

Construction Audit Services Report

Prepared for

City of Virginia Beach

August 28, 2015



HONKAMP KRUEGER & CO, P.C.

CPAs & Business Consultants



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EXECUTIVE SUMMARY

Project Description

At the request of the City of Virginia Beach's (City) Internal Audit department, Honkamp Krueger & Co. P.C. (HK) completed a construction cost review audit of a sample of projects for the Public Works and Public Utility departments to verify the legitimacy of costs charged by the selected general contractors. Projects were selected upon two factors; volume and amount of change orders executed for the project and if the project was over the original contract value amount at the time of project selection. The following table illustrates the breakdown of the projects selected for review and key cost data as of the time of testing. Planning, fieldwork and jobsite visits were performed remotely and at the City of Virginia Beach offices.

Department	Contract Number	Contractor's / Builder's Name	Original Contract Amount (OCA)	CO Amount	Adjusted Amount	Percent Change
Public Works	PWCN-09-0349	T.A. Sheets Mechanical Contractors, Incorporated	\$16,439,980.00	\$1,124,489.33	\$17,564,469.33	7%
Public Works	PWCN-12-0005	VIRTEXCO Corporation	\$6,293,700.00	\$626,446.50	\$6,920,146.50	10%
Public Utility	PUCN-10-0020	A&W Contractors Inc.	\$1,999,967.85	\$336,584.45	\$2,336,552.30	17%
Public Utility	PUCN-12-0001	Spensieri Diversified, LLC	\$1,300,000.00	\$121,013.75	\$1,421,013.75	9%



Objective & Scope

The objective of the audit was to review documentation of costs incurred by City and paid for by City in the completion of the projects to determine if the requests for reimbursement were in alignment with the applicable contracts. The scope of the audit included costs invoiced by the general contractors and their associated projects. Additionally, HK gained an understanding of the City's internal control structure as it relates to the monitoring of construction costs by the respective departments.

Audit Approach

The following approach was taken in order to successfully achieve the objectives of the audit:

- Conducted interviews with Public Works and Public Utility Project Managers.
- Summarized posted transaction details for all construction projects to select a sample for detailed testing purposes.
- Reviewed pay applications and change orders by the selected general contractors and their major subcontractors.
- Reviewed general contractor insurance certificates for compliance with contract requirements.
- Reviewed general contractor contracts and agreed to payment applications.

Summary of Audit Results

Overall, for the six contracts selected for review (3 for Public Works, 3 for Public Utilities) the City has adequate internal controls governing the verification of the costs paid for by the City for the completion of the projects to the contract requirements executed for those projects. The City follows those procedures and controls enabling us to verify the payment of those costs to appropriate documentation. For change orders, we found that contract language/requirements should be more detailed and specific, allowing for a better understanding of the costs making up the change order. We have included some best practices suggestions in the attached addendums. We have also made suggestions in regards to circumstances whereby third party representatives are utilized and relied on to gain assurance that no conflict of interest exists between them and the City's best interests.

Best Practice Suggestions

The following recommendations are based on observations noted in conducting the audit and are being presented to the City for consideration to improve upon their current processes and related controls:

1. Review and agree upon contractor and subcontractor labor rates prior to start of project.
2. Update change order language to include requirements around the level of detail required and further define what is reimbursable.
3. Review relationship between selected third parties/owner's representatives responsible for project oversight and general contractors.



HK CLOSING

Thank you again for the opportunity to provide the City of Virginia Beach with our Construction Audit Services. We appreciate the assistance and cooperation of the City and contractor staff members.

Respectfully,

Matt Gardner – Construction Audit Services Practice Leader



REPORT **DETAIL**

Best Practice Suggestions

Observation	Recommendation
<p>1. Use of Third Party / Owner Representatives</p> <p>Based on discussions with both the Public Works and Public Utility departments, third party/owner representatives are occasionally hired to monitor the work performed and ultimately determine the reasonableness in the project costs incurred; including change orders. These individuals are often in the field and have frequent communication with contractors and are responsible to ensure the project is on schedule and budget.</p>	<p>Third party/owner representatives are sometimes used to monitor City projects to ensure costs are reasonable and schedules/deadlines are met. To ensure no conflict of interest exists between third parties/owner representatives and the City, a statement should be provided before contract signing by the third party/owner representative indicating no conflict of interest exists between themselves and the contractor to ensure the relationship between the two do not jeopardize the project in an unfavorable way to the city (i.e. excessive costs, inappropriate costs charged, schedule not met, etc.)</p>
<p>2. Enhancement to City of Virginia Beach Contract Language</p> <p>The City's standard contract language, for both unit price and lump sum contracts, should be enhanced to further control project costs and allow the City to recover costs that are not typically reimbursable during the project lifecycle. We were unable to validate the legitimacy of some change order costs as sufficient detail was not often provided, nor was it required by contract terms, by the general contractors within the documentation submitted justifying that change orders costs were indeed legitimate and reasonable</p>	<p>We have provided example contract language below for the City's use. The City should tailor the language to fit their specific needs and compliment their project management function. Please see the following attachments:</p> <ul style="list-style-type: none">▪ Attachment A – Change Order Pricing (Fixed Price and Unit Price Contracts)▪ Attachment B – Right of Audit▪ Attachment C – Business Ethics Expectations▪ Attachment D – Cost of Work



Attachment A – Change Order Pricing (Fixed Price and Unit Price Contracts)

Pricing of Construction Contract Change Orders Lump Sum (Fixed Price) and/or Unit Price Contracts

The contract language contained in this Attachment “A” will supplement and take precedence over all other change order pricing contract provisions in the contract documents provided by either the Owner, Construction Manager (Contractor), General Contractor (Contractor) and/or Architect/Engineer.

It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by Contractors and/or all other lower tier subcontractors (all referred to as “Contractor” in this Exhibit “A”). In the event of a conflict between the other contract documents used for the project, the change order pricing contract provisions in this Exhibit “A” shall govern.

Contractor agrees that it will incorporate the provisions of this Exhibit “A” into all agreements with lower tier Contractors who will also include this Attachment “A” into agreements with all lower tier subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus Fee change order proposals.

Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the contractor in accordance with the pricing provisions found in this Attachment “A”. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus fee change order proposal as defined in the following provisions.

- 1.1 Lump Sum Change Order Proposals:** The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.)
- 1.2 Labor:** Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the Contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, non-working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Exhibit “A”. *Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a change order. Costs attributed to warranty expenses and safety expense will be considered to be covered by the Markup Percentages as outlined in paragraphs 1.6 and 1.7 of this Attachment “A”.*



- 1.3 Labor Burden:** Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)
- 1.4 Material:** Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non-cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for Contractor to take advantage of any such "cash" discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.
- 1.5 Equipment:** Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of *The AED Green Book* divided by 173.3 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for contractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.
- 1.6 Maximum Markup Percentage Allowable on Self-Performed Work:** With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net direct cost of: (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work; and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the work.
- 1.7 Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors:** With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.



- 1.8 No Markup on Bonds and Liability Insurance Costs:** Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.
- 1.9 Direct and Indirect Costs Covered by Markup Percentages:** As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.
- 1.10 Deduct Change Orders and Net Deduct Changes:** The application of the markup percentages referenced in the preceding paragraphs 1.6 and 1.7 will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in paragraphs 1.6 and 1.7 so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.
- 1.11 Contingency:** In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
- 1.12 Change Order Proposal Time and Change Directives:** The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.
- 1.13 General Liability Insurance and Bonds:** In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in comprehensive general liability insurance costs and/or net bond premium costs associated with change orders to Contractor's base contract price. *Note: If a change order or a separate payment is made to reimburse the Contractor for the cost of a Performance and/or Payment Bond. The contractor will be required to remit any bond dividend or rebate that it will receive from the Surety after the successful completion of the project.*



- 2.1 Unit Price Change Order Proposals:** As an alternative to Lump Sum Change Order Proposals, the Owner or the Contractor acting with the approval of the Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.
- 2.2** The Contractor will submit, within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.
- 2.3** Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.
- 3.1 Cost Plus Change Order Proposals:** As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in subparagraphs 1.1 through 1.13 above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.
- 4.1 Accurate Change Order Pricing Information:** Contractor (subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific subcontractor or supplier for the approved change order work.
- 4.2 Right to Verify Change Order Pricing Information:** Contractor, subcontractor and sub-sub-contractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, subcontractor or sub-subcontractor's records (during the contract period and up to three (3) years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the



terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.

- 4.3 Requirements for Detailed Change Order Pricing Information:** Contractor, subcontractor agrees to provide and require all subcontractors and sub-subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Exhibit "A". This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.
- 5.1 Discounts:** If a Contractor enters into an agreement to pay a subcontractor before they receive payment from the Owner, and in return they negotiate an early payment discount, the amount of any such discount that the contractor is allowed to keep as a "cash discount earned" will be limited to one and ½ percent (1.5%) of the costs subject to discount. Any percentage of discount greater than 1 and ½ percent (1.5%) shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases, and change orders as applicable.
- 4.1 Accurate Change Order Pricing Information:** Contractor (subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific subcontractor or supplier for the approved change order work.
- 4.2 Right to Verify Change Order Pricing Information:** Contractor, subcontractor and sub-subcontractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, subcontractor or sub-subcontractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.
- 4.3 Requirements for Detailed Change Order Pricing Information:** Contractor, subcontractor agrees to provide and require all subcontractors and sub-subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this



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- 5.1 Discounts:** If a Contractor enters into an agreement to pay a subcontractor before they receive payment the Owner and in return they negotiate an early payment discount, the amount of any such discount that the contractor is allowed to keep as a "cash discount earned" will be limited to one and ½ percent (1.5%) of the costs subject to discount. Any percentage of discount greater than 1 and ½ percent (1.5%) shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases, and change orders as applicable.



Attachment B – Right of Audit

Right of Audit - Examination of Records

- .1 Records for all contracts, specifically including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts) shall upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any Owner's representative or any outside representative engaged by Owner for the purpose of examining such records. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three (3) years after final payment or longer if required by law. Owner's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.
- .2 Contractor's "records" as referred to in this Attachment "B" shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, emails, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:
 - (a) Compliance with contract requirements for deliverables
 - (b) Compliance with approved plans and specifications
 - (c) Compliance with Owner's business ethics expectations
 - (d) Compliance with contract provisions regarding the pricing of change orders
 - (e) Accuracy of contractor representations regarding the pricing of invoices
 - (f) Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.



- .3 Contractor shall require all payees receiving \$10,000 or more in connection with this contract (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.
- .4 Owner's authorized representative(s) shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- .5 If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to the Owner (of any nature) by the Contractor and/or the Contractor's subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.



Right of Audit – Records to Be Provided to Owner’s Representatives upon Request

In addition to the normal paperwork documentation the Contractor typically furnishes to the Owner in order to facilitate efficient use of Owner resources when reviewing and/or auditing the Contractor’s billings and related reimbursable cost records, the Contractor agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf



Attachment C – Business Ethics Expectations

Business Ethics Expectations

- .1 During the course of pursuing contracts with Owner, and while performing contract work in accordance with this agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner best interests.
- .2 Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner’s best interests. These obligations shall apply to the activities of contractor employees, agents, subcontractors, subcontractor employees, consultants of contractor, etc.

Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner’s representatives, employees or their relatives.

Contractor employees, agents or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the project.

- .3 Contractor agrees to notify a designated Owner representative within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.

The telephone number to report any concerns related to any possible violations of the Owner’s Business Ethics Expectations is ___ - ___ - ____.

- .4 Upon request by Owner, Contractor agrees to provide a certified Management Representation Letter executed by selected Contractor representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.
- .5 Contractor agrees to include this clause in all contracts with subcontractors and material suppliers receiving more than \$25,000 in funds in connection with the Owner’s project.
- .6 Contractor shall permit interviews of employees, reviews and audits of accounting or other records by Owner representative(s) to evaluate compliance with the spirit of these business ethics expectations. Such reviews and audits will encompass all dealings and activities of Contractor’s employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor.
- .7 Contractor agrees to implement a program requiring their employees sign acknowledgements that they have read and understand Owner’s Business Ethics Expectations and the related obligations outlined in this contract exhibit.



Attachment D – Cost of the Work

Article 1 Costs

1.1 Cost of the Work

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 1.

- 1.1.2 In the event the contractor operates and maintains a fabrication shop to assemble pre-fab materials for installation at the job-site, the contractor's direct cost (as defined in the remainder of this Exhibit "D") will be considered Costs to Be Reimbursed. However, the contractor's shop overhead such as plant and equipment, depreciation, taxes, utilities, etc. will be considered covered by the overall Fees quoted as markup on the various components of reimbursable Cost of Work.

1.2 Labor Costs

- 1.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

- 1.2.1.1 Cost to be reimbursed will be the actual wages paid to the individuals performing the work.

- 1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval. No Contractor personnel stationed at the Contractor's home or branch offices shall be charged to the Cost of the Work. Non-field office based Contractor management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to project matters is considered to be covered by the Contractor's Fee.

- 1.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Article 1.2.2 but who become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

Employee bonuses and/or costs associated with Employee Stock Ownership Plans (ESOP), Phantom Stock Plans (or any similar company ownership distribution plans), will not be considered reimbursable labor or labor burden costs and will be considered non-reimbursable costs considered to be covered by the Contractor's Fee.

- 1.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 1.2 1 through 1.2.3.



ARTICLE 1 Costs to be Reimbursed (Cont.)

- 1.2.4.1 When computing actual costs chargeable to the Cost of the Work for payroll taxes, the Contractor shall give proper consideration to the annual limitations of the wages subject to applicable payroll taxes. The Contractor may accomplish this through the use of an accounting system which computes actual costs for payroll taxes when incurred up to the wage limit cut-off and allocated same to all jobs by individual based on the time worked on each job by the individual. Alternatively the Contractor may use an estimated net effective payroll tax percentage to allocate payroll tax costs during the year and make appropriate adjustments at the end of the year or at the end of the project (whichever is more appropriate) to adjust the costs to actual net payroll tax cost. Using the latter approach, if 50% of the wages paid to an employee during the year were chargeable to the Cost of the Work, then only 50% of the actual annual costs of payroll taxes would be allocable to the Cost of the Work, etc.
- 1.2.4.2 Cost of the Work shall include the actual net cost to the Contractor for workers' compensation insurance attributable to the wages chargeable to the Cost of the Work per this agreement. The actual net cost of workers' compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, any applicable weekly maximums, etc. The Contractor may charge an estimated amount for workers' compensation insurance costs, but will make appropriate cost adjustments to actual costs within 45 days of receipt of actual cost adjustments from the insurance carrier.
- 1.2.4.3 Overtime wages paid to salaried personnel (if approved in advance in writing by the Owner) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the project will be allowed if the individual is not paid for the overtime worked.
- 1.2.4.4 Any overtime premium or shift differential expense to be incurred by Contractor for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Contractor is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Contractor or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the payroll expense and related labor burden costs will be considered as cost not to be reimbursed.
- 1.2.4.5 Reimbursable labor burden costs will be limited to payroll taxes, workers' compensation insurance, the employer's portion of union benefit costs for union employees working on the project, and the actual verifiable fringe benefit costs incurred by Contractor for non-union individuals working on the project subject to the following maximum percentages for the following reimbursable non-union fringe benefit costs. The following maximums (as a percentage of reimbursable actual wages by individual) shall apply for each of the following types of fringe benefit costs specifically attributable to the each of the non-union personnel working on the project:



Medical, dental, life and AD&D insurance	12.00%
Holiday, vacation and other paid time not worked	10.00%
Pension plan contributions to vested employees account, simplified employee pension plan contributions to employee accounts, or 401(k) matching plans (Note: ESOP related costs are covered by Contractor FEE)	PDF and Excel

Note: For non-union personnel, no other fringe benefit costs (other than the 3 specific categories listed immediately above shall be considered reimbursable Cost of the Work. Any labor burden costs that are in excess of the amounts considered reimbursable or are otherwise not considered reimbursable under the terms of this agreement are intended to be covered by Contractor FEE.

1.3 Subcontract Costs

1.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

1.3.2 For scope of work bid packages typically performed by subcontractors, Contractor may “self-perform” such work on a cost plus fee (Not-To-Exceed 7.5%) basis subject to an agreed upon guaranteed maximum price for the “self-performed work”. The Contractor may bid their proposed Guaranteed Maximum Price for the work to be “self-performed” against at least three other interested trade contractors. Any subcontract for “self-performed work” will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not to exceed the agreed upon subcontract guaranteed maximum price. All terms and provisions of any subcontract for “self-performed work” will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such subcontract for “self-performed work” shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. For purposes of defining “self-performed work” subject to this contract provision, any division of Contractor, or any separate Contractor or subcontractor that is partially owned or wholly owned by the Contractor or any of their employees or employee’s relatives will be considered a related party entity and will be subject to this provision regarding “self-performed work”. No self-performed work will be allowed to be performed on a lump sum basis.

1.3.3 Contractor (with respect to its suppliers, subcontractors and all lower tier subcontractors) shall provide Owner advance written notice and shall obtain Owner's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Contractor, Subcontractors or Suppliers whether as Costs of the Work or as reasonable termination costs in the event of termination.

1.3.4 NON-BID SUBCONTRACT WORK

For scope of work bid packages typically performed by subcontractors and normally awarded on the basis of adequate competitive bidding, whenever only one subcontractor is available to do the work or whenever only one subcontractor submits a responsive bid, Contractor may only award such subcontracts on a cost plus fee (Fee Not-To-Exceed 7.5%) basis subject to an agreed upon guaranteed maximum price for the “subcontract work”. Any such non-competitively bid subcontract awards will provide for payment in an amount equal to the Cost of the Work (as defined in this agreement) and will not to



exceed the agreed upon subcontract guaranteed maximum price (GMP). All terms and provisions of any such subcontract award for will be consistent with the terms and conditions of this agreement with the exception of the agreed upon Fee percentage. All savings under any such cost plus fee with GMP subcontracts shall be applied to reduce the Cost of the Work under this Agreement and the Guaranteed Maximum Price of this Agreement. Non-competitive subcontract work will not be allowed to be performed on a lump sum basis.

1.4 Costs of Materials and Equipment Incorporated in the Completed Construction

1.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

1.4.2 Costs of materials described in the preceding Subparagraph 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

1.4.3 Proceeds from the sale of recyclable materials, scrap, waste, etc. shall be credited to job cost.

1.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

1.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

1.5.2.1 The projected usage for each piece of equipment to be rented for use on the project and the estimated total rentals shall be considered by the Contractor before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the project, the Contractor shall transfer title and possession of all remaining job-owned equipment to the Owner, or Contractor may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Owner and Contractor.

1.5.2.2 Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates) and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the contractor.

1.5.2.3 The reimbursable equipment rental rates shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Contractor will be allowed to use a maximum equipment rental rate equal to 75% of the current competitive rental rates from local third party equipment rental companies.

1.5.2.4 The aggregate rentals chargeable for each piece of Contractor owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase



invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.

1.5.2.5 Fair market value for used material and equipment as referred to in this contract shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. *Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.*

1.5.2.6 Rental charges for equipment which is not owned by Contractor or any of its affiliates, subsidiaries, or other related parties and is rented from third parties for use in proper completion of the Work shall be considered reimbursable, will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to Owner as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.

1.5.2.7 All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Contractor, and not the Owner, and the cost of such losses shall not be reimbursable under this contract.

1.5.2.8 The Contractor shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be submitted to Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.

1.5.2.9 All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary; consequently such costs are not reimbursable and are intended to be covered by the rental rates.

1.5.3 Costs of removal of debris from the site.

1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

1.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

1.5.5.1 No travel expenses will be reimbursed to Contractor's representatives unless Project related travel required them to travel to a destination more than 50 miles from the project location. Any travel involving airfare will require advance written approval by an authorized Owner's representative.

1.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

1.5.7 Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents (\$.05) per square foot for prints and a maximum of five cents (\$.05) per 8 1/2 by 11 inch page for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.



1.6 Miscellaneous Costs

1.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

1.6.1.1 The Contractor's actual cost for insurance and bonds shall be considered to be included within the Maximum limit for General Conditions costs. All premiums for any insurance and bonds required for the project shall reflect the net actual costs to Contractor after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, bond dividends, bond rebates, etc.

1.6.1.2 The amount to be reimbursed to the contractor for all contractually required liability insurance will be actual costs not to exceed a total of .5% of the net reimbursable Cost of Work (not including liability insurance and not including fee. If the Contractor's cost of contractually required liability insurance is greater than the amount agreed to be reimbursed per this contract provision, the difference shall be considered to be covered by the Contractor's FEE.

1.6.1.3 In the event that the contractor elects to utilize worker's compensation insurance programs that involve either self-insurance and/or large deductibles, the maximum amount to be considered reimbursable costs under this contract will not exceed an amount equal to 40% of the standard state worker's compensation rates applicable times the straight time portion of contractor employee wages. Any contractor costs incurred in connection with the contractor's elected worker's compensation insurance program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Contractor's FEE.

1.6.1.4 In the event that the contractor elects to utilize a subcontractor default insurance program (sometimes referred to as SUBGUARD), the maximum amount to be considered reimbursable costs under this contract will be .75% of the total amount of subcontracts enrolled in such an insurance program. Enrollment in any such program will be limited to subcontracts in excess of \$100,000. Any contractor costs incurred in connection with the contractor's elected subcontractor default insurance program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Contractor's FEE. In the event the Contractor elects to bond selected subcontractors rather than enroll them in the subcontractor default insurance program, the net cost to purchase any such bonds will be reimbursed in lieu of the .75% *Note: Contractor will not be reimbursed for any deductibles stated in the Subguard policy. The deductible is considered covered by the .75% and/or the Contractor FEE.*

1.6.1.4.1 In the event that the Contractor elects to provide Subguard or a similar program of subcontractor default insurance, then the program and the coverage provided by the Contractor shall extend to any additional costs incurred for the Contractor to replace or supplement the forces of a subcontractor to provide the Work, and such circumstances shall include, but not be limited to, any partial or full termination of the contract of a subcontractor for convenience or otherwise, unless the Owner specifically directs the Contractor in writing to terminate the contract of a subcontractor for convenience.

1.6.1.5 In the event that the contractor elects to utilize a Contractor Controlled Insurance Program (CCIP) the maximum to be considered reimbursable costs under this contract will be 2% of the final agreed upon Guaranteed Maximum Price of this contract. This 2% cost factor will cover all insurance required to be carried by the prime contractor and all applicable subcontractors covered by this agreement (specifically 1% for worker's compensation insurance, and 1 % for general liability insurance, excess liability insurance, umbrella liability insurance). Any contractor costs incurred in connection with the contractor's elected CCIP program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be



covered by the Contractor's FEE. *Note: Contractor will not be reimbursed for any deductible stated in the CCIP policy. The deductible is considered covered by the CCIP % and/or the Contractor FEE.*

1.6.1.5.1 In the event that the contractor does not provide CCIP insurance for any subcontractors working on the project, a reduction in the amount to be paid to the contractor for CCIP under the previous provision will be made that will be equal to the applicable cost of the insurance charged by the subcontractor(s) providing their own insurance.

1.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

1.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

1.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of Subparagraph 1.7.3.

1.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price.

1.6.6 Data processing costs related to the Work.

1.6.6.1 However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the project. The aggregate charges for any such hardware shall not exceed the FMV of the hardware at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the FMV, that particular piece of hardware shall be turned over to the Owner whenever it is no longer needed for the project. If the Contractor elects to keep the particular piece of hardware, the job costs shall be credited with a mutually agreeable amount which shall represent the FMV of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Contractor's Fee.

1.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

1.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

1.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner. *Note: At the current time, it is not anticipated that any such costs will be necessary to staff the project. If, however, the Contractor determines that such expenses will be necessary to properly staff the job, the Owner's advance written approval will be required before any such costs are considered reimbursable. In the event that the Owner authorizes the reimbursement of relocation costs, the reimbursable relocation expenses will be limited to*



a maximum of \$50,000 per person. Any relocation cost incurred by Contractor in excess of the amount reimbursed by Owner will be considered to be covered by the Contractor's FEE.

1.7 Other Costs and Emergencies

1.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

1.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

1.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

Article 2 Cost of Work

2.1 The Cost of the Work shall not include:

2.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 1.2.2 and 1.2.3

2.1.2 Expenses of the Contractor's principal office and offices other than the site office.

2.1.3 Overhead and general expenses, except as may be expressly included in Article 1.

2.1.3.1 Costs of Contractor's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly the Contractor should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Contractor's home or branch offices, or other outside service locations.

2.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

2.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 1.5.2.

2.1.6 Except as provided in Subparagraph 1.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

2.1.7 Any cost not specifically and expressly described in Article 1.

2.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.



ARTICLE 3 DISCOUNTS, REBATES AND REFUNDS

3.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefore from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales or surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

3.1.1 Cost of the Work will be credited with all insurance policy discounts; performance and payment bond rebates, dividends or refunds; refunds or return premiums from any subcontractor default insurance; refunds or rebates from any contractor controlled insurance programs applicable to the project; merchandise rebates of any nature; refunds of any nature; insurance policy dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

3.1.2 "Cash" discounts which may accrue to the Contractor will be limited to a maximum of 1.5% of invoice cost. Any portion of "Cash" discounts greater than 1.5% shall automatically accrue to Owner if the contractor is eligible to take advantage of the discounts.

3.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 4 SUBCONTRACTS AND OTHER AGREEMENTS

4.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from which the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

4.1.1 Contractor shall invite bids from, and enter into contracts and material orders with, only subcontractors and suppliers who have first been approved by Owner. After receiving such bids, Contractor shall always analyze them and make recommendations for awards, accompanying its recommendation with all pertinent data required for decision upon the award, and certifying that, to the best of its knowledge, the bid of the recommended subcontractor or supplier is bona fide, fair and reasonable.

4.1.2 When Owner has approved the award of any such subcontract or purchase order, Contractor shall contract in its own name and behalf, and not in the name or behalf of Owner, with the specified subcontractor or supplier. Contractor's subcontract and purchase order forms shall be subject to approval of Owner and shall provide that subcontractor shall perform its portion of the Work and all applicable provisions of this Agreement and the Contract Documents.

4.1.3 Contractor shall add specific Owner directed contract clauses to the standard subcontract and purchase order forms to be used for the project. Contractor shall submit its subcontract and purchase order forms to Owner for approval prior to use in connection with the project, and shall promptly deliver to Owner a copy of all executed subcontracts and purchase orders entered into in connection with the project.

4.1.4 If the net effect of Owner's designation as the selected subcontractors and suppliers (taking into account both subcontractors and suppliers whose bids exceed those of bidders recommended by Contractor and those whose bids are less than bidders recommended by Contractor) is the selection of subcontractors



and suppliers whose bids, in the aggregate, exceed those of the bidders recommended by the Contractor, the Estimated Contractor's Cost and the Guaranteed Maximum Cost shall be increased by the lesser (i) the amount by which the bids of the designated subcontractors and suppliers exceed the bids of the bidders recommended by Contractor or (ii) the amount by which the bids of the designated subcontractors and suppliers exceed the amount utilized by the Contractor in calculating the Guaranteed Maximum Cost. The Contractor's Fee shall not be increased on account of Owner's designation of subcontractors or suppliers, regardless of the number of such designations or the resulting increase in the Guaranteed Maximum Cost, if any.

4.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without prior consent of the Owner.

ARTICLE 5 CONTINGENCY FUND

5.1 The Owner and Contractor agree that a not-to-exceed fund for "contingency" costs totaling \$_____ has been included in the contract guaranteed maximum price. Any unused contingency amounts and a pro-rata share of any applicable contractor fee shall be credited to the guaranteed maximum contract price before computing the savings. All charges to the "contingency" must be approved in advance by the Owner using contract administration procedures similar to those required for change order approvals.



City of Virginia Beach

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MUNICIPAL CENTER
OPERATIONS BUILDING 2
2405 COURTHOUSE DRIVE
VIRGINIA BEACH, VA 23456-9041

INTER-OFFICE MEMORANDUM

DATE: September 9, 2015

TO: Lyndon S. Remias, City Auditor

FROM: Thomas M. Leahy, Director of Public Utilities *TML*
Phillip A. Davenport, Director of Public Works *PAD*

SUBJECT: Comments Regarding the "Construction Audit Services Report" dated August 28, 2015 submitted by Honkamp Krueger & Company

Thank you for sharing the good news. We are pleased that the audit determined... "the City has adequate internal controls governing the verification of the costs paid for by the City for the completion of the projects to the contract requirements executed for those projects." Moreover, we appreciate the inclusion of Best Practice Suggestions provided by HKC. We are preparing to reconstitute our contracts team and have contacted Purchasing and the City Attorney's Office to revise our construction (and engineering) contracts to ensure compliance with Virginia law as we endeavor to include the HKC suggested practices whenever appropriate.

Again, we thank you for sharing the final report and for giving us this opportunity to provide comments. We would be glad to meet with you if you have any questions or need additional information regarding this matter.

RHN/ram

c: Patti Phillips, Finance
Chris Boynton, Esq. City Attorney's Office
Robert E. Clark, P.E., PU/Engineering
John E. Fowler, P.E., PW/Engineering
Richard H. Nettleton, P.E., PU/Engineering
John W. Lasley, PW/Contracts Division