



HILLSBORO/FOREST GROVE/BEAVERTON/
TUALATIN VALLEY WATER DISTRICT
JOINT WATER COMMISSION (JWC)
PRELIMINARY AGENDA

General Manager

Kevin Hanway
150 E. Main Street
Hillsboro, OR 97123
503-615-6585

Board of Commissioners

City of Hillsboro

John Godsey
John Rosenberger
David Judah

City of Forest Grove

Rod Fuiten
Carl Heisler
Victoria Lowe

City of Beaverton

Denny Doyle
Marc San Soucie
Mark Fagin

Tualatin Valley Water District

Dick Schmidt
Jim Doane
Mark Knudson



City of Hillsboro

Civic Center

150 East Main St., **Room 113B**

July 8, 2016

12:30 p.m.

Regular Meeting

Assistive Listening Devices (ALD) and sign language interpreters are available, at no cost, and can be scheduled for this meeting. Please provide at least 72 hours notice prior to the meeting. To obtain these services, call (503) 681-6100 or TTY (503) 681-6284.

ALL TESTIMONY IS ELECTRONICALLY RECORDED.

The Commission lunches at 12:00 p.m.

CALL TO ORDER

Introductions.

1. **CONSENT AGENDA** (The entire Consent Agenda is normally considered in a single motion. Any Commissioner may request that an item be removed for separate consideration.)

A. Approve regular meeting minutes from Friday, April 8, 2016.

B. Consider approval of the Audit Arrangement letter and consider the required communications under Statement on Auditing Standards 114.

2. **COMMUNICATIONS AND NON-AGENDA ITEMS**

A. None scheduled.

3. **UNFINISHED BUSINESS**

A. None scheduled.

4. **NEW BUSINESS**

A. Consider award of CM/GC contract to Slayden Constructors for the JWC WTP Expansion to 85 MGD Project. *Staff Report – Erika Murphy*

5. **DISCUSSION ITEMS** (These items may result in action by the Commission.)

- A. Curtailment plan update. *Staff Report – Tacy Steele*
- B. Financial report. *Staff Report – Mellisa Franklin*
- C. Information on lead testing programs. *Staff Report – Tacy Steele*
- D. Recap of Cascadia Rising Exercise. *Staff Report – Sophia Hobet*
- E. Water supply status. *Staff Report – Kristel Fesler*
- F. General Manager’s Report. *Staff Report – Kevin Hanway*

6. **ADVICE/INFORMATION ITEMS**

- A. The next JWC and BRJOC meetings are scheduled on Friday, October 14, 2016 at the Civic Center in Room 113B. The BRJOC meeting will be held at 12:30 p.m. with the JWC meeting following.

HILLSBORO/FOREST GROVE/BEAVERTON
TUALATIN VALLEY WATER DISTRICT
JOINT WATER COMMISSION (JWC)

MINUTES

City of Hillsboro
Civic Center Room 113B
150 East Main St.

April 8, 2016
12:30 p.m.
Regular Meeting

Commissioners Present:

Hillsboro: John Godsey, John Rosenberger and Dave Judah
Forest Grove: Victoria Lowe and Rod Fuiten
Beaverton: Marc San Soucie and Denny Doyle
Tualatin Valley Water District: Jim Doane, Dick Schmidt and Mark Knudson

Staff Present:

Hillsboro: Kevin Hanway, Rob Dixon, Tyler Wubbena, Niki Iverson,
Sophia Hobet, Chris Wilson, Tacy Steele, Erika Murphy, Kristel
Fesler, Mellisa Franklin, Roger Gonzales, Maria Sandoval and
Tonya Bilderbeck
Beaverton: David Winship
Forest Grove: Rob Foster and Rich Blackmun

Others Present:

Clark Balfour – Attorney
Mac Martin – Clean Water Services
Jerry Willey – Hillsboro Mayor
Brad Phelps – CH2M

The Commission lunches at 12:00 p.m. Call to order at 12:53 p.m.

CALL TO ORDER

Introductions.

1. **CONSENT AGENDA** (The entire Consent Agenda is normally considered in a single motion. Any Commissioner may request that an item be removed for separate consideration.)

- A. Approve regular meeting minutes from Friday, January 8, 2016.

Motion by Godsey, seconded by Judah, to approve the Consent Agenda, as presented. Motion carried unanimously with Commissioners Godsey, Rosenberger, Judah, Fuiten, Lowe, San Soucie, Doyle, Doane, Schmidt and Knudson all voting in favor.

- B. Approve Executive Committee meeting minutes from Friday, February 5, 2016.

Motion by Doane, seconded by Godsey, to approve the Executive Committee meeting minutes and included them as part of the Consent Agenda, as presented. Motion carried unanimously with Commissioners Godsey, Rosenberger, Judah, Fuiten, Lowe, San Soucie, Doyle, Doane, Schmidt and Knudson all voting in favor.

2. COMMUNICATIONS AND NON-AGENDA ITEMS

A. None scheduled.

3. UNFINISHED BUSINESS

A. None scheduled.

4. PUBLIC HEARING Time certain 1:30 p.m.

A. Consider convening into a Public Hearing to receive public testimony on the proposed findings for CM/GC alternate contracting method for WTP Expansion project. *Staff Report – Erika Murphy*

Murphy reported the CM/GC findings were made available to the public two weeks ago; a notice was advertised for the public hearing.

She said the findings demonstrate that utilizing a CM/GC approach to involve the construction contractor in the facility planning and design phase will provide important additional benefits to the project. In addition to the value engineering benefits of having the CM/GC on board throughout the design phase, the CM/GC process also allows the JWC to select a contractor based on qualifications and key personnel. The traditional Design-Bid-Build approach does not allow the Owner the flexibility to consider the experience of the contractor or individuals involved with the project. The findings document that selecting a qualified contractor will be critical to maintaining treatment plant operations as needed throughout the construction phase.

Fuiten asked who would be involved in the interviews of the candidates. Murphy responded, stating the Technical Advisory Committee, comprised of staff from each partnering agency, will conduct interviews on the candidates.

San Soucie proposed changing wording from RFQ to RFP on page 4. Murphy responded that update had already been made.

The meeting was opened to the public for testimony.

No members of the public testified, nor was any written testimony received before the hearing.

Lowe stated for the record that she recommends public hearings be held at a time that would be more convenient for the public to be able to attend. Her concern, is the perception of holding a public meeting at 1:30 p.m. is a guarantee that the public will not be able to attend.

Murphy responded that the public was also provided a period to send in written comments.

Godsey responded the Utilities Commission has held public meetings in the evenings, with the same turn out as an afternoon meeting.

Lowe suggested that the Commission meetings could be filmed and broadcasted.

The public hearing was closed, and the meeting was reconvened into regular session.

5. **NEW BUSINESS**

- A. Consider approval of proposed FY 2015-16 supplemental budget. *Staff Report – Mellisa Franklin*

Franklin reported staff is requesting a supplemental budget for FY 15-16 due mainly to three events that occurred after the budget was approved.

- The lease of water treatment plant (WTP) capacity and stored water by TVWD and Hillsboro,
- Unbudgeted financial support provided to United States Fish & Wildlife (USFW) for temporary pumping and repairs at Wapato Lake National Wildlife Refuge,
- Cost associated with increased water production due to the higher demand than had been budgeted during the summer months.

Franklin said that the proposed supplemental budget needed to be revised before adoption, to show the portion of the revenue from the proposed TVWD lease that would accrue in the current fiscal year. Staff requested that the amounts for lease revenue and lease payments be increased by \$31,387 for that purpose.

Approval of a supplemental budget is required when unanticipated revenues and corresponding expenditures occur after adoption of the budget.

Motion by Doyle, seconded by Rosenberger, to approve the FY 2015-16 supplemental budget, as revised during the staff presentation. Motion carried unanimously with Commissioners Godsey, Rosenberger, Judah, Fuiten, Lowe, San Soucie, Doyle, Doane, Schmidt and Knudson all voting in favor.

- B. Consider approval of proposed FY 2016-17 budget. *Staff Report – Mellisa Franklin*

Franklin reported the overall proposed budget total expenditures are \$13,575,442, which is a 4% decrease from fiscal year 2015-2016. The figure includes capital outlay of \$6,040,000.

Franklin reviewed the proposed budget as follows:

- **Plant Production:** Budget estimates for many expenditures correlate to projected plant production volume. Total Projected Plant Production (average day) for Fiscal year 2016-2017 is 33.2 MGD, an overall production increase of 6% from the current year's budget estimates. Two of the JWC partners increased their demand estimate (Hillsboro-1.25 MGD and TVWD-0.7 MGD) by a total of 1.95 MGD. Beaverton kept its projected demand estimate flat from FY 15/16 to FY 16/17. Forest Grove decreased its demand estimate by 0.055 MGD.

- Personnel Services: The proposed budget includes a 7% (\$170,165) increase in personnel costs. The proposed budget includes:
 1. Updated employee allocations between the City of Hillsboro, Joint Water Commission, and Barney Reservoir.
 2. 5% overall increase of total personnel services to include: (1) possible increase in Medical and Dental costs for half the year that is unknown; (2) Hillsboro Cost of Living Adjustments (COLA) have not yet been proposed.
 3. The new FTE restores a Water Treatment Plant Operator position that had been eliminated in the FY 2014 budget.
- Materials and Services: The proposed Materials and Services budget includes an increase of 9% from FY 15/16 budget amounts, to address inflation impacts and the potential that actual production exceeds partner volume estimates. Water production unit costs are projected to increase by 1.7% to \$0.44/unit as compared to the \$0.43/unit budget of FY 15/16.
- Operating Capital Outlay: The proposed Operating Capital Outlay budget decreased by \$28,500. Items budgeted include replacement of the riding mower, an additional bay pole in the current barn, a security camera system upgrade, expansion of the current wireless system, a HVAC system for the Maintenance Offices, painting for Pump Station #2, and HACH WIMS database. Additional information on each of these purchases is provided on page 7 of the proposed budget packet.

Special Payments: The proposed budget includes a 66% (\$367,000) increase in Special Payments from the current budget of \$554,304. The increase is due to estimated lease revenues to account for possible lease capacity requests that may occur and be finalized after the budget has been adopted. A total of \$321,900 was budgeted for FY 2017.

Special Payments includes costs for facilities depreciation, support services charges, equipment depreciation, facilities charges, insurance and payments to other governments. The final Special Payments will be determined once the cost allocation for the City of Hillsboro has been completed at year-end.

- Capital Projects: The proposed capital budget includes three projects with a total cost of \$3,540,000, and \$2,000,000 budgeted for Emergency Equipment Repair.

The major capital project is the continuation of the WTP Expansion Project, which began the design of the Water Treatment Plant expansion. The majority of the expansion is expected to be completed in FY 18-19, with a small rollover to FY 19-20. The current estimate for the total construction cost of these improvements is approximately \$30 million.

The proposed budget also includes several small projects:

- Continuation of Standby Power Generation- \$100,000

- Continuation of Installation of Flow Meters - \$200,000
- Brookwood/Shute Rd. Widening - \$30,000

San Soucie asked why the budget document said that the budget will be adopted by the City of Hillsboro. Hanway explained that under Oregon law, entities created under ORS 190, such as JWC, are not authorized to adopt budgets. JWC approves the budget, and Hillsboro, as the managing agency, adopts the budget to comply with the statute.

Motion by Godsey, seconded by Doyle, to approve the FY 2016-2017 budget, subject to final modifications not to exceed 5% of Personnel Services and Special Payments costs as determined by the City of Hillsboro, as presented. Motion carried unanimously with Commissioners Godsey, Rosenberger, Judah, Fuiten, Lowe, San Soucie, Doyle, Doane, Schmidt and Knudson all voting in favor.

- C. Consider award of contract for the Aluminum Sulfate Chemical contract. *Staff Report – Sophia Hobet*

Hanway said staff requests award of contract to Eco Services for Aluminum Sulfate. He said Eco Services is the current supplier, and have reduced their price by \$5/dry ton.

Motion by Knudson, seconded by Rosenberger, to approve the award of contract for the Aluminum Sulfate Chemical contract to Eco Services, as presented. Motion carried unanimously with Commissioners Godsey, Rosenberger, Judah, Fuiten, Lowe, San Soucie, Doyle, Doane, Schmidt and Knudson all voting in favor.

- D. Consider approval of leases for stored water and water treatment plant capacity. *Staff Report – Kevin Hanway*

Hanway said TVWD requested a lease of 2 mgd capacity at the WTP for a single year. He said the IGA requires the Commission approve all leases. He said this is a standard transaction, similar to previous year leases.

Motion by Doyle, seconded by Doane, to approve of leases for stored water and water treatment plant capacity, as presented. Motion carried unanimously with Commissioners Godsey, Rosenberger, Judah, Fuiten, Lowe, San Soucie, Doyle, Doane, Schmidt and Knudson all voting in favor.

- E. Consider adoption of Resolution 128-J adopting findings for CM/GC alternate contracting method for WTP Expansion Project. *Staff Report – Erika Murphy*

There was no additional discussion after the public hearing was closed.

Motion by Doyle, seconded by Schmidt, to approve Resolution 128-J adopting findings for CM/GC alternate contracting method for WTP Expansion Project, as presented. Motion carried unanimously with Commissioners Godsey, Rosenberger, Judah, Fuiten, San Soucie, Doyle, Doane, Schmidt and Knudson all voting in favor, and Lowe opposing.

6. DISCUSSION ITEMS (These items may result in action by the Commission.)

A. Water supply status. *Staff Report – Kristel Fesler*

Fesler reported levels spiked near the 1996 levels. She said Scoggins is 97% full, with a target fill date of May 1.

B. Project Updates

1. Standby Power Project. *Staff Report – Erika Murphy*

Murphy reported staff tested the back-up generators by simulating a utility power outage. She said the generator started up and ran pumps as projected. Staff ran the plant at 37.5 mgd during the test. Murphy said there was a seamless transition from generator power, once the power was turned back on. Staff has issued a punch list for the contractor; and anticipates the items to be completed by the end of the month.

Murphy advised the Commission that PGE tested the system in December and cleared it for use. She said PGE will continue test monthly, however they have not used the system for the DSG program.

C. General Manager’s Report. *Staff Report – Kevin Hanway*

Hanway reported on the following items:

- Water Treatment Plant received “Outstanding Performer” status from an Oregon Health Authority inspection.
- An open house is scheduled for May 11th at the WTP to inform residents about the upcoming upgrade project and chlorine handling plans.
- Treatment Plant staff are working to ensure the plant is ready for summer weather. The reservoirs are full, with adequate stored water to get through summer. Staff is maintaining and repairing the pumps. Staff is in discussion with TVID for potential connections to their system in the event of an outage of the raw water pumps.
- There is potential for water quality issues this year, as pumping is behind schedule at Wapato Lake due to the large pump failure.

7. ADVICE/INFORMATION ITEMS

- A. The next JWC and BRJOC meetings are scheduled on Friday, July 8, 2016 at the Civic Center in Room 113B. The BRJOC meeting will be held at 12:30 p.m. with the JWC meeting following.

There being no further business to come before the Commission, the meeting adjourned at 1:52 p.m.

Chairman _____
Hillsboro/Forest Grove/ Beaverton/
TVWD Joint Water Commission

ATTEST: _____
Secretary



STAFF REPORT

To: Joint Water Commission

From: Jon Grover, Accounting Manager

Date: July 8, 2016

Re: Agenda Item 1B – Audit Arrangement Letter and Required Communications under SAS 114

Staff Recommendation:

Staff recommends that the Commission acknowledge the required communication under SAS 114, and approve the audit arrangement letter with Talbot, Korvola and Warwick LLP.

Attachments:

Talbot, Korvola & Warwick, LLP Audit Arrangement Letter
SAS 114 Letter

Background:

Attached for your consideration is the arrangement letter and required communication under Statement on Auditing Standards 114 with Talbot, Korvola and Warwick, LLP, for the 2015-16 audits of the Hillsboro – Forest Grove – Beaverton – Tualatin Valley Water District Joint Water Commission.

The arrangement letters include proposed fees for each engagement not to exceed \$9,700. As a comparison, the previous audit fee was \$9,300, for an increase of 4.3%. This is the second year of a five-year contract with TKW and this increase is as described in the contract. The fees for services are paid by the City of Hillsboro's Finance department.

Please feel free to contact me at 503-681-5361 or jon.grover@hillsboro-oregon.gov should you have any questions in reviewing the attachments.



**Talbot, Korvola
& Warwick, LLP**

Certified Public Accountants
& Consultants

ACHIEVE MORE

4800 Meadows Road, Suite 200
Lake Oswego, Oregon 97035-4293

P 503.274.2849
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www.tkw.com

May 10, 2016

Board of Commissioners
Hillsboro-Forest Grove- Beaverton-
Tualatin Valley Water District
Joint Water Commission
Hillsboro, Oregon

Attention: Mark San Soucie, Chair

The Objective and Scope of the Audit of the Financial Statements

You have requested that we audit the financial statements of the Hillsboro-Forest Grove-Beaverton-Tualatin Valley Water District Joint Water Commission (the Commission), as of and for the year ending June 30, 2016 which collectively comprise the basic financial statements. We are pleased to confirm our acceptance and our understanding of this audit engagement by means of this letter.

Our audit will be conducted with the objective of our expressing an opinion on the financial statements.

The Responsibilities of the Auditor

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS. Also, an audit is not designed to detect errors or fraud that are immaterial to the financial statements.

In making our risk assessments, we consider internal control relevant to the Commission's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Commission's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

An Independently Owned Member
McGLADREY ALLIANCE



McGladrey

The Responsibilities of the Auditor (Continued)

We will also communicate to the Board of Commissioners (a) any fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements that becomes known to us during the audit, and (b) any instances of noncompliance with laws and regulations that we become aware of during the audit (unless they are clearly inconsequential).

The funds that you have told us are maintained by the Commission and that are to be included as part of our audit are consistent with those reported in the prior year.

The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledges and understands that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP);
2. To evaluate subsequent events through the date the financial statements are issued or available to be issued, and to disclose the date through which subsequent events were evaluated in the financial statements. Management also agrees that it will not evaluate subsequent events earlier than the date of the management representation letter referred to below;
3. For the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; and
4. To provide us with:
 - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;
 - b. Additional information that we may request from management for the purpose of the audit; and
 - c. Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.

As part of our audit process, we will request from management and, when appropriate, those charged with governance written confirmation concerning representations made to us in connection with the audit, including among other items:

1. That management has fulfilled its responsibilities as set out in the terms of this letter; and

The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework (Continued)

2. That it believes the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for identifying and ensuring that the Commission complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the entity involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the entity received in communications from employees, former employees, analysts, regulators, or others.

Management is responsible for the preparation of the required supplementary information (RSI) and supplementary information presented in relation to the financial statements as a whole in accordance with U.S. GAAP. Management agrees to include the auditor's report on the RSI or supplementary information in any document that contains the supplementary information and indicates that the auditor has reported on such RSI or supplementary information. Management also agrees to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance of the supplementary information and the auditor's report thereon.

The Board of Commissioners is responsible for informing us of its views about the risks of fraud within the entity, and its knowledge of any fraud or suspected fraud affecting the entity.

The Commission agrees that it will not associate us with any public or private securities offering without first obtaining our consent. Therefore, the Commission agrees to contact us before it includes our reports, or otherwise makes reference to us, in any public or private securities offering.

Our association with an official statement is a matter for which separate arrangements will be necessary. The Commission agrees to provide us with printer's proofs or masters of such offering documents for our review and approval before printing, and with a copy of the final reproduced material for our approval before it is distributed. In the event our auditor/client relationship has been terminated when the Commission seeks such consent, we will be under no obligation to grant such consent or approval.

We agree that our association with any proposed offering is not necessary, providing the Commission agrees to clearly indicate that we are not associated with the contents of any such official statement or memorandum. The Commission agrees that the following disclosure will be prominently displayed in any such official statement or memorandum:

Board of Commissioners
Hillsboro-Forest Grove- Beaverton-
Tualatin Valley Water District
Joint Water Commission
May 10, 2016
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The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework (Continued)

Talbot, Korvola & Warwick, LLP, our independent auditor, has not been engaged to perform, and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. Talbot, Korvola & Warwick, LLP also has not performed any procedures relating to this official statement or memorandum.

Because Talbot, Korvola & Warwick, LLP (the Firm) will rely on the Commission and its management and Board of Commissioners to discharge the foregoing responsibilities, the Commission holds harmless and releases the Firm and its partners and employees from all claims, liabilities, losses and costs arising in circumstances where there has been a knowing misrepresentation by a member of the Commission's management that has caused, in any respect, the Firm's breach of contract or negligence. This provision shall survive the termination of this arrangement for services.

Records and Assistance

If circumstances arise relating to the condition of the Commission's records, the availability of appropriate audit evidence or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting or misappropriation of assets which, in our professional judgment, prevent us from completing the audit or forming an opinion, we retain the unilateral right to take any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawing from the engagement.

During the course of our engagement, we may accumulate records containing data that should be reflected in the Commission's books and records. The Commission will determine that all such data, if necessary, will be so reflected. Accordingly, the Commission will not expect us to maintain copies of such records in our possession.

The assistance to be supplied by the Commission personnel, including the preparation of schedules and analyses of accounts, has been discussed and coordinated with Jon Grover, Accounting Manager. The timely and accurate completion of this work is an essential condition to our completion of the audit and issuance of our audit report.

If, in connection with our audit, you request us to perform accounting services necessary for the preparation of the financial statements (such as maintaining depreciation schedules, drafting the financial statements, etc.), you agree to designate an appropriate individual to oversee the services, make all management decisions involved in those services, evaluate the adequacy and results of the services, and accept responsibility for the results of the services.

Other Relevant Information

The Firm may mention the Commission's name and provide a general description of the engagement in the Firm's client lists and marketing materials.

Other Relevant Information (Continued)

From time to time and depending upon the circumstances, we may use third-party service providers to assist us in providing professional services to you. In such circumstances, it may be necessary for us to disclose confidential client information to them. We enter into confidentiality agreements with all third-party service providers and we are satisfied that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In addition, we may utilize financial information you have provided to us in connection with this engagement for purposes of creating benchmarking data to be used by the Firm professionals and other clients. This benchmarking data is aggregated with data from a minimum of five other entities so that users of the data are unable to associate the data with any single entity in the database.

You may choose to publish your financial statements electronically on the Commission's internet website. You agree we are not required under professional standards or this arrangement letter to read or monitor the information contained on your website or to consider the consistency of other information in the electronic site with the original document. However, we reserve the right to review the information as presented on your internet website, and to withdraw our report should we disagree with the form, context or manner of presentation of the financial statements upon which we reported. You agree upon written notification of our objections, to immediately remove our report and any reference thereto or to the Firm from your internet website.

In the interest of facilitating our services to you, we may communicate by electronic mail over the internet. Such communications may include information that is confidential to the Commission. Our Firm employs measures in the use of computer technology designed to provide reasonable assurance that data security is maintained. While we will use our best efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept that we have no control over the unauthorized interception of these communications once they have been sent. Unless you issue specific instructions to do otherwise, we will assume that you consent to our use of electronic communication during this engagement as we deem appropriate.

Fees, Costs, and Access to Workpapers

Our fees for the audit and accounting services described above are based upon the value of the services performed and the time required by the individuals assigned to the engagement, plus direct expenses. Our fee estimate and completion of our work are based upon the following criteria:

1. Anticipated cooperation from the Commission personnel
2. Timely responses to our inquiries
3. Timely completion and delivery of client assistance requests
4. Timely communication of all significant accounting and financial reporting matters
5. The assumption that unexpected circumstances will not be encountered during the engagement

Board of Commissioners
Hillsboro-Forest Grove- Beaverton-
Tualatin Valley Water District
Joint Water Commission

May 10, 2016

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Fees, Costs, and Access to Workpapers (Continued)

If any of the aforementioned criteria are not met, then fees may increase. Our fee for the services described in this letter is not expected to exceed \$9,700 unless the scope of the engagement is changed, the assistance which the Commission has agreed to furnish is not provided, or unexpected conditions are encountered, in which case we will discuss the situation with you before proceeding. Interim billings will be submitted as work progresses and as expenses are incurred. Billings are due upon submission.

Our professional standards require that we perform certain additional procedures, on current and previous years' engagements, whenever a partner or professional employee leaves the firm and is subsequently employed by or associated with a client in a key position. Accordingly, the Commission agrees it will compensate the Firm for any additional costs incurred as a result of the Commission's employment of a partner or professional employee of the Firm.

In the event we are requested or authorized by the Commission or are required by government regulation, subpoena or other legal process to produce our documents or our personnel as witnesses with respect to our engagement for the Commission, the Commission will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

Claim Resolution

The Commission and the Firm agree that no claim arising out of services rendered pursuant to this agreement shall be filed more than two years after the date of the audit report issued by the Firm or the date of this arrangement letter if no report has been issued. The Commission waives any claim for punitive damages. The Firm's liability for all claims, damages and costs of the Commission arising from this engagement is limited to the amount of fees paid by the Commission to the Firm for the services rendered under this arrangement letter.

If any term or provision of this agreement is determined to be invalid or unenforceable, such term or provision will be deemed stricken and all other terms and provisions will remain in full force and effect.

Reporting

We will issue a written report upon completion of our audit of the Commission's financial statements. Our report will be addressed to the Board of Commissioners of the Commission. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.

Reporting (Continued)

In addition to our report on the Commission's financial statements, we will also issue the following types of reports:

- Independent Auditor's Report Required by Oregon State Regulations.

Board of Commissioners
Hillsboro-Forest Grove- Beaverton-
Tualatin Valley Water District
Joint Water Commission
May 10, 2016
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Reporting (Continued)

- A report on the Summary of Revenues and Expenditures as required by the Minimum Standards for Audits of Oregon Municipal Corporations. The responsibility we are to take for the material included in this report will be the same as that we assume for other supplementary information accompanying the financial statements.

This letter constitutes the complete and exclusive statement of agreement between the Firm and the Commission, superseding all proposals, oral or written, and all other communications with respect to the terms of the engagement between the parties.

Please sign and return a copy of this letter to indicate your acknowledgment of, and agreement with, the arrangements for our audit of the financial statements, including our respective responsibilities.

TALBOT, KORVOLA & WARWICK, LLP

By 

Timothy R. Gillette, Partner

Confirmed on behalf of the addressee:
**Hillsboro-Forest Grove-Beaverton-
Tualatin Valley Water District
Joint Water Commission**

Signature

Title

Date



**Talbot, Korvola
& Warwick, LLP**

Certified Public Accountants
& Consultants

ACHIEVE MORE

4800 Meadows Road, Suite 200
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F 503.274.2853

www.tkw.com

Board of Commissioners
Hillsboro - Forest Grove-Beaverton -
Tualatin Valley Water District
Joint Water Commission
Hillsboro, Oregon

Attention: Mark San Soucie, Chair

This letter is intended to communicate certain matters related to the planned scope and timing of our audit of Hillsboro-Forest Grove-Beaverton-Tualatin Valley Water District Joint Water Commission's (the Commission) financial statements as of and for the year ending June 30, 2016.

Communication

Effective two-way communication between Talbot, Korvola & Warwick, LLP (the Firm) and the Board of Commissioners is important to understanding matters related to the audit and in developing a constructive working relationship.

Your insights may assist us in understanding the Commission and its environment, identifying appropriate sources of audit evidence and providing information about specific transactions or events. We will discuss with you your oversight of the effectiveness of internal control and any areas where you request additional procedures to be undertaken. We expect that you will timely communicate to us any matters you consider relevant to the audit. Such matters might include strategic decisions that may significantly affect the nature, timing and extent of audit procedures, your suspicion or detection of fraud, or any concerns you may have about the integrity or competence of senior management.

We will timely communicate to you any fraud involving senior management and other fraud that causes a material misstatement of the financial statements, instances of noncompliance with laws and regulations that come to our attention (unless they are clearly inconsequential), and disagreements with management and other serious difficulties encountered in performing the audit. We also will communicate to you and to management any significant deficiencies or material weaknesses in internal control that become known to us during the course of the audit. Other matters arising from the audit that are, in our professional judgement, significant and relevant to you in your oversight of the financial reporting process will be communicated to you in writing after the audit.

Independence

Our independence policies and procedures are designed to provide reasonable assurance that our firm and its personnel comply with applicable professional independence standards. Our policies address financial interests, business and family relationships, and non-audit services that may be thought to bear on independence. For example, partners and professional employees of the Firm are restricted in their ability to own a direct financial interest or a material indirect financial interest in a client or any affiliate of a client. Also, if an immediate family member or close relative of a partner or professional employee is employed by a client in a key position, the incident must be reported and resolved in accordance with firm policy. In addition, our policies restrict certain non-audit services that may be provided by the Firm and require audit clients to accept certain responsibilities in connection with the provision of permitted non-attest services.

An Independently Owned Member
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McGladrey

The Audit Planning Process

Our audit approach places a strong emphasis on obtaining an understanding of how your business functions. This enables us to identify key audit components and tailor our procedures to the unique aspects of your business. The development of a specific audit plan will begin by meeting with you and with management to obtain an understanding of your business objectives, strategies, risks and performance.

As part of obtaining an understanding of your business and its environment, we will obtain an understanding of internal control. We will use this understanding to identify risks of material misstatement, which will provide us with a basis for designing and implementing responses to the assessed risks of material misstatement. We will also obtain an understanding of the users of the financial statements in order to establish an overall materiality level for audit purposes. We will conduct formal discussions among engagement team members to consider how and where your financial statements might be susceptible to material misstatement due to fraud or error.

The Concept of Materiality in Planning and Executing the Audit

We apply the concept of materiality in both planning and performing the audit; evaluating the effect of identified misstatements on the audit and the effect of uncorrected misstatements, if any, on the financial statements; and forming the opinion in our report. Our determination of materiality is a matter of professional judgment and is affected by our perception of the financial information needs of users of the financial statements. We establish performance materiality at an amount less than materiality for the financial statements as a whole to allow for the risk of misstatements that may not be detected by the audit. We use performance materiality for purposes of assessing the risks of material misstatement and determining the nature, timing and extent of further audit procedures. Our assessment of materiality throughout the audit will be based on both quantitative and qualitative considerations. Because of the interaction of quantitative and qualitative considerations, misstatements of a relatively small amount could have a material effect on the current financial statements as well as financial statements of future periods. We will accumulate misstatements identified during the audit, other than those that are clearly trivial. At the end of the audit, we will inform you of all individual uncorrected misstatements aggregated by us in connection with our evaluation of our audit test results.

Our Approach to Internal Control Relevant to the Audit

Our audit of the financial statements will include obtaining an understanding of internal control sufficient to plan the audit and determine the nature, timing and extent of audit procedures to be performed. An audit is not designed to provide assurance on internal control or identify significant deficiencies or material weaknesses. Our review and understanding of the Commission's internal control is not undertaken for the purpose of expressing an opinion on the effectiveness of internal control.

Timing of the Audit

We have scheduled preliminary audit field work for the week of August 8, 2016, with final field work commencing the week of October 10, 2016. Management's adherence to its closing schedule and timely completion of information used by us in performance of the audit is essential to timely completion of the audit.

Board of Commissioners
Hillsboro - Forest Grove-Beaverton -
Tualatin Valley Water District
Joint Water Commission
Page 3

Closing

We will be pleased to respond to any questions you have about the foregoing. We appreciate the opportunity to be of service to the Commission.

This communication is intended solely for the information and use of the Board of Commissioners and is not intended to be, and should not be, used by anyone other than this specified party.

Talbot, Kowola & Warwick LLP

Lake Oswego, Oregon
May 10, 2016



STAFF REPORT

To: Joint Water Commission

From: Erika Murphy, Project Manager

Date: June 28, 2016

Subject: Agenda Item 4A: Consider award of Construction Manager/General Contractor (CM/GC) contract for the JWC WTP Expansion to 85 MGD Project

Staff Recommendation:

Award the Construction Manager/General Contractor (CM/GC) contract for the JWC WTP Expansion to 85 MGD Project to Slayden Constructors, Inc.

Background:

JWC's FY 2015-16 capital projects budget includes the commencement of a water treatment plant project to complete capacity upgrades, expansion, and seismic improvements at the water treatment plant, along with a facility plan for future replacement of most of the existing WTP facilities to address seismic resilience needs. The project is scheduled for completion in 2019.

The top priority for the JWC partners on this project is to prevent extended interruptions of treatment plant operations throughout the construction phase while maintaining the planned construction completion schedule. Utilizing a Construction Manager/General Contractor (CM/GC) delivery approach will greatly improve JWC's ability to achieve this. Staff has presented information on the CM/GC approach at several recent Commission meetings. The CM/GC findings for an exemption to competitive bidding were presented and approved by the Joint Water Commission on April 8, 2016.

A Request for Proposals (RFP) for CM/GC Services was issued on May 2, 2016. A mandatory pre-proposal meeting was held two weeks later, on May 16. Three general contractors attended the meeting: Slayden Constructors, Ward-Henshaw Construction, and Garney Construction.

Two proposals were received during the RFP process, from Slayden Constructors and Ward-Henshaw Construction. JWC staff reviewed both proposals and agreed that both contractors were qualified to perform the work; therefore interviews were scheduled with both firms. All JWC partners participated in the contractor interviews and unanimously voted for Slayden Constructors as the most qualified contractor. The project manager for CH2M participated in the interviews as an advisory, non-voting member. The most prominent reason that Slayden was chosen is the extensive experience that Slayden presented with local water and wastewater treatment plants. In addition, the contractor pricing that was included in the proposal was

significantly lower than the pricing provided by Ward-Henshaw. Slayden provided overhead and profit mark-ups of 4% for self-performed and subcontracted work, which is industry standard for jobs of this size. JWC staff followed up with several professional references for Slayden; some of which had been provided by Slayden, as well as direct contact by JWC with other Slayden clients. All information received on reference calls reaffirmed that Slayden is qualified to do the work, is cooperative and collaborative with clients, and consistently performs work within the agreed upon Guaranteed Maximum Price (GMP).

The Notice of Intent to Award was issued on Thursday, June 16, 2016. The “protest of award” period closed at 5:00pm on Thursday, June 23, 2016. No protests were received.

Current Decision: Consider Award of the CM/GC contract to Slayden Constructors, Inc.

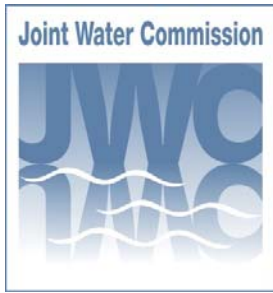
The CM/GC contract only authorizes pre-construction services. The total fee estimate for Package 1 pre-construction services as fixed in the RFP is a lump sum amount of \$55,000. Any hours and expenses by the contractor exceeding this amount shall be considered incidental. The fee estimate for Package 2 pre-construction services is a lump sum of \$130,000.

During the pre-construction phase of both Package 1 and Package 2 of the CM/GC services, Slayden will provide services that include, but are not limited to: regular meetings with the JWC staff and CH2M, design and constructability reviews at 30%, 60% and 90% design, value engineering, cost estimating, external stakeholder and permitting support, and assistance in development of procurement strategies and sub-contractor selection.

Upon successful completion of Package 1 pre-construction services, the JWC and Slayden Constructors will begin negotiations for a Guaranteed Maximum Price (GMP) for the construction services for Package 1. If the JWC and Slayden are unable to successfully negotiate a GMP for Package 1, then the CM/GC contract will be canceled and the project will go out to bid in a traditional design-bid-build process.

Future Decision: Guaranteed Maximum Price for Package 1 Construction Services (anticipated January 2017)

Once the project has progressed through the pre-construction phase for each package, the JWC will negotiate with the CM/GC firm for a guaranteed maximum price (GMP) contract for that package of construction work. Package 1 will include maintenance and minor modifications to existing facilities, as well as procurement of long lead items such as plate settlers and large pumps. Package 2 will include the major improvements associated with expanding the WTP to 85 MGD. JWC will have the ability to cancel the contract at any time if a GMP cannot be negotiated or if the CM/GC work is unsatisfactory. JWC staff anticipates negotiating a GMP for Package 1 in the fall of 2016 and presenting a recommendation to the JWC at the January 13, 2017 meeting.



**ATTACHMENT A:
CONSTRUCTION MANAGER/GENERAL CONTRACTOR ("CM/GC") CONTRACT
between**

**JOINT WATER COMMISSION, A PARTNERSHIP ORGANIZATION WITHIN THE STATE OF OREGON
and
Slayden Constructors, Inc.**

For Water Treatment Plant Expansion to 85MGD

This Construction Manager / General Contractor ("CM/GC") Contract ("Contract") is made by and between the Joint Water Commission, a partnership agency within the State of Oregon ("JWC" or "Agency") and **Slayden Constructors, Inc.** ("Contractor" or "CM/GC") to provide construction services for the Water Treatment Plant Expansion to 85MGD ("Project"), briefly described below:

The Project is: to provide the JWC with increased life-safety and maintenance improvements as Package 1 work elements. A second, Package 2 work effort will increase the capacity of the water supply to 85 MGD.

The Engineer on this Project is: CH2M

The parties agree as follows:

CONTRACTOR DATA

Contractor must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Contract. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant. Contractor shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for Work under this Contract.

Business Name: Slayden Constructors, Inc.

Contractor Contact Person:

Address:

City, State, ZIP:

Business Telephone:

Facsimile:

Email:

Federal Tax Identification Number ("TIN") or Social Security Number ("SSN"):

Oregon CCB License Number:

Contractor certifies under penalty of perjury that Contractor is a:

Sole Proprietor

Corporation

- Limited Liability Company
- Partnership
- Other [describe: _____]

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ATTACHED EXHIBITS

- Exhibit A - General Conditions to the Contract
- Exhibit B – Request for Proposals (RFP) CM/GC Services
- Exhibit C – Contractors Response to RFP for CM/GC Services (redlined to include any negotiated changes)
- Exhibit D – Form of GMP Amendment
- Exhibit E – Progress Payment Waiver & Release

The Joint Water Commission (JWC) and CM/GC agree as set forth below:

1. DEFINITIONS

Except as expressly defined or modified below or elsewhere in this agreement ("Agreement"), all capitalized terms shall have the meanings set forth in the General Conditions .attached as Exhibit A hereto (the "General Conditions"). The terms below are expressly defined as follows:

- a. **Affiliate.** Affiliate shall mean any subsidiary of CM/GC (defined below), and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).
- b. **Allowances.** Allowances shall mean funding reserved to address non-quantifiable scopes of work shown or inferred in the GMP Supporting Documents, together with such further allowances as may be developed by the parties as the Project progresses.
- c. **Amendment.** Amendment shall mean a written modification of the Contract executed by both parties.
- d. **Business Days.** Business Days shall mean every day except Saturday, Sunday, and the nine legal holidays recognized by the JWC: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day.
- e. **CM/GC Construction manager / general contractor,** – means a person that provides construction manager/general contractor services to a contracting agency under a public improvement contract as specified in ORS 279C.332 (2). Also referred to as "Contractor".
- f. **Construction manager/general contractor services.** Has the meaning set forth in ORS 279C.332 (3).
- g. **Change Order.** Change Order shall mean a written modification of the Contract under Section D.1 of the General Conditions (including without limitation any agreed change to GMP), identified as a Change Order and executed by the JWC and CM/GC.
- h. **Construction Documents.** Construction Documents are those documents that are used specifically for the construction of the Work and are a part of the Contract Documents.
- i. **Construction Phase.** The Construction Phase shall mean the period commencing on the JWC's execution of a GMP Amendment or Early Work Amendment, together with the issuance by the JWC of a Notice to Proceed with any on-site construction.
- j. **Construction Services.** Construction Services shall mean all of the Work other than the Preconstruction services.
- k. **Contract Documents.** Contract Documents shall have the meaning given in Section A.1 of the General Conditions, as supplemented by paragraph 2.a. below.
- l. **Early Work.** Early Work shall mean Construction Services authorized by Pre-GMP Amendment that the parties agree should be performed in advance of establishment of the entire GMP for the Work. Permissible Early Work shall be limited to: early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance Work

related to critical components of the Project for which performance prior to establishment of the GMP will materially and positively affect the development of the completion of the Project. The JWC will only compensate the CM/GC for Early Work if it is authorized in an Early Work Amendment.

- m. Early Work Amendment.** Early Work Amendment shall mean an Amendment to the Contract executed by and between the parties to authorize Early Work prior to GMP.
- n. General Conditions Work.** General Conditions Work (“GC Work”) shall mean:

 - 1) that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work in Exhibit C, and
 - 2) any other specific categories of Work approved in writing by the JWC as forming a part of the GC Work. GC Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted Work due to: exclusions by the Subcontractor not resolved through the process described in paragraph 11.c, undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming Work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for “pick-up” or GC Work under industry standards; provided, however, that:

 - i. the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of JWC,
 - ii. such Work is identified as GC Work in monthly billings and
 - iii. CM/GC receives prior approval of the JWC as to the scope of such GC Work.
- o. Guaranteed Maximum Price (GMP).** GMP shall mean the Guaranteed Maximum Price of the Contract, as stated in dollars within the GMP Amendment(s), as determined in accordance with Article 6, and as it may be adjusted from time to time pursuant to the provisions of the Contract.
- p. GMP Amendment.** GMP Amendment shall mean an Amendment to the Contract, issued substantially in the form of Exhibit D executed by and between the parties, to establish the GMP and identify the GMP Supporting Documents for Construction Services. In this Contract, there will be two distinct GMP Amendments as described in the RFP: one for Package 1 Work and one for Package 2 Work.
- q. GMP Supporting Documents.** GMP Supporting Documents shall mean the documents referenced in a GMP Amendment as the basis for establishing a GMP. The GMP Supporting Documents shall expressly identify the Plans and Specifications, schedules, phasing plans, assumptions, qualifications, exclusions, conditions, allowances, unit prices, alternates and other pertinent information and documentation that form the basis for the proposed GMP.
- r. Preconstruction Phase.** The Preconstruction Phase shall mean the period commencing on the effective date of this CM/GC Contract and generally ending upon commencement of the Construction Phase; provided that if the JWC and CM/GC agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- s. Preconstruction services.** Preconstruction services shall mean services described in paragraph 3.a. and as described in Exhibit B – RFP for CM/GC Services, Scope of Preconstruction Services, but excluding any Early Work. Early Work shall be considered part of Construction Services.

t. **Scope Change.** Scope Change shall mean only:

- 1) Materially changed site conditions not reasonably inferable from information available to CM/GC at the time of execution of the GMP Amendment either through review of project documentation or examination of existing site conditions/reports, and
- 2) Material Work modifications (including additions, substitutions, and deletions), application of Allowances, and selection of alternates not originally included in the GMP, all as approved by the JWC under the Contract beyond that identified or inferable from the GMP Supporting Documents (but in the case of Allowance items, the GMP will increase only if the cost to JWC of the Allowance items exceeds the total amount of the Allowances).

2. CONTRACT DOCUMENTS

- a. **Contract Documents.** JWC and the CM/GC agree to the terms of the Contract that are set forth in the Contract Documents. For purposes of this Project, the Contract Document referenced as "CM/GC Contract" in the General Conditions shall mean this Contract between the JWC and CM/GC (hereafter the "Contract"). The Contract shall include all exhibits attached hereto, which by this reference are incorporated herein as well as any properly executed Amendments and Change Orders to this Contract. This Contract shall supersede any and all arrangements or agreements between the parties, whether written or otherwise.
- b. **Effective Date.** The Contract shall become effective on the last date on which all parties have signed the Contract and JWC has issued a written directive for the CM/GC to proceed with Preconstruction services.
- c. **The Contract; Order of Precedence.** Except as expressly otherwise provided herein, the order of precedence of the Contract Documents is established in Section A.3 of the General Conditions, if there are inconsistent or conflicting terms among the Contract Documents.

3. WORK OF THE CONTRACT

- a. **Preconstruction services (CM/GC Fee).** The CM/GC agrees to provide the services stated in Exhibit B-RFP for CM/GC Services, Scope of Preconstruction Services, on an ongoing basis in support of, and in conformance with, the time frames described herein as well as at the direction of the JWC and in cooperation with the Engineer and other designated Project consultants (the "Construction Principals").
- b. **Construction Services.**
 - 1) Upon execution of an Early Work Amendment or GMP Amendment, the CM/GC shall commence with Construction Services as provided in the Contract, including without limitation providing and paying for all materials, tools, equipment, labor, jurisdictional approval as required for the Work, professional and non-professional services, and performing all other acts and supplying all other things necessary to fully and properly perform and complete the Work, as required by the Contract, to furnish to JWC a complete, fully functional Project, capable of being legally occupied and fully used for its intended purposes upon completion of the Contract (or, as to an Early Work Amendment, to furnish such Work as is described in the Early Work Amendment).
 - 2) Notwithstanding any other references to Construction Services in this Agreement, the Contract shall include only Preconstruction services unless:

- i. the parties execute a GMP Amendment or
 - ii. the parties execute an Early Work Amendment, defined below.
- 3) The parties may execute one or more Early Work Amendments identifying specific Construction Services that must be performed in advance of establishment of the GMP, without exceeding a time & expense budget with a not-to-exceed limit or a fixed price ("Early Work Price") to be stated in such Amendment, subject to all necessary JWC approvals as required.
- i. If the Early Work Price is a time & expense budget, then CM/GC shall be obligated to perform the Early Work only to the extent that the Cost of Work therefore, together with the CM/GC Fee, does not exceed the Early Work Price; however
 - ii. if CM/GC performs Early Work under a fixed price, and incurs cost in excess of that fixed price, the CM/GC shall complete the Early Work and pay such excess cost without reimbursement.
 - iii. If one or more Early Work Amendments are executed, the CM/GC shall diligently continue to work toward development of a GMP Amendment acceptable to JWC, which shall incorporate the Early Work Amendments.
- 4) If JWC thereafter terminates the Contract prior to execution of a GMP Amendment, the provisions of Section J.5 of the General Conditions shall apply.
- 5) Prior to commencement of the Construction Phase, and in any event not later than mutual execution of the GMP Amendment, CM/GC shall provide to JWC a full performance bond and a payment security bond as required by Section G of the General Conditions in the amount of the GMP. If an Early Work Amendment is executed, CM/GC shall provide such bond in the amount of the Early Work Price under the Early Work Amendment. CM/GC shall provide to JWC additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or GMP Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the total Early Work Price or the GMP, as the case may be. In the event of a Scope Change that increases the GMP, CM/GC shall provide to JWC an additional or supplemental bond in the amount of such increase prior to performance of the additional Work.

4. RELATIONSHIP AND ROLES OF THE PARTIES

- a. **Independent Contractor.** The CM/GC is an independent contractor and not an officer, employee, or agent of JWC as those terms are used in ORS 30.265.
- b. **Performance of Work.** The CM/GC covenants with JWC to:
 - 1) cooperate with the JWC's Authorized Representative(s), Construction Principals, agencies having jurisdiction,
 - 2) utilize the CM/GC's professional skill, efforts and judgment in furthering the interests of JWC;
 - 3) to furnish efficient business administration and supervision;
 - 4) to furnish at all times an adequate supply of workers and materials; and
 - 5) to perform the Work in conformance with the terms and conditions of the Contract Documents and

in a safe, expeditious and economical manner consistent with the interests of JWC.

- c. **Design Consultants.** JWC has a separate contract with the Engineer related to the Project. Both the CM/GC and the Engineer shall be given direction by JWC through JWC's Authorized Representative(s). The CM/GC agrees to support JWC's efforts to create a collaborative and cooperative relationship among the CM/GC, Engineer, other Project consultants, and JWC's Authorized Representative(s).
- d. **Forms and Procedures.** The JWC has developed or may develop procedures and forms for the administration and tracking of the Contract. The CM/GC agrees to abide by those procedures and use those forms.
- e. **CM/GC's Project Staff.** The CM/GC's Project staff shall consist of the following personnel:
 - 1) Project Manager: _____ (name, email, phone) shall be the CM/GC's Project Manager and will supervise and coordinate all Construction Phase and Preconstruction services of CM/GC and participate in all meetings throughout the Project term unless otherwise directed by JWC. CM/GC represents that the Project Manager, or designee approved by JWC, has authority to execute Change Orders and Contract Amendments on behalf of the CM/GC.
 - 2) Project Engineer and/or Assistant Project Manager: _____ (name, email, phone) shall be the CM/GC's Project Engineer and _____ (name, email, phone) shall be CM/GC's Assistant Project Manager.
 - 3) Job Superintendent: If Construction Services are requested and accepted by JWC, _____ (name, email, phone) shall be the CM/GC's on-site job superintendent throughout the Project term. In addition to the Construction Services, the Job Superintendent shall be an active part of the Preconstruction Services Project team.
- f. **Key Persons.** The CM/GC's personnel identified in paragraph 4.e., and the key staff identified by name in CM/GC's Proposal to the RFP and accepted by JWC, shall be considered Key Persons and shall not be replaced during the Project without the prior written permission of JWC, which shall not be unreasonably withheld. If the CM/GC intends to substitute personnel, a request must be given to JWC at least thirty (30) Days (or such shorter period as permitted by JWC) prior to the intended time of substitution. When replacements have been approved by JWC, the CM/GC shall provide a transition period of at least ten (10) Business Days during which the original and replacement personnel shall be working on the Project concurrently; provided, however, that JWC shall be charged and pay for only the original or the replacement personnel, whichever is less expensive but not both, for the transition period. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the prior written permission of JWC.
- g. In the event that replacement of Key Persons is required during the course of the Project, the resume for subsequent staff members proposed shall be provided to the JWC for review and approval prior to their assignment to the Project. CM/GC shall not assign any person the JWC does not specifically approve of, such approval which shall not be unreasonably withheld by the JWC.
- h. Replacement staff shall be of equal or higher caliber in terms of experience and skills sets than those they are replacing.
- i. In the event that Key Persons are replaced during the Project, the JWC shall not incur additional cost for labor rates of replacement staff compared to the originally proposed staff members. Any labor expenses in excess of those proposed for the original Key Persons shall be the financial responsibility of the CM/GC.

5. DATE OF COMMENCEMENT; SUBSTANTIAL AND FINAL COMPLETION

- a. **Notice to Proceed.** If Construction Services are added to the Contract as set forth in paragraph 3.b., then a Notice to Proceed will be issued by JWC to begin the designated or full Construction Services (“Notice to Proceed”). A separate Notice to Proceed shall be issued for any and every Early Work Amendment and each of the two GMP Amendments.
- b. **Completion of Project.** The CM/GC shall achieve Substantial Completion of the entire Work as agreed for each construction package and each GMP amendment and shall achieve Final Completion not later than thirty (30) calendar days after Substantial Completion. JWC and the CM/GC may agree to phased occupancy, in which case JWC shall have the right to take possession and occupancy of the Project in phases, and the CM/GC agrees that such partial occupancy shall not be grounds for adjustment of the GMP or the Substantial or Final Completion Dates.
- c. **Continuous finished water delivery.** The JWC water treatment plant is the sole source of water supply for one of the JWC member partners. It is critical that the two construction packages be designed and sequenced so that the water treatment plant maintains continuous delivery of finished water to JWC partners. Short-term planned shut-downs (18 hours maximum) will be allowed with at least one week notice to the JWC. Continuous plant operations shall be a priority during design and constructability reviews of the plant expansion.
- d. **Time is of the Essence.** All time limits stated in the Contract Documents are of the essence.
- e. **Time Extensions.** Notwithstanding provisions for Contract time extensions in Section D.2 of the General Conditions, JWC and CM/GC agree that timely completion of the Work is essential to the success of the Project, and that approval for time extension shall be granted only as a last resort.
- f. **Failure to Achieve Substantial Completion by Final Completion Date.** In the event CM/GC fails to obtain Substantial Completion by the date set for Final Completion in 5.b, subject to any time extensions granted by the JWC during the Project, JWC reserves the right to terminate this Contract for Cause and pursue any course of action deemed in the best interest of the JWC to complete the Project. Any and all costs incurred by the JWC, in addition to any actual damages accrued, under this clause shall be considered the financial responsibility of the CM/GC.
- g. **Delay in Final Completion.** JWC shall make payment of the balance due for any portion of the Work fully completed and accepted if Final Completion is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion. In the event that final completion is not accomplished within thirty (30) calendar days after the date of Substantial Completion due to any fault of Contractor, JWC may withhold from the final payment 150 percent of the reasonable cost to complete the unfinished Work and to attain Final Completion. In the event Contractor fails to complete the Work necessary to attain Final Completion after forty five (45) days from Substantial Completion, JWC may, without waiving other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld.

6. FEES, CONTRACT SUM AND GMP

- a. **Fees; Contract Sum; GMP.** JWC shall pay CM/GC the Preconstruction Fee described in paragraph 6.d. In addition, for each Early Work Amendment executed by CM/GC and JWC, JWC shall pay CM/GC, as payment for the Early Work, an amount equal to the value agreed including, the cost of any bonds and insurance applicable to the Early Work, and the actual cost of all Early Work completed and accepted by JWC, but not exceeding the Early Work Price.

- b. The GMP shall be determined in accordance with the formula set forth below and as described in this paragraph 6.

CM/GC Fee (Is a fixed dollar amount, which is subject to adjustment in accordance with paragraph 6.f.)
+ Cost of the Work (Becomes a total amount based on established pay items)
+ Bonds and Insurance (Estimated costs)
+ Risk/Contingency Items (An allowance not included in Cost of the Work)
= GMP

- c. The "Cost of the Work" is specifically defined in Article 8. Costs in excess of the GMP shall be paid by the CM/GC without reimbursement by JWC. Changes to the GMP shall only be authorized by Amendment or Change Order that includes any necessary JWC approvals
- d. **Preconstruction Fee.** The Preconstruction Fee shall be payable to Contractor as a lump sum of \$55,000 for Package 1 and \$130,000 for Package 2 which shall cover coordination with the JWC and engineer, constructability review, value engineering, cost estimating, development of GMP, and all other preconstruction services as described in Article 3.a. If Contractor's costs for provision of Preconstruction Phase Services exceed the maximum Preconstruction Fee provided, Contractor shall absorb such additional costs without reimbursement from JWC. JWC shall pay the Preconstruction Fee on a percent-complete basis with each application for payment during the Preconstruction Phase. If the total actual Preconstruction Fee is less than the maximum Preconstruction Fee, the JWC shall retain the unused fee.
- e. **Preconstruction services provided after execution of the GMP Amendment:** If JWC and Contractor execute a GMP Amendment for either Package 1 or Package 2, compensation for any ongoing preconstruction services that are specific to that package and that occur after execution of the GMP will be addressed in the GMP Amendment for that package. Package 1 and Package 2 preconstruction and construction services will remain independent of each other. It is anticipated that Package 2 preconstruction services will continue after the execution of the GMP Amendment for Package 1, but additional compensation for Package 2 preconstruction services will not be negotiated into the Package 1 GMP Amendment.
- f. **Establishment of CM/GC Fee; Converting the CM/GC Fee Percentage into a Fixed Amount; Adjustments to CM/GC Fee.**
 - 1) The CM/GC Fee shall be a fixed fee, set forth in Exhibit C and the Cost of the Work subject to adjustment by change order that is based upon the Cost of the Work in any Early Work Amendment(s) and the GMP Amendment. In calculating the GMP, the Cost of the Work shall exclude the Preconstruction Costs, the CM/GC Fee itself and any other cost or charge which this CM/GC Contract states is not to be included in calculating the CM/GC Fee.
 - i. The CM/GC Fee Components: The CM/GC Fee is inclusive of 1) profit; 2) general and administrative (G&A) costs; 3) home, branch and regional office overhead; and 4) other indirect and non-reimbursable costs as identified in Exhibit A, the General Conditions. The CM/GC Fee shall exclude costs for construction risk to perform the Work. Costs for Construction General Conditions not included in the CM/GC Fee shall be included in the Cost of the Work. Risk for construction that is allocated to the CM/GC shall be included in the agreed-upon Pay items that comprise the Cost of the Work.

No additional markup will be paid to the CM/GC for change order or force account work or for

subcontracted labor or materials.

- 2) **Good Faith Negotiations** - The Agency and CM/GC shall negotiate the fixed lump sum amounts, estimated quantities, fixed unit prices, estimated cost reimbursable amounts, and all other aspects of any Work Package in good faith and shall establish a set of assumptions upon which all Work and unit prices are based.
- 3) **Amendment Pricing.** Once all components of a Work Package are agreed upon by the Agency and CM/GC, all Pay Item total costs (the Pay Item estimated quantity multiplied by the unit price) shall be rolled into one total amount, which becomes the Cost of the Work for the Work Package. The CM/GC Fee then becomes a fixed amount for that Work Package, subject to adjustment by Change Order in accordance with Article 7. The estimated actual reimbursable costs for any applicable bonds and insurance shall not be subject to mark-up.
- 4) In addition, if the Contract is terminated for any reason prior to full completion of the Work (including, without limitation, termination during or following performance of Early Work), the CM/GC Fee shall be limited to the total CM/GC Fee multiplied by the percentage of Work completed and accepted at the time of termination. The CM/GC Fee shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions.

g. Determination of GMP.

- 1) For each Package 1 and Package 2, CM/GC shall deliver to JWC a proposed GMP and GMP Supporting Documents at a time designated by JWC during the Preconstruction Phase for that package. If any actual subcontract Offers are available at the time the GMP is being established, CM/GC shall use those subcontract Offers in establishing the GMP.
- 2) As the Plans and Specifications may not be developed to the stage of biddable design documents at the time the GMP proposal is prepared, the CM/GC shall provide in the GMP for further development of the Plans and Specifications by the Engineer that is consistent with the Contract Documents and reasonably inferable there from. Such further development does not include such things as changes in scope outside of the original intent of the design, fundamental system or process types, significant changes to types or quantities of building components that are inconsistent with the original design intent, quality of finishes or equipment, all of which, if required, shall be incorporated by Change Order or Amendment with a corresponding GMP adjustment.
- 3) The CM/GC shall include with its GMP proposal a written statement of its basis (the "GMP Supporting Documents"), which shall include:
 - i. A list of the Plans and Specifications, including all addenda thereto and the conditions of the Contract, which were used in preparation of the GMP proposal.
 - ii. A detailed list of allowances and contingencies, the allocated amount of the GMP as well as a statement of their basis, parameters and calculation methodology.
 - iii. A list of the clarifications, qualifications, exclusions, assumptions and any other material qualifiers used by the CM/GC in the preparation of the GMP proposal to supplement the information contained in the Plans and Specifications.
 - iv. The proposed GMP, including a statement of the estimated cost organized in a manner acceptable to the JWC, allowances, contingency, and other items and the associated fees that comprise the GMP.

- v. The parties may agree to identify and carry contingency to reflect potential escalation of material and commodity prices during the course of construction as well as estimated risk costs for changes and differing site conditions.
- 4) The CM/GC shall meet with the JWC and Engineer to review the GMP proposal and the written statement of its basis. If the JWC or Engineer discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CM/GC, who shall make appropriate adjustments to the GMP proposal, its basis or both.
- 5) Prior to the JWC's acceptance of the CM/GC's GMP proposal and issuance of a Notice to Proceed, the CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as specifically provided in an Early Work Amendment.
- 6) The JWC shall authorize and cause the Engineer to revise the Plans and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the GMP Amendment. Such revised Plans and Specifications shall be furnished to the CM/GC in accordance with schedules agreed to by the JWC, Engineer and CM/GC. Prior to commencement of work, the CM/GC shall promptly notify the Engineer and JWC if such revised Plans and Specifications are inconsistent with the agreed-upon assumptions and clarifications.
- 7) The GMP shall include in the Estimated Cost of the Work only those taxes and/or governmental fees which are enacted at the time the GMP is established.
- 8) The Estimated Cost of the Work shall include the Project contingency, which is a sum established by the CM/GC and JWC for the JWC and CM/GC's mutually agreed upon use to cover additional development of Plans and Specifications and unanticipated costs and unforeseen conditions which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order. For purposes of use of Project's contingency, unanticipated costs and unforeseen conditions include Work within the scope of the Project or any conditions that the parties reasonably should have anticipated might be encountered during the renovation of a site or of a building of similar nature, condition and age. The parties shall provide advance written notice to the other each time the parties propose to use the Project contingency, shall include in the notice the purposed purpose for such use, and shall seek the agreement and approval of the other prior to the contingency use, the approval of which shall not unreasonably be withheld by the other party.
 - i. The Project contingency shall not be utilized by any party to make changes to the Project that are inconsistent with Article 6. or should reasonably be incorporated into the Project via a Change Order.
- 9) The CM/GC shall work with the Engineer and JWC to identify and confirm components and systems not specifically shown but required for a complete, fully functional Project and sequencing to maintain continuous delivery of treated water. JWC will direct the Engineer to complete the final Construction Documents in accordance with the Project scope agreed upon by all parties at the time the GMP is established.
- 10) Notwithstanding the level of detail represented in the GMP Supporting Documents, the CM/GC shall represent and warrant, at the time that it submits the GMP that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility consistent with the design intent of the JWC and Engineer.
- 11) In developing the GMP, the CM/GC shall include and identify any allowances within the GMP as may

be necessary to pay for undefined costs and conditions that are required for a complete, fully functional facility.

- h. Failure to Furnish an Acceptable GMP.** If the CM/GC does not furnish a GMP acceptable to JWC or if JWC determines at any time in its sole discretion that the parties may fail to reach a timely agreement on a GMP acceptable to JWC, JWC may terminate the Contract without liability, and the CM/GC shall not receive additional compensation beyond the Preconstruction Fee earned as of the date of the termination under the Contract and sums due under any Early Work Amendment. Termination under this provision shall proceed under Section J.5 of the General Conditions as a termination for JWC's convenience. CM/GC further agrees that JWC shall not be liable for any damages whether actual, consequential or otherwise for termination of the Contract under this provision.
- i. Acceptance of GMP.** Upon acceptance of the GMP by JWC, the parties shall execute a GMP Amendment for the relevant package to which the GMP relates.
- j. JWC Savings.** If the sum of the CM/GC Fee, plus the actual and final Cost of the Work (the Contract Sum as defined in paragraph 6.a.) is less than the GMP, 100% of the savings shall accrue to the JWC.
- k. Allowance Work.**

 - 1) CM/GC shall not perform any Allowance Work without prior written authorization by the JWC approving the Specifications for the Allowance Work and the price thereof.
 - 2) JWC shall be entitled to reallocate any Allowance line items that have not been fully expended to other line item Allowances that have been fully expended, without any resulting increase in the GMP.
 - 3) If the total cost of the Work associated with allowances exceeds the total Allowances amount within the GMP, CM/GC shall not perform any Allowance Work in excess of such amount until either (i) the parties agree that the additional Allowance Work will be performed within the then-current GMP or (ii) a GMP Amendment is executed to increase the GMP by the excess cost of the Allowance Work.
 - 4) If at the Final Completion of the Project, any portion of the Allowance funds remains unexpended, the GMP shall be reduced by a corresponding amount via a Change Order or Amendment.
 - 5) Allowances shall not be allowed to have costs charged against them for accounting purposes on the Project. CM/GC shall submit itemized estimates based on competitive bids or quotes for JWC review and approval for any and all Work covered by Allowances. Upon acceptance by the JWC, CM/GC will reallocate Allowance funding to general Cost of the Work budget line items.
- l. Reallocating Projected Cost Underruns after Bid (Offer) Buyout.** As soon as possible after the awarding of the Work to the primary Subcontractors, after review and approval by the JWC, CM/GC shall review projected costs and provide the JWC with a buy-out status report showing any projected cost over/under runs by contracting package, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by CM/GC to establish the GMP. CM/GC shall include with its report any underlying documentation requested by JWC used to develop or support such report. CM/GC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the Project's Contingency. The parties shall negotiate in good faith to execute a budget revision transferring an appropriate portion of any projected cost over/under runs to/from the Project Contingency. Any unused contingency shall be returned to the JWC.

 - 1) Over/under runs on bid packages and subcontracted scopes of work shall accrue or be funded from

a buy-out contingency that will be jointly controlled by the JWC and CM/GC. Funding in the buy-out contingency shall not be allocated other than to portions of the Work until all Subcontractors are under contract, at which time any surplus shall accrue to the contingency for the Project subject to the requirements and limitation of use described herein.

- m. **CM/GC's Sole Responsibility for Errors.** The CM/GC agrees that review or approval by Agency or its agents of the CM/GC's estimates, proposals, pricing, or any other information disclosed to Agency by CM/GC during the negotiation of Work Packages, including those under Early Work Amendment(s) or the GMP Amendment, shall not relieve CM/GC of its sole responsibility for any costs resulting from or arising out of defects or deficiencies in the CM/GC's estimates, proposals, pricing, or any other information disclosed to Agency.

7. CHANGES IN THE WORK

- a. **Price Adjustments.** Adjustments to the Estimated Cost of the Work required by changes in the Work shall be determined by any of the methods listed in Section D of the General Conditions, except that, unless the adjustment is based upon fixed pricing or unit pricing:
 - 1) The overhead and profit markup for the CM/GC shall be limited to the CM/GC Fee adjustment, if any, permitted under paragraph 6.f of this Agreement;
 - 2) The increase or decrease in the Estimated Cost of the Work, other than for subcontract Work, shall be calculated pursuant to Articles 8. and 9. of this Contract, instead of being based on CM/GC's Direct Costs as defined in the General Conditions; and
 - 3) In calculating adjustments to subcontracts, unless the parties agree otherwise, the change shall be limited to the Subcontractor's Direct Costs plus the supplemental markup provided in Section D of the General Conditions, and shall not be modified by Articles 8. and 9. of this Contract.
- b. **Adjustments to GMP.** Notwithstanding any contrary language in the Contract Documents, adjustments to the GMP after execution of the GMP Amendment may be made only in the event of a Scope Change, and then only in accordance with the following procedure:
 - 1) CM/GC shall review subsequent iterations of the Plans and Specifications as they are prepared to determine whether, in the opinion of CM/GC, they result in a Scope Change so that it can be determined if an adjustment to the GMP is warranted.
 - 2) Changes to the GMP shall be initiated by written notice by one party to the other. CM/GC shall deliver any such request to Engineer and JWC's Authorized Representative promptly after becoming aware of any Scope Change if, in CM/GC's opinion, it constitutes grounds for adjustment of the GMP. Any change request shall include a fully itemized proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
 - 3) CM/GC shall submit its request as soon as possible, and CM/GC shall not be entitled to claim a GMP increase unless CM/GC submitted a Change Order Request to JWC's Authorized Representative and to Engineer within the earlier of,
 - i. ten (10) business days after CM/GC has received the information constituting the basis for the claim, or
 - ii. as to Work not yet bid or proposed, prior to submission of solicitations for such Work and as to Work already solicited, prior to commencement of the portion of the Work for which CM/GC

intends to claim a Scope Change; and

iii. in any event, prior to CM/GC's signing of a Change Order for the Scope Change.

- 4) JWC may, at any time, submit a reduction of the GMP, which shall include JWC's basis for such request, which may include, for example, reduction of the Project's Contingency after further development of the Plans and Specifications that form the basis for the original GMP Amendment, and/or unused Allowances.
 - 5) CM/GC shall work with JWC and Engineer to reconcile all differences in its request within three (3) business days from the date of submission of the request. "Reconciled" means that the CM/GC, JWC and Engineer have verified that their assumptions about the various categories are the same, and that they have identified the reason for differences in the request and the JWC and/or Engineer's position. CM/GC shall submit the reconciled request to JWC, which submission shall be a condition to any CM/GC claim for a GMP increase.
 - 6) If the reconciled request is not acceptable to JWC, CM/GC agrees to work with the JWC and the Engineer to provide a request that is acceptable to JWC.
 - 7) CM/GC agrees to make all records, calculations, drawings and similar items relating to the request available to JWC and to allow Engineer and JWC access and opportunity to view such documents at CM/GC's offices. Upon JWC's reasonable notice, CM/GC shall deliver two copies of such documents to JWC and Engineer at any regular meeting or at the Site.
 - 8) GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the CM/GC Fee applicable to such change in the Cost of the Work.
 - 9) Except as provided in this paragraph 7.b., adjustments to the GMP shall be reconciled in accordance with Section D of the General Conditions.
- c. Execution by JWC.** Engineer has no authority to execute Change Orders or Amendments on behalf of JWC, and only duly authorized personnel of JWC may do so. However, as provided in the definitions for "JWC's Authorized Representative" and "Architect/Engineer" in Section A.1 of the General Conditions, JWC may, by written notice to the CM/GC, delegate some or all responsibilities of the JWC's Authorized Representative to the Architect/Engineer.
- d. Continuation of Work.** CM/GC shall continue to prosecute the Work in a timely and diligent manner consistent with the regardless of the status, outcome or other issues associated with potential Change Orders or Amendments. In no way shall CM/GC impact or allow others, such as Subcontractors, to impact the Project Schedule due to pending, on-going or concluded change order negotiations. Failure to do so shall be considered a material breach of the Contract on the part of the CM/GC and subject to recourse by the JWC.

8. COST OF THE WORK (To Be Reimbursed)

- a. Cost of the Work.** (The term "Cost of the Work" shall mean the following costs.) The Cost of the Work shall include only those items necessarily and reasonably incurred by CM/GC in the proper performance of the Work and specifically identified in this Article 8., and only to the extent that they are directly related to the Project.

b. Labor Costs. (This project will require payment of Oregon State Prevailing Wages as determined at the date of the GMP delivery to the JWC.)

- 1) Wages of construction workers directly employed by the CM/GC to perform the construction of the Work at the site.
- 2) Wages and salaries of the CM/GC's supervisory and administrative personnel
 - i. stationed at the site, or
 - ii. engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with JWC, or otherwise engaged and off the site when specifically related to the Project, and
 - iii. under either clause (i) or (ii), only with JWC's prior written approval, and only for that portion of their time directly required for the Work.
- 3) Fringe benefit costs paid or incurred by the CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, 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 paragraphs 8.b.1) through 8.b.2).

c. Subcontract Costs.

- 1) CM/GC's actual payment to Subcontractors pursuant to CM/GC's contract with such Subcontractor for the Work on the Project. No amount paid by or payable to any such Subcontractor other than the fixed or cost reimbursement price of its subcontract shall be included in the Cost of the Work, unless otherwise approved in writing by JWC.

d. Costs of Materials and Equipment Incorporated in the Work or Stored On Site.

- 1) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed Work.
- 2) Costs of materials in excess of those actually installed, but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to JWC at the completion of the Work or, at JWC's option, shall be sold by the CM/GC. Any sale shall be commercially reasonable and CM/GC shall provide accounting for such a sale within fifteen (15) business days of the transaction. Net amounts realized, if any, from such sales shall be credited to JWC as a deduction from the GMP.

e. Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges.

- 1) Costs, including transportation, installation, maintenance, dismantling and removal, of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site and fully consumed in the performance of the Work.
- 2) Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the CM/GC at the site, whether rented from the CM/GC or others, and costs of transportation, installation, minor repairs and replacements,

dismantling and removal thereof. Rates and quantities of equipment rented:

- shall be according to industry standards,
- shall not exceed 100% of the rental rates published from time to time in the Rental Rate Blue Book for Construction Equipment, prepared by Machinery Information Division of Primedia Information Incorporated in effect at the time of rental
- shall not exceed acquisition costs, and
- for individual items exceeding \$500.00, will be subject to JWC's prior approval.

CM/GC shall deliver to JWC a list of published rates from time to time at JWC's request. For all items rented or leased, the CM/GC shall charge JWC only the rental charge incurred by CM/GC with no additional administrative or other mark-up. CM/GC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the JWC. Efforts shall include, but not be limited to, providing JWC with a rent/buy analysis so that JWC may elect for CM/GC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue.

- 3) Costs of removal of debris from the site.
- 4) Cost of communication devices, postage and parcel delivery charges, and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

f. Other Costs.

- 1) That portion of premiums for insurance directly attributable to the Contract for builders all/risk insurance, and payment, performance and public works bond premiums as required by Section G of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by JWC). CM/GC's charge to JWC for all bonds and insurance shall be limited to the CM/GC's verifiable costs for those items.
- 2) Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the CM/GC is liable.
- 3) Fees and assessments for the building permit and for other permits, licenses and inspections for which the CM/GC is required by the Contract Documents to pay.
- 4) CM/GC deposits lost for causes other than the CM/GC's fault or negligence.
- 5) Costs of drawings, Specifications and other documents required to complete the Work, except as provided by JWC or Engineer.
- 6) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by JWC.

g. Costs to Prevent Damage or Injury in Emergencies. The Cost of the Work shall also include costs which are incurred by the CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

h. Costs For General Conditions Work. CM/GC shall be paid on a lump-sum basis as payment for the GC Work, including all labor, materials, and direct and indirect costs thereof. The lump-sum amount for GC Work shall be established in each Early Work Amendment or the GMP Amendment, as applicable. To the extent any GC Work is otherwise described above in this Article 8., CM/GC's compensation for the same is included in the Cost for GC Work and shall not otherwise be charged as Cost of the Work.

The Cost for GC Work, less 5% retainage thereon, shall be paid monthly on a percent complete basis of the scheduled Construction Phase, including any period of Early Work, commencing with the first progress billing after commencement of the scheduled Construction Phase or Early Work Period. However, no adjustment in the amount for General Conditions Work will be made if the actual construction period or Early Work period is shorter or longer than the number of months scheduled for the Construction Phase or Early Work period, unless such period is extended because of a JWC-requested delay.

- i. Travel and subsistence expenses of the CM/GC shall be included in the costs for General Conditions.

9. COSTS EXCLUDED FROM COST OF WORK (Not To Be Reimbursed)

- a. **Costs Excluded from Cost of Work.** The following shall not be included in the Cost of the Work unless specifically approved in writing by the JWC prior to approval of the GMP:
 - 1) Salaries and other compensation of the CM/GC's personnel stationed in offices other than the site office except as allowed under paragraphs 8.b.2) and 8.b.3).
 - 2) Office expenses of the CM/GC other than the site office.
 - 3) Any overhead and general expenses, except as may be expressly included in paragraph 8.
 - 4) CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
 - 5) Rental cost of machinery and equipment, except as provided in paragraph 8.e.2).
 - 6) Any cost associated with the Project not specifically and expressly described in paragraph 8.
 - 7) Costs due to the fault or negligence of the CM/GC, Subcontractors, suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable.
 - 8) The cost of correction of any repair Work, nonconforming or defective Work, or warranty Work.
 - 9) Merit, safety, or other incentive payments, bonuses or awards, or any expenses in connection therewith, except as provided in Article 8.
 - 10) Fines and penalties.
 - 11) Except for Early Work, the cost of Preconstruction services.
 - 12) The Cost of GC Work in excess of the lump-sum amount established for GC Work.
 - 13) Any costs in excess of the GMP.
 - 14) Any equipment, vehicle, tool or other items the CM/GC retains ownership of beyond the Substantial Completion date of the Project.

10. DISCOUNTS, REBATES AND REFUNDS

- a. **Discounts, Rebates and Refunds.** Cash discounts obtained on payments made by the CM/GC shall accrue to JWC. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to JWC, and the CM/GC shall make provisions so that they can be secured.

- b. **Amounts Credited to JWC.** Amounts which accrue to JWC in accordance with the provisions of paragraph 10.a. shall be credited to JWC as a deduction from the Cost of the Work.

11. SUBCONTRACTS AND OTHER CONTRACTS

a. General Subcontracting Requirements.

- 1) Other than Work performed pursuant to paragraphs 11.e. or 11.f. of this Agreement, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates. If CM/GC elects to bid on any Work, CM/GC shall inform JWC of its intention to do so prior to the bid package release date for public bidding for that Work.

b. CM/GC's Obligations under Subcontracts.

- 1) No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.
- 2) The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the General Conditions, fully effective as applied to Subcontractors. CM/GC shall indemnify JWC for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Agreement in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their portions of the Work.
- 3) **Retainage from Subcontractors.** Except with the JWC's prior approval and as allowed under Oregon law, payments to Subcontractors shall be subject to retainage of no more than 5%. The JWC and the CM/GC shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

c. Subcontractor Selection.

- 1) All Subcontractors performing Work must be, as legally required or appropriate for the Work they are performing, registered or licensed by the following before such Subcontractors commence Work and for the duration of the subcontract:
 - i. The Construction Contractors' Board in accordance with ORS 701.035 to 701.138;
 - ii. The State Board of Examiners for Engineering and Land Surveying in accordance with ORS 672.002 to 672.325;
 - iii. The State Board of Architect Examiners in accordance with ORS 671.010 to 671.220;
 - iv. The State Landscape Architect's Board in accordance with ORS 671.310 to 671.459; or
 - v. The State Landscape Contractor's Board in accordance with ORS 671.510 to 671.710.
- 2) These registration and licensing requirements shall also apply to employees of the CM/GC and it shall require and ensure that they are in compliance.

- 3) The CM/GC shall pay and comply with, and require Subcontractors to pay and comply with State prevailing wage rates in effect at the time of execution of the first Early Work Amendment, or if no Early Work Amendment is executed, at the time the GMP Amendment is executed, as listed in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", and any amendments thereto. The higher of those rates shall be incorporated in the Contract and shall then apply throughout the remainder of the Project.
- 4) The CM/GC shall review all bids and shall work with bidders to clarify submitted bids, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- 5) Unless otherwise provided under this Article 11., the selection of all Subcontractors and suppliers shall be made by competitive bidding in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the procedures discussed herein, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.
- 6) CM/GC shall submit to JWC's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all JWC comments regarding any proposed Offer packages. As Offers are received, CM/GC shall submit to the JWC an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by JWC. The competitive process used to award subcontracts by the CM/GC may be monitored by the JWC's Authorized Representative; provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this Agreement. CM/GC shall cooperate in all respects with JWC's monitoring. The JWC's Authorized Representative shall be advised in advance of and be given the opportunity to be present at bid openings, and CM/GC shall provide him or her with a summary or abstract of all bids in form acceptable to the JWC's Authorized Representative, and copies of particular bids if requested, prior to CM/GC's selection of bids. Prior to opening bids, the CM/GC agrees to disclose in writing to JWC any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project Work, directly or indirectly, including whether such party is an Affiliate of CM/GC.
- 7) The following minimum requirements apply to the Subcontract solicitation process:

For solicitations where the resulting subcontract estimated to exceed \$100,000:

- i. Solicitations shall be advertised at least ten (10) business days prior to opening in the Daily Journal of Commerce. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- ii. Unless specific other prior arrangement has been made with the JWC representative, all bids will be written, and submitted to a specific location at a specific time. CM/GC shall time/date-stamp all bids as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- iii. If fewer than three (3) bids are submitted in response to any solicitation estimated to exceed \$100,000, (inclusive of any bid submitted by CM/GC), written approval by a JWC representative shall be required to accept a bid.
- iv. JWC may at its sole discretion, require CM/GC to re-solicit for bids based on the same or modified

documents.

- v. The CM/GC shall document any and all discussions, questions and answers, modifications and responses to from any bidder and ensure that the same are distributed to all bidders, and JWC shall be entitled to inspect such documentation on request.
- vi. CM/GC shall determine the lowest responsive and responsible bid for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such bidder, CM/GC may, with JWC's prior approval, execute a subcontract with the second-lowest Offeror pursuant to paragraph 11.c.9) below. CM/GC may alternatively utilize a solicitation method whereby both price and subcontractor qualifications are evaluated. In such case, the solicitation method and evaluation process must be documented in writing, must be competitive, fair and open, and must be prior approved by JWC. JWC reserves the right to approve such a method on a case by case basis.

For solicitations where the resulting subcontract estimated to be below \$100,000:

- i. Solicitations must be publically advertised in any or all of the following methods: electronically, in the Oregon Daily Journal of Commerce, or a local community newspaper.
- ii. Unless specific other prior arrangement has been made with the JWC representative, all bids will be written, and submitted to a specific location or email address at a specific time. Quotes may be sent and submitted electronically. CM/GC shall retain a record of the time and date all quotes are received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
- iii. A minimum of three (3) written quotes must be solicited. CM/GC may consider price and other qualifications in awarding such subcontracts.

Generally:

- i. CM/GC may develop and implement a prequalification process in accordance with Oregon Revised Statutes for competitive bidding for particular solicitations, followed by selection of successful bids among those bidders that CM/GC determines meet the prequalification standards, with JWC's prior written approval of such prequalification process.
 - ii. The CM/GC shall comply, and require Subcontractor compliance, with the State of Oregon Bureau of Labor & Industries prevailing wage rate requirements. The wage rates that apply to this Project are described in paragraph C.1. of Exhibit A - General Conditions.
- 8) Under special circumstances and only with prior written authorization by JWC, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, JWC may require CM/GC's agreement to establish and implement qualification and performance criteria for bidders, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor Work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit JWC. Such alternative procurements may, at the sole determination of the JWC, be subject to the JWC's procurement policies.
- 9) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in paragraph 11.c.5., the process must meet the following requirements:

- i. The CM/GC must prepare and submit a written justification to the JWC explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification.
 - ii. For a "sole source" selection of a subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
 - iii. If required by the JWC, the CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process.
 - iv. The CM/GC must fully respond to all JWC questions or comments pertaining to a proposed or completed non-competitive selection process or associated Work package.
 - v. The JWC must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
- 10) A competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;
- 11) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project:
- i. the CM/GC must disclose that fact in the selection process documents and announcements.
- 12) CM/GC shall notify JWC in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to JWC of all bidders received for the Subcontract at issue. JWC reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. JWC shall not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to JWC's disapproval shall be cause for an increase in the GMP. Notification shall be made with suitable time for review and comment/approval by the JWC before issuance of the Subcontract for execution.
- 13) The CM/GC shall notify the JWC in the event that it receives an objection or protest in response to subcontractor selection. The JWC must approve the CM/GC's proposed resolution to any such objections or protests, prior to the CM/GC implementing the resolution.
- 14) Briefings for Unsuccessful Subcontractors. Unsuccessful subcontractors will be allowed 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC and the JWC. The CM/GC shall hold such

meetings within 45 days of the subcontractor's written request.

- 15) CM/GC's subcontracting records shall not be considered public records; provided, however, that JWC and other agencies of the State shall retain the right to inspect, audit and monitor the subcontracting process in order to protect the JWC's interests.

d. CM/GC Field Work.

- 1) The CM/GC or its Affiliate(s) may provide GC Work required to complete the Project with its own forces, without the necessity of subcontracting such Work.
- 2) Except as provided in paragraph 11.d.1), any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of paragraph 11.e.

e. Subcontracting by CM/GC.

- 1) Except to the extent otherwise approved in advance in writing by JWC's Authorized Representative, the CM/GC or its Affiliates may submit a bid in accordance with paragraph 11.c. to do Work with its own forces, provided at least 80% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate. If CM/GC is selected to perform the Work, the overhead and markup paid to CM/GC shall be limited to its CM/GC Fee percentage and the markups applicable to Change Order Work or subcontracted Work set forth in the General Conditions shall not apply. The CM/GC shall clearly identify any Work for which it was the winning bidder in the supporting documentation and invoicing for payments so it can be easily determined that the Work was provided within CM/GC's bid price.
- 2) For those items for which the CM/GC or any of its subsidiaries intends to submit a bid, such intent must be publicly announced with the solicitation for bidders required by paragraph 11.c., and JWC notified in writing. All bids for this Work, including the CM/GC, shall be delivered to JWC and publicly opened by JWC at an announced time, date, and place. An appointed JWC representative will provide objective, independent review and opening of bids or proposals for the elements of Work on which CM/GC bids.
- 3) CM/GC or an Affiliate or subsidiary of the CM/GC may only perform elements of the construction Work without competition from subcontractors when:
 - i. The work is job-site GC Work, or
 - ii. The CM/GC proposed to self-perform certain elements of the Work in response to the JWC's CM/GC RFP and the JWC accepted these portions of the proposal in its contract negotiations with the CM/GC, or
 - iii. The CM/GC provides the JWC a detailed written proposal to self-perform the work, showing that such self-performance is cost effective, the JWC accepts the written proposal and the proposal is supported by at least one independent cost estimate prior to Work being included in the Contract.

- f. Change of Subcontractors.** Once a subcontract has been accepted by the JWC and executed by the CM/GC and Subcontractor, CM/GC shall not terminate or substitute the Subcontractor without prior written approval of the JWC. In the event a change to the subcontract assignment is made, CM/GC shall initiate a new bid package consistent with this Agreement to procure a new Subcontractor.

12. ACCOUNTING RECORDS

- a. **Accounting; Audit Access.** The CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to JWC. JWC and JWC's representatives shall be afforded reasonable and regular access to the CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the CM/GC shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.
- b. **Periodic and Final Audits.** JWC may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. JWC intends to conduct a final audit of reimbursable costs prior to the Contract closeout and final payment application approval. The CM/GC shall cooperate fully with JWC in the performance of such audits. Disputes over audit findings or conclusions shall be subject to the process set forth in paragraph 14.d.

13. PROGRESS PAYMENTS

- a. **Integration with General Conditions.** The requirements of this paragraph 13. and paragraph 14. are in addition to, and not in lieu of, the requirements of Section E of the General Conditions. In the event of conflict between the provisions of paragraph 13. and 14. and Section E, the provision more favorable to JWC shall control. Without limitation, the provisions of paragraph 13.c. and 13.d. shall control over the corresponding provisions of Section E.2.5 of the General Conditions.
- b. **Progress Payments.** Based upon applications for payment submitted pursuant to Section E of the General Conditions, JWC shall make progress payments on account of the Preconstruction Fee, Cost of the Work, and associated CM/GC Fee, less 5% retainage, to the CM/GC as provided below and elsewhere in the Contract Documents. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. All progress payment requests shall include the forms designated or approved by the JWC stating that all of the Contractor's obligations to date relating to the Work have been paid. Reference Exhibit E, Progress Payment Waiver and Release.
- c. **Percentage of Completion.** 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 (i) the percentage of that portion of the Work which has actually been completed; or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by the CM/GC on account of that portion of the Work for which the CM/GC has made or intends to make actual payment prior to the next application for payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.
- d. **Calculation of Payment.** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 - 1) Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work based on the monthly progress schedule update by the share of the GMP allocated to that portion of the Work in the Schedule of Values. Pending final determination of cost to the JWC of changes in the Work, amounts not in dispute shall be included. For the lump-sum General Conditions, the amount payable will be equal to the amount allocated to General Conditions multiplied by the overall percent complete for the Project;
 - 2) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored and otherwise in compliance with Section E.2.3 of the General Conditions;

- 3) Add the CM/GC's Fee. The portion of the CM/GC's Fee payable shall be an amount that bears the same ratio to CM/GC Fee as sum of the amounts in the two preceding Clauses bears to the estimated probable Cost of the Work described in paragraph 8..a., but in no event causing total CM/GC Fee payments to exceed the total CM/GC Fee;
- 4) Subtract the aggregate of previous payments made by and retained by the JWC;
- 5) Subtract the shortfall, if any, indicated by the documentation required to substantiate prior applications for payment, or resulting from errors subsequently discovered by the JWC in such documentation;
- 6) Subtract any amounts for which the JWC's Authorized Representative has withheld or denied payment as provided in the Contract Documents; and
- 7) Subtract 5% retainage on the entire progress payment.

14. FINAL PAYMENT

- a. **Final Payment Accounting.** CM/GC shall submit to JWC a final detailed accounting of the Cost of the Work together with CM/GC's final application for payment.
- b. **Calculation of Final Payment.** The amount of the final payment shall be calculated as follows:
 - 1) Take the sum of the CM/GC Fee, plus the actual Cost of the Work substantiated by the CM/GC's final accounting. Said sum shall not exceed the GMP.
 - 2) Subtract amounts, if any, for which the JWC's Authorized Representative withholds, in whole or in part, approval of payment.
 - 3) Subtract the aggregate of previous payments made by JWC to CM/GC. If the aggregate of previous payments made by JWC exceeds the amount due the CM/GC, the CM/GC shall reimburse the difference to JWC within 30 Days with interest at the rate applicable to JWC payments under the General Conditions.
- c. **Final Payment Review.** JWC or its accountants will review and report in writing on the CM/GC's final accounting within twenty (20) business days after delivery of the final accounting by the CM/GC. Based upon such Cost of the Work as JWC or JWC's accountants report to be substantiated by the CM/GC's final accounting, and provided the other conditions of the Contract have been met, the JWC's Authorized Representative will, within ten (10) business days after receipt of the written report of JWC's accountants, either issue to JWC an approval of CM/GC's final application for payment with a copy to the CM/GC or notify the CM/GC and JWC in writing of the JWC's Authorized Representative's reasons for withholding approval of any part of the application for payment, which disapproval shall include JWC's Authorized Representative's estimate of the amount that is due the CM/GC under the application for payment.
- d. **Payment Disputes.** If JWC's accountants report the Cost of the Work as substantiated by the CM/GC's final accounting to be less than claimed by the CM/GC or if JWC's Authorized Representative declines to approve any duly submitted payment request by CM/GC, the CM/GC shall be entitled to demand a review by the JWC's highest contracting authority of the disputed amount. Such demand shall be made by the CM/GC within twenty (20) business days after the CM/GC's receipt of a copy of the rejection of the application for payment; failure to demand additional review within this 20-Day period shall result in the substantiated amount reported by JWC's accountants becoming binding on the CM/GC. In addition, If JWC performs a subsequent audit of the Cost of the Work and determines any item therein to have been unsubstantiated or that CM/GC was otherwise overpaid, CM/GC shall have twenty (20) business days after delivery of request for reimbursement by JWC to demand additional review by JWC's highest contracting authority; failure to make such demand within this 20 Day period shall result in the requested reimbursement becoming unconditionally due and payable by CM/GC. If CM/GC timely submits a protest to the JWC's highest contracting authority, CM/GC's Claim shall be subject to the claims review process in Section D.3 of the General Conditions. Pending a final resolution, JWC shall pay the CM/GC the amount of the application for payment approved by the JWC's Authorized Representative.

15. **Effect of Payment.** Neither approval of an application for payment, a progress payment, release of retainage, final payment, or partial or entire use or occupancy of the Project by the JWC shall constitute acceptance of Work not conforming to the Contract Documents, a waiver of JWC's right to compel CM/GC to fix nonconforming Work or waiver of the right to assert overpayment.

16. TERMINATION OR SUSPENSION

- a. **JWC's Right to Terminate Prior to Execution of GMP Amendment.** Prior to execution by both parties of the GMP Amendment, the JWC may terminate the Contract at any time without cause. Upon such termination, the amount to be paid to the CM/GC shall not exceed the Preconstruction Fee payable to the date of termination, together with amounts payable for Early Work if an Early Work Amendment has been executed. If JWC terminates for convenience during the Preconstruction Phase, JWC shall be entitled to copies of, and shall have the right to use, all work products of CM/GC and its Subcontractors performed to the date of termination, and CM/GC shall deliver copies of the same to JWC on request.
- b. **JWC's Termination for Convenience after GMP Amendment.** After the GMP Amendment is executed by both parties, the Contract may be terminated by JWC without penalty for convenience pursuant to Section J.5 of the General Conditions in which case CM/GC shall be entitled to payment of the amount stated in paragraph 16.a., together with the actual Cost of the Work completed, plus the CM/GC's Fee prorated based on the actual Cost of the Work completed prior to the date of termination, but in any event not in excess of the GMP.
- c. **JWC's Termination for Cause.** In the event of termination of this Agreement by JWC for cause pursuant to Section J.4 of the General Conditions, the amount, if any, to be paid to the CM/GC after application of the General Conditions and JWC's rights at law shall not exceed the amount the CM/GC would be entitled to receive under paragraph 16.b. If a court or other dispute resolution body determines JWC's for-cause termination to be unlawful, the JWC's termination is to be deemed a termination for convenience under 16.b. to the greatest extent the law permits.
- d. **CM/GC Termination for Cause.** CM/GC acknowledges that disputes regarding payments and Change Orders may occur as part of the CM/GC process, and that JWC's declining to pay disputed amounts shall not be grounds for suspension of the Work or termination for cause by CM/GC. If CM/GC terminates the Contract for JWC's material breach, the amount to be paid to CM/GC shall not exceed the amount CM/GC would have been entitled to receive under paragraph 16. above through termination and demobilization from the Project, with the CM/GC Fee prorated based on the actual Cost of the Work through the date of termination.
- e. **Assignment of Subcontracts.** Each Subcontract and supply contract for any portion of the Work is hereby irrevocably assigned by the CM/GC to the JWC, provided that such assignment is effective only after termination of the Contract by the JWC, and only for those Subcontracts and supply contracts which the JWC accepts by notifying the Subcontractor/supplier and CM/GC in writing. For those Subcontracts and supply contracts accepted by JWC, if the Work has been suspended for more than twenty (20) business days, the Subcontractor's/supplier's compensation shall be equitably adjusted for increases in cost resulting from the suspension. CM/GC shall include a provision in each Subcontract and supply agreement whereby the Subcontractor/supplier acknowledges JWC's rights under this paragraph 17.e. With respect to any Subcontracts/supply contracts that are not accepted by JWC, the provisions of Section J.6.1 of the General Conditions shall apply.

17. REPRESENTATIONS, WARRANTIES AND CERTIFICATIONS

- a. **Representations and Warranties.** CM/GC represents and warrants to JWC as of the effective date of the Contract:
 - 1) it is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted;

- 2) it has full corporate power and corporate authority to enter into and perform the Contract and to consummate the transactions contemplated hereby; CM/GC has duly and validly executed and delivered this Agreement to JWC and that the Contract constitutes the legal, valid and binding obligation of CM/GC, enforceable against CM/GC in accordance with its terms, except as enforceability may be limited or affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);
- 3) CM/GC's execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under,
 - i. CM/GC's Articles of Incorporation or Bylaws;
 - ii. any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which CM/GC is a party or by which CM/GC may be bound; or
 - iii. any statute, order, writ, injunction, decree, rule or regulation applicable to CM/GC;
- 4) no material consent, approval, authorization, declaration or other order of, or registration or filing with, any court or regulatory authority or any third person is required for the valid execution, delivery and performance of the Contract by CM/GC or its consummation of the transactions contemplated hereby;
- 5) there is no action, proceeding, suit, investigation or inquiry pending that questions the validity of the Contract or that would prevent or hinder the consummation of the transactions contemplated hereby; and
- 6) the CM/GC's Project Manager identified in paragraph 4.e. is a duly appointed representative and has the authority to bind the CM/GC to any and all duties, obligations and liabilities under the Contract Documents and any Amendments thereto.

b. Tax Compliance Certification.

By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of CM/GC and that CM/GC is, to the best of the undersigned's knowledge, not delinquent in the filing or payment of any Oregon income taxes, Oregon personal property taxes, Oregon municipal taxes, or Oregon real property taxes and that it has otherwise complied with all Oregon tax laws and all tax laws of those Oregon municipalities to which Engineer is subject.. For purposes of this certification, "taxes" includes a state tax imposed by ORS 401.792 to 401.816 and ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706, and local taxes administered by the Department of Revenue under ORS 305.620.

18. MISCELLANEOUS

- a. **Headings.** The headings used in this Agreement are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.
- b. **Merger.** The Contract Documents constitute the entire Contract between the parties and supersedes any previous negotiations, agreements or other commitments between the Parties for this Project. No waiver, consent, modification or change of terms of the Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be

effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. CM/GC, by signature of its representative, hereby acknowledges that it has read the Contract, understands it and agrees to be bound by its terms and conditions.

- c. **Foreign Contractor.** The CM/GC shall be domiciled in or registered to do business in the State of Oregon. If the CM/GC is not domiciled in or registered to do business in the State of Oregon, CM/GC shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies, or other regulatory bodies, relative to the resultant Contract. CM/GC shall maintain its legal capacity to perform the services set forth under the Contract.
- d. **Recyclable Products.** The CM/GC shall use recyclable products to the maximum extent economically feasible in the performance of the Contract Work set forth in this document.

CM/GC has the power and authority to enter into and perform this Contract. The persons executing this Contract on behalf of CM/GC, have the actual authority to bind CM/GC to the terms of this Contract.

For the CM/GC

For the JWC

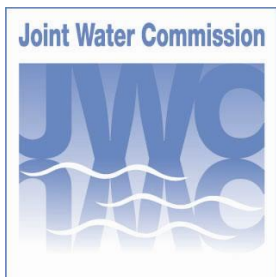
Slayden Constructors, Inc.

Signature

Kevin Hanway, JWC General Manager

Printed Name and Title

Date



STAFF REPORT

To: Joint Water Commission (JWC)

From: Tacy Steele, Public Information Officer

Date: July 8, 2016

Subject: Agenda Item 5A – Curtailment Plan Update

This update is provided as a Discussion item. Staff intends at the October Commission meeting to request that the Commission approve Resolution 129-J adopting the Curtailment Plan. The Commission also has the option of approving the Resolution at the July Commission meeting.

Background:

In 1998, the Joint Water Commission submitted its first Water Management and Conservation Plan (WMCP) to the State, in accordance with Oregon Administrative Rules, Chapter 690, Division 86. The 1998 plan included the Conservation Plan that had been written as a condition of approval for the Barney Reservoir Expansion Project, for the purpose of addressing the role of conservation in the resource management and planning process. The Plan had been adopted by the JWC in 1993. It had been written before the JWC service area had ever experienced a water shortage, so its curtailment section was limited to identifying causes and curtailment trigger levels. The 1998 plan proposed that an expanded curtailment section be completed for the 2010 WMCP plan.

The Curtailment section of the 2010 WMCP was expanded, and had some “lessons learned” experience to draw on after the 2001 drought. This update focused primarily on drought and peak season issues. Individual partner plans were also included, since customer curtailment would actually be delegated to, and implemented by, the individual member agencies.

Current Status:

As production demands from partners continue to rise, and after experiencing two situations in 2015 (one peak season, one non-peak season) that could have resulted in the need for one or more partners to curtail, the JWC recognized that the curtailment plan should again be expanded to address demand reductions when water treatment plant capacity is limited, without waiting until the scheduled 2020 WMCP update. Key components that have been added to the updated plan include:

- When WTP capacity is limited, the partners will respond first by collaborating to seek a resolution that does not trigger across-the-board curtailment measures.
- If the collaborative approach doesn’t resolve the situation, the available WTP capacity will be allocated to individual partners based on their WTP ownership shares.

- Provision to petition Governor for curtailment exemption in an all-state drought declaration, if staff can demonstrate that JWC water supplies are adequate.
- Updated procedures for coordination with outside agencies (e.g. Washington County Office of Consolidated Emergency Management) in large-scale emergencies.
- Acknowledgement that any curtailment will be based on stored water and capacity issues, and may not always apply to all partners simultaneously.

This revised and updated Curtailment Plan has been reviewed by the JWC Operations Committee, the JWC Event and Education Committee, and the JWC Management Committee, with comments received and incorporated into the draft. It will be included in the 2020 WMCP, along with updated individual member agency curtailment plans. Adoption of the JWC Curtailment Plan by the Commission will provide additional legal support to the curtailment plans adopted by the individual partners.