall be retained by the Contractor for a period of three (3) years after the final audit.

Protection of the Environment

No construction related activity shall contribute to the degradation of the environment, allow material to enter surface or ground waters, or allow particulate emissions to the atmosphere, which exceed state or federal standards. Any actions that potentially allow a discharge to state waters must have prior approval of the Washington State Department of Ecology.

Project Signs

The Contractor shall display Ecology's and the EPA's logo in a manner that informs the public that the project received financial assistance from the Washington State Water Pollution Control Revolving Fund.

Use Of American Iron And Steel (Buy American)

This provision applies to projects for the construction, alteration, maintenance, or repair of a "treatment works" as defined in the Federal Water Pollution Control Act (33 USC 1381 et seq.). This provision does not apply if the engineering plans and specifications for the project were approved by the Ecology prior to January 17, 2014.

The Contractor acknowledges to and for the benefit of the Project Owner and the State of Washington that it understands the goods and services under this Agreement are being funded with monies made available by the Water Pollution Control Revolving Fund which contains provisions commonly known as "Buy American;" that requires all of the iron and steel products used in the project be produced in the United States ("Buy American Requirements"). "Iron and Steel products" means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

The Contractor hereby represents and warrants to and for the benefit of the Project Owner and the State that:

- (a) the Contractor has reviewed and understands the Buy American Requirements,
- (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved, and
- (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Project Owner or the State.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Project Owner or State to recover as damages

against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Project Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Project Owner). While the Contractor has no direct contractual privity with the State, as a lender to the Project Owner for the funding of its project, the Project Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of the Agreement necessary to give this paragraph force or effect shall be amended or waived without the prior written consent of the State.

Prevailing Wage

The work performed under this contract is subject to the wage requirements of the Davis-Bacon Act. The Contractor shall conform to the wage requirements prescribed by the federal Davis-Bacon and Related Acts which requires that all laborers and mechanics employed by contractors and subcontractors performing on contracts funded in whole or in part by SRF appropriations in excess of \$2000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits, and determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area. Attachment 1 to this specification insert and an up to date wage determination shall be included in full into this contract and in any subcontract in excess of \$2,000. Wage determinations can be found at <http://www.wdol.gov>.

The Contractor agrees that the Contractor is legally and financially responsible for compliance with the Davis-Bacon Act wage rules. All laborers and mechanics employed by contractors and subcontractors employed as part of this contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Certification Regarding Suspension, Debarment, Ineligibility Or Voluntary Exclusion

1. The CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The CONTRACTOR shall provide immediate written notice to the Department if at any time the CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department for assistance in obtaining a copy of those regulations..
4. The CONTRACTOR agrees it shall not knowingly enter into any lower tier covered

transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

5. The CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "Certification Regarding Suspension, Debarment, Ineligibility Or Voluntary Exclusion" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.
8. CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to the Department upon request. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov/> and print a copy of completed searches to document proof of compliance.

This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

Disadvantaged Business Enterprises

General Compliance (40 CFR Part 33).

The contractor shall comply with the requirements of the Environmental Protection Agency's Program for Participation By Disadvantaged Business Enterprises (DBE) 40 CFR Part 33.

Non-discrimination Provision (40CFR Appendix A to Part 33).

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

The contractor shall comply with all federal and state nondiscrimination laws, including, but not limited to Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

Six Good Faith Efforts (40 CFR Part 33 Subpart C).

The contractor agrees to make the following good faith efforts whenever procuring subcontracts, equipment, services and supplies. The contractor shall retain records documenting compliance with the following six good faith efforts.

1. Ensuring Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources. Qualified Women and Minority business enterprises may be found on the Internet at www.omwbe.wa.gov or by contacting the Washington State Office of Minority and Women's Enterprises at (866) 208-1064.
2. Making information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
3. Considering in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
4. Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
5. Using services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, requiring the subcontractors to take the six good faith efforts in paragraphs 1 through 5 above.

MBE/WBE Reporting (40 CFR Part 33 Parts 33.302, 33.502 and 33.503).

1. The contractor shall complete the DBE Subcontractor Utilization Form (EPA Form 6100-4).
2. The contractor shall require all DBE subcontractors to complete the DBE Subcontractor Performance Form (EPA Form 6100-3). The DBE Subcontractor Performance Form is only required to be completed by certified DBE subcontractors.
3. The contractor shall submit DBE Subcontractor Utilization Form (EPA Form 6100-4) and all completed DBE Subcontractor Performance Form(s) (EPA Form 6100-3) as part of the bid, or within one hour after the published bid submittal time (consistent with RCW 39.30.060)
4. The contractor shall provide DBE Subcontractor Participation Form (EPA Form 6100-2) to all DBE subcontractors. These subcontractors may submit Subcontractor Participation Form (EPA Form 6100-2) to the EPA Region 10 DBE coordinator in order to document issues or concerns with their usage or payment for a subcontract.

The 6100 forms can be found at:

<http://www.ecy.wa.gov/programs/wq/funding/GrantLoanMgmtDocs/Eng/GrantLoanMgmtEngRes.html>

Bidders List (40 CFR Part 33 part 33.501)

All bidders shall submit the following information for all firms that bid or quote on subcontracts (including both DBE and non-DBE firms) as part of the bid, or within one hour after the published bid submittal time (consistent with RCW 39.30.060).

1. Firm's name with point of contact;
2. Firm's mailing address, telephone number, and e-mail address;
3. The work on which the firm bid or quoted, and when the firm bid or quoted; and
4. Firm's status as an MBE/WBE or non-MBE/WBE.

Contract Administration Provisions (40 CFR part 33.302).

The contractor shall comply with the contract administration provisions of 40 CFR, Part 33.302.

1. The contractor shall pay its subcontractor for satisfactory performance no more than 30 days from the contractor's receipt of payment.
2. The contractor shall notify the owner in writing prior to any termination of a DBE subcontractor.
3. If a DBE subcontractor fails to complete work under the subcontract for any reason, the contractor shall employ the six good faith efforts when soliciting a replacement subcontractor.
4. The contractor shall employ the six good faith efforts even if the contractor has achieved its fair share objectives.

Equal Opportunity (EEO)

If this Contract exceeds \$10,000, the Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60.

Contractor's compliance with Executive Order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

Equal Opportunity Clause (41 CFR part 60-1.4(b))

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading,

- demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Federal Equal Employment Opportunity Construction Contract Specifications
(Executive Order 11246 and 41 CFR part 60-4.3)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United

- States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications,

Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority

and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in

fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to

maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Reporting Requirements (EEO-1)

On or before September 30 of each year, a contractor that is subject to Title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more employees, shall file with the EEOC or its delegate an "Employer Information Report EEO-1". Instructions on how to file are available on the EEOC's website at <http://www.eeoc.gov/employers/eo1survey/howtofile.cfm>. The contractor shall retain a copy of the most recent report filed.

Segregated Facilities (41 CFR part 60-1.8)

The contractor shall ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; Provided, That separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

Attachments:

1. Wage Rate Requirements For Subrecipients
2. Current Wage Rate Determination (to be provided by project owner)
3. Certification Of Nonsegregated Facilities
4. Notice To Labor Unions Or Other Organization Of Workers: Non-Discrimination In Employment

EPA Form 6100-4, EPA Form 6100.3, EPA Form 6100-2

**ATTACHMENT 1 - WAGE RATE REQUIREMENTS FOR
SUBRECIPIENTS. (To be included in full in any contract in excess of \$2,000)**

The following terms and conditions specify how recipients will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the FY 2013 Continuing Resolution with respect to State recipients and subrecipients that are governmental entities. If a subrecipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB provisions, or compliance monitoring, it may contact the State recipient. If a State recipient needs guidance, the recipient may contact Lorraine Fleury at fleury.lorraine@epa.gov or at 215-814-2341 of EPA, Region III Grants and Audit Management Branch for guidance. The recipient or subrecipient may also obtain additional guidance from DOL's web site at <http://www.dol.gov/whd/>

1. Applicability of the Davis- Bacon (DB) prevailing wage requirements.

Under the FY 2013 Appropriations Act, DB prevailing wage requirements apply to the construction, alteration, and repair of treatment works carried out in whole or in part with assistance made available by a State water pollution control revolving fund and to any construction project carried out in whole or in part by assistance made available by a drinking water treatment revolving loan fund. If a subrecipient encounters a unique situation at a site that presents uncertainties regarding DB applicability, the subrecipient must discuss the situation with the recipient State before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Subrecipients shall obtain the wage determination for the locality in which a covered activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the subrecipient shall monitor www.wdol.gov weekly to ensure that the wage determination contained in the solicitation remains current. The subrecipients shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the subrecipients may request a finding from the State recipient that there is not a reasonable time to notify interested contractors of the modification of the wage determination. The State recipient will provide a report of its findings to the subrecipient.

(ii) If the subrecipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless the State recipient, at the request of the subrecipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The subrecipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(b) If the subrecipient carries out activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the subrecipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Subrecipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the subrecipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the subrecipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The subrecipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract provisions.

(a) The Recipient shall insure that the subrecipient(s) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a treatment work under the CWSRF or a construction project under the DWSRF financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1 or the FY 2012 Appropriations Act, the following clauses:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably

anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records.**

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional

Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and

Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act.

These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

ATTACHMENT 2

DAVIS-BACON WAGE RATE DETERMINATION

[SRF Assistance Recipient to insert applicable wage determinations here]

How to obtain a Wage Determination:

1. www.wdol.gov
2. Click "Selecting DBA WDs"
3. Select the State and county where the work will be performed
4. Select the "Construction Type": Heavy, Building, Highway, or Residential
5. Click on one of the wage determinations. Verify that the wage determination displayed is the correct wage determination, and not for "Heavy Dredging".
6. Select the text box displaying the Wage Determination and copy the text of the Wage Determination.
7. Click "Sign Up for Alert Service" to receive notification if the Wage Determination is updated.

When to update the wage determination:

1. If DOL updates the Wage Determination, you must update the Wage Determination through an addendum to the bid specifications.
2. If the update occurs less than 10 days prior to the date of bid opening, you are not required to update the Wage Determination.

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ATTACHMENT 3

CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to federally assisted construction contracts and related subcontracts exceeding \$10,000 which are not exempt from the Equal Opportunity clause.)

The federally assisted construction contractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor certified, further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The federally assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work area, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or area, in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally assisted construction contractor agrees that (except where he has obtained identical certifications from proposed contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such, certification in this file.

Signature _____

_____ Date _____

Name and title of signer (please type)

[THIS FORM SHALL BE COMPLETED IN FULL AND SUBMITTED WITH THE BID PROPOSAL]

ATTACHMENT 4

NOTICE TO LABOR UNIONS OR OTHER ORGANIZATION OF WORKERS: NON-DISCRIMINATION IN EMPLOYMENT

TO: _____
(name of union or organization of worker)

The undersigned currently holds contract(s) with _____
(name of applicant)
_____ involving funds or credit of the U.S. Government or (a)
subcontract(s) with a prime contractor holding such contract(s).

You are advised that under the provisions of the above contract(s) or subcontract(s) and in accordance with Section 202 of Executive Order 11246 dated September 24, 1965, the undersigned is obliged not to discriminate against any employee or applicant for employment because of race, color, creed, or national origin. This obligation not to discriminate in employment includes, but is not limited to, the following:

EMPLOYMENT, UPGRADING, TRANSFER OR DEMOTION

RECRUITMENT AND ADVERTISING

RATES OF PAY OR OTHER FORMS OF COMPENSATION

SELECTION FOR TRAINING INCLUDING APPRENTICESHIP, LAYOFF OR TERMINATION

This notice is furnished you pursuant to the provisions of the above contract(s) or subcontract(s) and Executive Order 11246.

Copies of this notice will be posted by the undersigned in conspicuous places available to employees or applicants for employment.

(contractor or subcontractor(s))

(Date)

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services, Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services , Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: <input type="checkbox"/> DOT <input type="checkbox"/> SBA		Meets/ exceeds EPA certification standards?
<input type="checkbox"/> Other: _____		<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.



OMB Control No: 2090-0030
Approved: 8/13/2013
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Performance Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

Subcontractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	___ YES	___ NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue on back if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-4 (DBE Subcontractor Utilization Form)



OMB Control No: 2090-0030
Approved: 8/13/2013
Approval Expires: 8/31/2015

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Utilization Form**

I certify under penalty of perjury that the forgoing statements are true and correct. Signing this form does not signify a commitment to utilize the subcontractors above. I am aware of that in the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302 (c).

Prime Contractor Signature	Print Name
Title	Date

The public reporting and recordkeeping burden for this collection of information is estimated to average three (3) hours per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to this address.

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Cost Responsibility Matrix

City of Oak Harbor
Clean Water Facility
5-29-14

(To be attached to Agreement at contract execution)

This Cost Responsibility Matrix ("Matrix") defines the specific categories of cost expected for this project. The checked box indicates in what section of the fee proposal the City expects GC/CM proposers to apply the identified cost. "COW" is Cost of Work to be awarded via subcontracts or Negotiated Self-Performed Work, "NSS" is Negotiated Support Services, "SGC" is Specified General Conditions and "PCS" is Preconstruction Services. Proposers should refer to the RFFP, GC/CM Agreement and General Conditions documents including all addenda, to ascertain all the project scope requirements. In the event there are omitted items contained in this Matrix, the Contract Documents shall govern. In the event there is a conflict between this Matrix and the Contract Documents, this Matrix shall govern.

#	Item	COW	NSS	SGC	Fee	PCS	Owner
1.	Design participation through GMP					X	
2.	Estimating through GMP					X	
3.	Meeting minutes-through GMP					X	
4.	Pre-construction schedules					X	
5.	Subcontractor and supplier analysis of market conditions prior to bidding					X	
6.	Review and implementation of possible product substitutions					X	
7.	Participation in Value Engineering studies					X	
8.	Participation in pre-bid Constructability Reviews					X	
9.	Assembling and updating BIM models as assigned					X	
10.	Other technical or administrative tasks as assigned					X	
11.	Development of GMP or interim Contract Amendments					X	
12.	Subcontractor bid planning and development					X	
13.	Subcontractor bidding process					X	
14.	Advertise project for bids					X	
15.	Pre-bid conferences and marketing					X	

Cost Responsibility Matrix for GC/CM Services-Clean Water Facility
Page 1 of 5

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	Item	COW	NSS	SGC	Fee	PCS	Owner
16.	Subcontractor and supplier bid analysis and award recommendation including possible MCCM and ECCM					X	
17.	Review and analysis of subcontractor qualifications per RCW 39.10					X	
18.	Coordination and finalization of subcontracting for labor, material and equipment, including reviews/finalization of scopes of work and buyouts					X	
19.	Project Manager during construction			X			
20.	Superintendent during construction			X			
21.	Senior Project Engineer during construction			X			
22.	Project Engineer during construction			X			
23.	Project Administrator during construction			X			
24.	Quality Control Manager during construction		X				
25.	Commissioning and Start Up Coordinator		X				
26.	Federal funding support documentation			X			
27.	Estimating during construction			X			
28.	Meeting minutes and administration during construction			X			
29.	Schedule development and updating during construction			X			
30.	Sub-contract administration and coordination			X			
31.	Contractor accounting and cost accounting			X			
32.	Cash flow analysis			X			
33.	Administration of the project safety program			X			
34.	Administration of the environmental program			X			
35.	All GC/CM insurance, payment and performance bonds (not including Builders Risk)				X		
36.	Builders risk insurance as stated in agreement		X				

Cost Responsibility Matrix for GC/CM Services-Clean Water Facility
Page 2 of 5

LEGAL120786731.1

#	Item	COW	NSS	SGC	Fee	PCS	Owner
37.	Applications for payments			X			
38.	Change order preparation and procedures			X			
39.	Communications and coordination			X			
40.	Managing regulatory requirements			X			
41.	Review and processing of submittals, shop drawings and samples			X			
42.	Maintaining and updating BIM models during construction		X				
43.	Contractor quality control manager		X				
44.	Coordination of testing laboratory			X			
45.	Administration and coordination of the commissioning program		X				
46.	Equipment, phones, and supplies related to management			X			
47.	Travel and subsistence for supervision assigned to project			X			
48.	Company-owned vehicles assigned to staff (company trucks)			X			
49.	Travel, gas, oil, maintenance for company-owned vehicles assigned to staff			X			
50.	Project signs			X			
51.	Coordination of other Owner contractors			X			
52.	Contract close-out			X			
53.	Punch-list preparation and administration			X			
54.	Electronic equipment and software			X			
55.	Primary surveying and control		X				
56.	Construction office and facilities		X				
57.	Equipment and supplies incorporated in the work	X					
58.	Equipment and supplies not incorporated in the work		X				
59.	Refuse collection, clean-up, removal and disposal from the site—unless included in sub bids		X				

Cost Responsibility Matrix for GC/CM Services-Clean Water Facility
Page 3 of 5

LEGAL120786731.1

#	Item	COW	NSS	SGC	Fee	PCS	Owner
60.	Dust control—unless included in sub bids		X				
61.	Street cleaning		X				
62.	Power and water use during construction		X				
63.	Utility hook-up, meters and fees						X
64.	Temporary signs fences and barricades		X				
65.	Temporary sanitation		X				
66.	Site security including lighting		X				
67.	Flaggers and traffic control		X				
68.	Erosion control		X				
69.	Cranes and hoisting		X				
70.	Scaffolds and shoring		X				
71.	Elevator operations		X				
72.	Weather protection		X				
73.	Temporary site conditions and modifications		X				
74.	Selective demolition		X				
75.	Mock-ups		X				
76.	Temporary project fire protection		X				
77.	Temporary heat, power and water		X				
78.	Final cleaning		X				
79.	Negotiated self-performed work including foreman level supervision	X					
80.	Subcontractor and material costs	X					
81.	Regulatory requirements of the Contract Documents	X					
82.	Permits other than building permit	X					

Cost Responsibility Matrix for GC/CM Services-Clean Water Facility
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#	Item	COW	NSS	SGC	Fee	PCS	Owner
83.	Warranties	X					
84.	GC/CM fee (profit)				X		
85.	GC/CM use, sales, B&O, income, and other taxes except sales taxes on progress payments				X		
86.	Liquidated damages				X		
87.	Fee proposal preparation, site walk, interview process, invitation to propose, GC/CM Agreement and General Conditions				X		
88.	Replacement of defective or non-conforming work including retesting unless the responsibility of a subcontractor.				X		
89.	GC/CM corporate overhead				X		
90.	Architectural and engineering services						X
91.	Subcontractor bid document reproduction						X
92.	WSST on GC/CM billings						X
93.	Building permit						X
94.	Testing laboratory and testing services per the Contract Documents						X
95.	Project management consultant						X
96.	Commissioning agent						X

Cost Responsibility Matrix for GC/CM Services-Clean Water Facility
Page 5 of 5

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Exhibit 5: Indemnification / Hold Harmless and Insurance Requirements

Indemnification / Hold Harmless

The Construction Manager shall defend, indemnify and hold the Owner, its officers, officials, employees and volunteers harmless from and against any and all claims, injuries, damages, losses or suits, including but not limited to costs, design professional and consultant fees, and attorneys' fees, incurred on such claims and in proving the right to indemnification, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Owner.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Construction Manager and the Owner, its officers, officials, employees, and volunteers, the Construction Manager's liability and defense, indemnity, and hold harmless obligations hereunder shall be only to the extent of the Construction Manager's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Construction Manager's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

The obligations of the Construction Manager under this Section shall not be construed to negate, abridge, or otherwise reduce any other right or obligations of indemnity which would otherwise exist as to any party or person described in this Section. To the extent the wording of this Section would reduce or eliminate the insurance coverage of the Construction Manager or the Owner, this Section shall be considered modified to the extent that such insurance coverage is not affected. To the extent that any portion of this Section is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect. This Section shall survive completion, acceptance, final payment and termination of the Contract.

The Construction Manager agrees to being added by the Owner as a party to any arbitration or litigation with third parties in which the Owner alleges indemnification or contribution from the Construction Manager, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Construction Manager agrees that all of its Subcontractors of any tier will, in their subcontracts, similarly stipulate; in the event any does not, the Construction Manager shall be liable in place of such Subcontractor(s) of any tier.

Insurance

The Construction Manager shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Construction Manager, their agents, representatives, employees or subcontractors.

No Limitation.

Construction Manager's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Construction Manager to the coverage provided by such insurance, or otherwise limit the Owner's recourse to any remedy available at law or in equity.

Insurance:

A. Minimum Scope of Insurance

Construction Manager shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85 or an equivalent endorsement. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The Owner shall be named as an insured under the Construction Manager's Commercial General Liability insurance policy with respect to the work performed for the Owner using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Professional Liability insurance appropriate to the Construction Manager's profession.
4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
5. Builders Risk insurance covering interests of the Owner, the Construction Manager, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Construction Manager. Higher deductibles for flood and earthquake perils may be accepted by the Owner upon written request by the Construction Manager and written acceptance by the Owner. Any increased deductibles accepted by the Owner will remain the responsibility of the Construction Manager. The Builders Risk insurance shall be maintained until final acceptance of the work by the Owner.
6. Construction Manager's Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the Construction Manager. The Construction Manager's Pollution Legal Liability insurance shall be written in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000.

If coverage the Construction Manager's Pollution Liability insurance is written on a claims-made basis, the Construction Manager warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the contract is completed.

The Owner shall be named by endorsement as an insured on the Construction Manager's Pollution Liability insurance policy.

If the scope of services as defined in this contract includes the disposal of any hazardous materials from the job site, the Construction Manager must furnish to the Owner evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the Owner under this paragraph 1.7 must be maintained in minimum amounts of \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000.

7. This contract involves work on or adjacent to navigable water, as defined by the U.S. Department of Labor. The Construction Manager therefore shall provide proof of insurance coverage in compliance with the statutory requirements of the U.S. Longshore and Harbor Workers' Compensation Act (administered by the U.S. Department of Labor).

If the Construction Manager is working from barges or any other watercraft, owned or non-owned, the Construction Manager must maintain Protection and Indemnity (P&I) insurance providing coverage for actions of the crew to third parties in the amount of \$1,000,000 each occurrence or accident. The Owner shall be named by endorsement as an insured on the Construction Manager's Protection and Indemnity insurance policy. The Construction Manager must also provide proof of insurance coverage in compliance with the statutory requirements of the Merchant Marine Act of 1920 (the "Jones Act").

B. Minimum Amounts of Insurance

Construction Manager shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products- completed operations aggregate limit.
3. Professional Liability insurance shall be written with limits no less than \$5,000,000 per claim and \$5,000,000 policy aggregate limit.
4. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.
5. The Construction Manager shall purchase and maintain Excess or Umbrella Liability insurance with limits not less than \$10,000,000 per occurrence and annual aggregate. This Excess or Umbrella liability insurance shall apply above, and be at least as broad in coverage scope, as the Construction Manager's Commercial General Liability and Automobile Liability insurance.

This requirement may be satisfied instead through the Construction Manager's Commercial General Liability and Automobile Liability insurance, or any combination thereof.

C. Other Insurance Provision

The Construction Manager's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Owner. Any Insurance, self-insurance, or insurance pool coverage maintained by the Owner shall be excess of the Construction Manager's insurance and shall not contribute with it.

D. Construction Manager's Insurance for Other Losses

The Construction Manager shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Construction Manager's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Construction Manager, or the Construction Manager's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

A. Waiver of Subrogation

The Construction Manager and the Owner waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent

covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

B. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

C. Verification of Coverage

Construction Manager shall furnish the Owner with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Construction Manager before commencement of the work. Before any exposure to loss may occur, the Construction Manager shall file with the Owner a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

D. Subcontractors

The Construction Manager shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

E. Notice of Cancellation

The Construction Manager shall provide the Owner and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

F. Failure to Maintain Insurance

Failure on the part of the Construction Manager to maintain the insurance as required shall constitute a material breach of contract, upon which the Owner may, after giving five business days' notice to the Construction Manager to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Owner on demand, or at the sole discretion of the Owner, offset against funds due the Construction Manager from the Owner.



AIA[®] Document A133[™] – 2009 Exhibit A

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

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.

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 ("GE") 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

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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.

§ A.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.

§ A.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:
(State the 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.

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
<u>None.</u>	-

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

None.

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<u>None.</u>			

§ A.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.)

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

Section	Title	Date	Pages

§ A.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).

Number	Title	Date

§ A.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 Clean Water Facility MBR System Equipment Procurement Addendum No. 1 (Carollo Engineers, October 15, 2014).

Oak Harbor Clean Water Facility MBR System Equipment Procurement Addendum No. 2 (Carollo Engineers, October 28, 2014).

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).

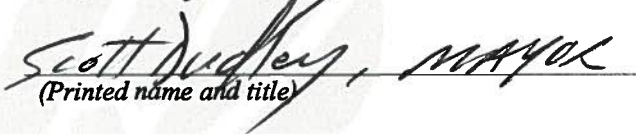
ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

December 29, 2017.



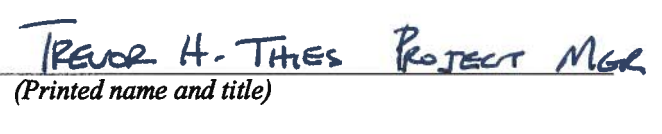
OWNER (Signature)



Scott Dudley, Mayor
(Printed name and title)



CONSTRUCTION MANAGER (Signature)



TREVOR H. THIES PROJECT MGR
(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Graehm 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)



AIA Document A133™ – 2009 Exhibit A

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

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.

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 Richard Phillips Marine, Inc. for Bid Package #OHOF-01 Outfall Replacement ("Outfall Replacement") and to establish a Guaranteed Maximum Price for the Outfall Replacement Work and related Negotiated Support Services and Specified General Conditions. The Owner and Construction Manager anticipate subsequent amendment(s) to the Agreement to establish a Guaranteed Maximum Price for the remainder of the Work. This is the Second GMP Amendment for this Project. 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 Outfall Replacement Work and related Negotiated Support Services and Specified General Conditions. 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 (\$—); ~~One Million Nine Hundred Ninety-One Thousand Two Hundred Forty-Nine (\$1,991,249.00) for the Outfall Replacement Work and includes all related Negotiated Support Services, Specified General Conditions, Contingency, and the Construction Manager's Fee of 4.28%, subject to additions and deductions by Change Order as provided in the Contract Documents. Sales tax is not included in the above amount and will be added to the Cost of the Work.~~

§ A.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 Hoffman Construction Company GMP Amendment No. 2 Recapitulation dated April 10, 2015.

§ A.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:
(State the 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.)

Subcontractor Payment and Performance Bond, included within the above price.

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
None.	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See the Oak Harbor Wastewater Treatment Plant Bid Package #OHOF-01: Outfall Replacement Request for Bids and other documents listed in this Guaranteed Maximum Price Amendment.

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: See the Oak Harbor Wastewater Treatment Plant Bid Package #OHOF-01: Outfall Replacement Request for Bids and other documents listed in this Guaranteed Maximum Price Amendment.

Document	Title	Date	Pages
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§ A.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.)

Oak Harbor Wastewater Treatment Plant Bid Package #OHOF-01: Outfall Replacement Technical Specifications (Carollo Engineers, February 16, 2015, 495 pages) and Geotechnical Report (July 12, 2013).

Section	Title	Date	Pages
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§ A.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 Bid Package #OHOF-01: Outfall Replacement Technical Specifications (Carollo Engineers, January 22, 2015).

Number	Title	Date
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§ A.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.)

- Addendum No. 1 (March 17, 2015), 101 pages.
- Addendum No. 2 (March 19, 2015), 7 pages.
- Addendum No. 3 (March 23, 2015), 133 pages.
- Addendum No. 4 (March 26, 2015), 5 pages.
- Addendum No. 5 (March 27, 2015), 3 pages.

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

October 30, 2015 for the Outfall Replacement Work.

Int.


OWNER (Signature)

SCOTT DUDLEY, MAYOR
(Printed name and title)


CONSTRUCTION MANAGER (Signature)

Lyle Martin, Vice President
(Printed name and title)

Init.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Graehm 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 16:19:16 on 04/09/2015 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)

attorney

(Title)

4/13/15

(Dated)



AIA[®]

Document A133™ – 2009 Exhibit A

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 proceed with the Work of Site Prep A - Partial Excavation and Archeological Survey ("Site Prep A") and to establish a Guaranteed Maximum Price for the Site Prep A Work and related Negotiated Support Services and Specified General Conditions. The Owner and Construction Manager anticipate subsequent amendment(s) to the Agreement to establish a Guaranteed Maximum Price for the remainder of the Work. This is the Third GMP Amendment for this Project. 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 Site Prep A Work and related Negotiated Support Services and Specified General Conditions. 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 (\$ ~~)-Eight Hundred Thirty-Six Thousand One Hundred Thirty Dollars (\$836,130.00)~~ for the Site Prep A Work and includes all related Negotiated Support Services, Specified General Conditions, Contingency, and the Construction Manager's Fee of 4.28%, subject to additions and deductions by Change Order as provided in the Contract Documents. Sales tax is not included in the above amount and will be added to the Cost of the Work.

§ A.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.)

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.

Init.

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User Notes: (1831941750)

See the Hoffman Construction Company GMP Amendment No. 3 Recapitulation for Site Prep A - Partial Excavation and Archeological Survey.

§ A.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:

(State the 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.)

Subcontractor Payment and Performance Bond, included within the above price.

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
<u>Archeological discoveries</u>	<u>\$57,114.00</u>
<u>Dewatering</u>	<u>\$14,400.00</u>

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See the Hoffman Construction Company GMP Amendment No. 3 Recapitulation for Site Prep A - Partial Excavation and Archaeological Survey.

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: See the Oak Harbor Wastewater Treatment Plant Site Preparation and Archeological Exploration Technical Specifications dated June 8, 2015 and other documents listed in this Guaranteed Maximum Price Amendment.

Document	Title	Date	Pages
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§ A.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.)

Oak Harbor Wastewater Treatment Plant Site Preparation and Archeological Exploration Technical Specifications dated June 8, 2015 and other documents listed in this Guaranteed Maximum Price Amendment.

Section	Title	Date	Pages
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§ A.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 Clean Water Facility Site Preparation and Archeological Exploration Package dated June 8, 2015 and other documents listed in this Guaranteed Maximum Price Amendment

Number	Title	Date
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§ A.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.)

Construction Manager shall comply with Washington Department of Ecology funding requirements including the Water Pollution Control Revolving Fund Specifications Insert dated 10/30/13. Construction Manager will perform construction activities in accordance with the City of Oak Harbor Cultural Resources Memorandum of Agreement approved April 21, 2015.

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion for Site Prep A Work established by this Amendment:

| October 1, 2015.

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)



Int.

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User Notes: (1831941750)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Graehm 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 08:28:11 on 06/09/2015 under Order No. 1248342233_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)

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User Notes:

(1831941750)