



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 5, 2002

Ordinance 14295

Proposed No. 2002-0079.4

Sponsors Phillips and McKenna

1 AN ORDINANCE authorizing and directing the King
2 County executive to enter into an agreement for the
3 provision of project management services between the
4 University of Washington, Harborview Medical Center and
5 King County, relating to the Harborview Medical Center's
6 bond program, authorizing the use of University of
7 Washington policies and procedures, and requiring further
8 council approval for certain changes in project scope,
9 schedule or budget.

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STATEMENT OF FACTS:

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1. Harborview Medical Center is a comprehensive acute care facility,

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Level 1 trauma and regional burn center owned by King County.

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2. Pursuant to chapter 36.62 RCW, King County has established a board

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of trustees for the purpose of overseeing the operation and management of

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Harborview Medical Center.

18 3. Pursuant to an agreement between board of trustees and the University
19 of Washington dated December 19, 1995, the university operates and
20 manages Harborview Medical Center.

21 4. Harborview Medical Center provides teaching, research and clinical
22 care for a mission population, including but not limited to the indigent,
23 sick, injured or infirm in King County, Washington.

24 5. The board of trustees has proposed and King County has reviewed
25 and approved a long-range capital improvement program for the period of
26 2001-2010.

27 6. The voters in 2000 authorized King County to issue bonds to fund
28 seismic, health and public safety improvements at Harborview hospital
29 including demolition of unsound buildings, construction of new buildings
30 and renovation and upgrading of existing facilities.

31 7. The project includes a program to design and construct certain public
32 health and safety improvements for the Harborview Medical Center
33 campus, including but not limited to seismic upgrades, renovations and
34 construction of new buildings for patient care, research, teaching and
35 administration, as well as new facilities for the King County medical
36 examiner, funded by bonds and Harborview Medical Center funds.

37 8. The University of Washington has experience in constructing and
38 managing hospitals and medical facilities and utilizing alternative public
39 works delivery methods, including the general contractor/construction
40 management approach.

41 9. The Harborview Medical Center board of trustees and King County
42 have explored multiple project management options and determined that
43 contracting with the University of Washington to use its construction and
44 project management experience will efficiently use scarce public
45 resources.

46 10. Upon execution of the attached agreement the University of
47 Washington will provide project management services to the Harborview
48 Medical Center board of trustees and King County.

49 11. The University of Washington, Harborview Medical Center board of
50 trustees and King County have negotiated the terms of the agreement
51 under which the University will utilize its expertise to provide project
52 management services.

53 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

54 SECTION 1. The King County executive is authorized and directed to enter into
55 and execute the attached agreement with the University of Washington and Harborview
56 Medical Center for the purpose of providing project management services in support of
57 the design, construction and commissioning elements of the Harborview Medical Center
58 bond program.

59 SECTION 2. The county executive is authorized to direct the University of
60 Washington to act as agent on behalf of King County to assume responsibilities as project
61 manager for the implementation of the services indicated in section 1 of this ordinance in
62 accordance with terms and conditions stipulated in the attached agreement between

63 Harborview Medical Center board of trustees, University of Washington and King
64 County.

65 SECTION 3. Except to the extent otherwise specifically provided in the
66 Agreement for Project Management Services authorized by this ordinance, any contract
67 to implement the Agreement to design, construct and commission the Harborview
68 Medical Center Bond Program may be entered into by the University of Washington as
69 the agent for King County pursuant to University policies and procedures.

70 SECTION 4. The University of Washington capital projects office shall organize
71 a project team to include representatives from Harborview Medical Center administration
72 and King County facilities management division. Harborview Medical Center and King
73 County shall assign staff to coordinate design input for all phases of the project.

74 SECTION 5. The executive shall report to the council and request additional
75 appropriation and authority to sell bonds as the construction phase requires. The
76 projected schedule for anticipated bond sales and appropriation authority shall be
77 developed in the initial program management plan to be approved by the council.

78 SECTION 6. The Executive shall designate a person or persons to serve as the
79 County's representative on the Oversight Committee established in the Agreement.
80 Council authorization by motion is required before such representative shall vote to
81 approve any change to project scope, schedule, or budget as follows:

82 1. County or Board requested scope change orders in excess of \$1,000,000 in single
83 change order request;

84 2. Cumulative County or Board requested scope change orders to an Approved project
85 Budget that exceed \$5,000,000 or 20% of total approved contingencies, whichever is
86 less;

87 3. A change order which, if implemented, would result in any design or construction
88 contingency or the Approved Project Budget to be exceeded;

89 4. Any discretionary change that would result in a forecast that the Approved Project
90 Budget would be exceeded.

91 SECTION 7. The executive shall evaluate whether one or more Project Labor
92 Agreements (PLAs) would reasonably achieve the HMC Project's labor, employment,
93 and economic objectives and facilitate the completion of construction contracts on time
94 and within budget. The executive shall transmit to the council by April 3, 2002 a report
95 with detailed findings regarding the benefits and costs of such requirements as well as
96 recommendations regarding which categories of contracts, if any, should be subject to
97 PLA requirements. The report shall also evaluate the impact of using a PLA for any of
98 the contemplated contracting methods (General Contractor/Construction Manager –
99 GC/CM, Traditional General Contracting – GC, or Design/Build – D/B). If the executive
100 report recommends the use of one or more PLAs the executive shall also transmit for
101 council consideration a proposed motion that would give policy direction to the County
102 representative on the Oversight Committee to propose one or more PLAs as requirements
103 of the HMC Project. Such additional county policy requirements would be subject to
104 review by the Oversight Committee pursuant to Sections 2.1.3 and 4.3 of the Project

105 Management Agreement.

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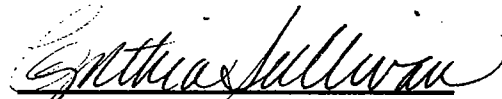
Ordinance 14295 was introduced on 2/11/2002 and passed as amended by the Metropolitan King County Council on 3/4/2002, by the following vote:

Yes: 10 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr. Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Gossett and Ms. Patterson

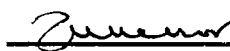
No: 1 - Mr. Pullen

Excused: 2 - Ms. Hague and Mr. Irons

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 13 day of March, 2002.



Ron Sims, County Executive

Attachments A. Agreement for Project Management Services as amended by Council February 25 and March 4, 2002

Agreement for Project Management Services
between
Harborview Medical Center Board of Trustees
and
King County
and
The University of Washington
relating to
Harborview Medical Center Bond Program

March 15, 2002

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This Agreement for Project Management Services ("Agreement") is made, entered into and effective this 15th day of March, 2002 ("Effective Date"), by and between the Board of Trustees ("Board") of Harborview Medical Center of Seattle, King County, Washington ("HMC"), King County, Washington ("County") a home-rule charter County, and the Board of Regents of the University of Washington ("University") a State of Washington Institution of Higher Education (together the "Parties").

RECITALS

A. HMC is a comprehensive acute care facility, Level 1 Trauma and Regional Burn Center owned by County.

B. Pursuant to Chap. 36.62 RCW, County has established Board for the purpose of overseeing the operation and management of HMC.

C. Pursuant to an agreement entitled Management and Operations Contract between the Harborview Medical Center Board of Trustees and the University of Washington ("Management and Operations Contract"), dated December 19, 1995 University operates and manages HMC.

D. HMC provides teaching, research, and clinical care for a mission population including but not limited to the indigent, sick, injured or infirm in King County, Washington.

E. Board has proposed, and County has reviewed and approved, a Long-Range Capital Improvement Program (LRCIP) for the period of 2001-2010.

F. The LRCIP includes a program to finance, design and construct certain public health and safety improvements for the HMC campus, including but not limited to seismic upgrades, renovations and construction of new buildings for patient care, research, teaching and administration, as well as certain facilities to meet requirements of the County Medical Examiner.

G. University has experience in constructing hospitals and medical facilities utilizing alternative public works delivery methods, including the General Contractor/Construction Management ("GC/CM") approach.

H. University has authority to provide Project Management Services for capital projects to HMC and currently does so pursuant to the Management and Operations Contract.

I. In accordance with the King County Charter, County may, in the exercise of its powers and the performance of its functions and service, agree by contract or otherwise to participate jointly or in cooperation with any one or more other governmental agencies, including the University of Washington, and to share the costs and responsibilities of such powers, functions and services which are in County's best interests.

J. University has specific statutory authority to operate and construct the University Medical Center, and the Board of Regents has broad statutory power to enter into such contracts as the Regents deem essential to University purposes. University has authority to enter into contract with County to utilize its project management expertise on behalf of County to benefit both entities.

K. Notwithstanding anything to the contrary in the Management and Operations Contract, Board and County desire University to use its above-mentioned experience and its authority to implement the design and construction elements of the HMC Bond Program.

L. University wishes to provide such services to Board and County.

M. The Parties desire to set forth the terms pursuant to which University shall, on behalf of and as agent for County, provide project management services for the HMC Project during design, construction and commissioning of the HMC Project.

N. To expedite the commencement of the HMC Bond Program, the Parties previously undertook certain limited activities pursuant to a Memorandum of Understanding ("MOU") executed in October, 2001 and amended in February 20002 while the mutually agreeable terms of this Agreement were established.

NOW THEREFORE, in consideration of the mutual promises and obligations set forth below, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following terms have the following meanings when used with initial capitalization, whether singular or plural:

Apprenticeship Program: County program set forth in King County Code Chapter 12.16.

Approved HMC Project Budget: The total overall budget for the HMC Project consisting of all of the Approved Project Budgets together with the HMC Project Savings Reserve Account, which has been approved by the Oversight Committee.

Approved Project Budgets: The budgets reviewed and approved by the Oversight Committee for the management, design, construction, furnishing, and commissioning of the Projects, as they may be amended from time to time.

Board: The Board of Trustees for the Harborview Medical Center established by the County pursuant to Chapter 36.62 RCW, with powers and duties as outlined in controlling legislation.

Bond Ordinance: KC Ordinance No. 13963, authorizing the sale of bonds, as approved by King County voters, for the HMC Project.

Construction Management: Project specific tasks relating to administration of construction contracts, coordination of agency reviews of construction submittals, monitoring of Project schedules, monitoring consultant and contractor performance, commissioning, close-out and warranty administration performed by personnel responsible for onsite contract administration.

Date of Final Completion: The date on which final acceptance of the last phased Project is achieved.

Force Majeure: Any act or event that delays or prevents County, Board or Project Manager from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event is beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance or noncompliance,

including, without limitation, an act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, strike or other labor disturbance beyond the reasonable control of County, Board or Project Manager (whether such cause is caused or suffered by third parties and is similar or dissimilar to the foregoing or is foreseen, unforeseen, or foreseeable) or any restraint or restriction imposed by law or by rule, regulation, or other acts of governmental authorities except County, whether federal, state or local.

GC/CM Contract: A contract between Project Manager, as agent of County, and a GC/CM Contractor to provide for construction of a particular Project.

GC/CM Contractor: A general contractor selected to be the prime contractor for a particular Project pursuant to the general contractor/construction manager public procurement process set forth in Chapter 39.10 RCW.

Green Buildings Initiative: The policy established by Executive policy FES 9-3 (AEP) for incorporating principles of green building practices and sustainability in County capital projects.

Hazardous Substance: Any hazardous or toxic substance, material or waste that is or becomes regulated by any federal, state, or local government, authority, agency, court or other public body with jurisdiction over the Projects. The term "Hazardous Substance" shall include, without limitation, any substance that at any time shall exhibit the characteristics of or itself be listed or contain regulated concentrations of a component that is listed as "hazardous," "extremely hazardous" or "toxic" in any applicable law.

HMC Bond Program: The program as approved by the voters of King County in September 2000 to make seismic, health and public safety improvements at HMC. The program, which includes elements of the LRCIP, includes demolition of unsound buildings, the expansion and renovation of existing facilities to provide seismic stability for those and adjacent facilities and additional critical health care capacity, and the construction of new buildings to house services displaced from the demolished buildings, including inpatient and outpatient clinical services and public health services provided by the King County Medical Examiner.

HMC Project: All of the individual Projects taken as a whole comprising the demolition, improvements, design, construction, furnishing and commissioning elements of the HMC Bond Program.

HMC Project Savings Reserve Account: An overall reserve account established in the development of the Approved HMC Project Budget identified in Section 2.1.4.

1% for Art: County public art program as set forth in King County Code Chapter 2.46.

Other Contractor: Any Person, firm or corporation other than a GC/CM Contractor that directly or indirectly performs work or provides equipment, goods or services for Project Manager or County at the request and direction of Project Manager pursuant to the terms of this Agreement.

Oversight Committee: The committee established pursuant to Article 4 of this Agreement charged with review and approval of Project Budgets, commencement of Projects and related issues.

Owner: King County.

Permits: All of the consents, approvals, authorizations, directions, licenses and permits issued by any federal, state, local agency or authority, to County or its agents or any combination of those parties with respect to the ownership, construction, and operation of the Projects in a safe and commercially sound manner, as they may be amended from time to time.

Person: Any individual or a corporation, limited liability company, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, government (or any agency or political subdivision thereof) or other entity of any kind.

Prime Rate: The rate of interest per annum publicly announced from time to time by the Bank of America as its prime rate in effect at its principal office in Seattle, Washington.

Project: A portion of the HMC Project consisting of the demolition and or improvement, design, construction and commissioning of a discrete identifiable element such as but not necessarily limited to renovation, retrofitting and expansion of existing buildings to increase seismic stability and to increase health care capacity; demolition of seismically unsound

As amended by BFM February 13, 2002

As amended by Council February 25, 2002, March 4, 2002

buildings, renovation and construction of new buildings to house services displaced from demolished buildings, including inpatient and outpatient clinical services and the Medical Examiner's Office, and related street improvements and mitigation.

Project Architect: The particular architect(s) selected for a specific Project pursuant to the architect selection process set forth in Article 4.

Project Budget: Shall mean a budget for implementation of programming, design, construction and management of each Project as set forth in Article 5.

Project Costs Account: The University account funded periodically with amounts from the Project Fund, separate funds of HMC, and/or other sources sufficient to pay the Project Costs.

Project Costs: Costs properly and reasonably incurred by Project Manager on behalf of County in the ordinary course of business for the design, construction and management of the Projects in accordance with the terms and conditions of this Agreement and the Bond Ordinance, including, without limitation: payments to GC/CM Contractors under the GC/CM Contracts; payments to Other Contractors for work not covered by the GC/CM Contracts; architectural, engineering, consultant and Project Manager costs; costs of furnishing and/or installing equipment, goods and materials; costs of complying with Permits and legal requirements; costs of discovery, caring for and handling any Hazardous Substances; costs of legal, accounting and consulting services related to design, construction and commissioning of the Projects; lease payments for property or easements; costs of insurance; and all costs of commissioning operations; costs of land acquisition, County oversight costs and mitigation related to the HMC Project.

Project Fund: The County fund created by the proceeds of the sale of bonds as set forth in the Bond Ordinance.

Project Management Services: Planning, design, construction and management services of multiple public works projects, including but not necessarily limited to non project-specific tasks associated with general support of project management operations, staff management, staff support, general accounting, statutory accounting and management of public information related

to the HMC Project. Project Management tasks may include, but are not limited to, managing the consultant and contractor procurement processes and contracts.

Project Manager: The University of Washington.

Standard University Policies and Procedures: Those normal practices undertaken by the University in implementing projects for its own account.

Technical Document Review: Review of structural, electrical, mechanical documents during development of plans and specifications of Project.

ARTICLE 2 DESIGNATION OF PROJECT MANAGER AND WORK SCOPE

2.1 Designation of Project Manager; Project Manager's Rights and Duties

2.1.1 County hereby appoints University as Project Manager and authorizes Project Manager to act on County's behalf and as County's agent to the extent and in the manner provided by this Agreement. Project Manager shall furnish the Project Management Services during programming, design, construction and commissioning of the Projects in accordance with the terms and conditions of this Agreement.

2.1.2 County grants Project Manager the nonexclusive right (which shall not constitute an easement or other restriction on the Projects) to enter the premises on which the Projects are located and to occupy and have free access to use the same for the purposes set forth in this Agreement.

2.1.3 Project Manager shall, on behalf of and as agent for County, enter into contracts, in such form and manner as are generally used by University, consistent with applicable codes and standards for hospital facilities and the following County policies in effect as of the Effective Date: 1% for Art and Apprenticeship Program, with design consultants, construction managers, general contractors, general contractors/construction managers, other contractors, architects, engineers and other providers of services, materials or equipment necessary and appropriate for completion of the HMC Project. The Parties shall consider incorporating the principles set forth in the Green Buildings Initiative into the HMC Project,

subject to approval of the Oversight Committee. Any Party may request the application of additional policies to a particular project. Such request shall be reviewed and considered for approval by the Project Manager or Oversight Committee consistent with the provisions of Section 4.3 herein. Project Manager shall provide Project Management Services for the Projects including administering the GC/CM Contracts and any other construction contracts related to the Projects in accordance with this Agreement. Project Manager shall cause Project Costs to be incurred in County's name, and such Project Costs consistent with the Approved Project Budgets shall be payable from funds on deposit in the Project Costs Account. Project Manager shall review and approve applications for payment submitted by contractors, consultants and service providers, and assemble documents to support monthly construction draw requests from the Project Costs Account. So long as funds are available in the Project Costs Account, all payments under this Agreement to be made on behalf of County are to be made from the Project Costs Account. If County fails to provide sufficient funds in the Project Costs Account to keep Project Costs paid current, Project Manager shall have no duty to advance any of its own funds or credit to pay any Project Costs.

Without limiting the foregoing, Project Manager shall provide Project Management Services for the following tasks:

2.1.4 Develop a comprehensive program plan, scope, phasing plan, schedule and budgets that define parameters for the separate Projects comprising the HMC Project. This work product, subject to review and approval by the Oversight Committee, will be the basis for the Approved HMC Project Budget. The Approved HMC Project Budget shall contain, in addition to individual Project Budgets, a separate HMC Project Savings Reserve Account intended to serve as an overall HMC Project contingency account, and repository of any unexpended funds remaining in a Project Budget after Project closeout. The requested spending authorization will be structured so as to identify planned spending among identified Projects.

2.1.5 Plan, schedule and conduct all business incidental to the design, construction and commissioning of the Projects, and in particular, administer the procurement processes pursuant to Chapter 39.10 RCW, GC/CM Contracts and other construction-related contracts and develop and administer County's requirements in accordance with conditions of compliance contained in any Permits including but not limited to reviewing all invoices, issuing

purchase orders or change orders, reviewing and approving schedules, plans, drawings and specifications.

2.2 Project Management.

On behalf of County, Project Manager may, consistent with the Approved Project Budgets, enter into such agreements as may be necessary or desirable for the performance of Project Manager's duties under this Agreement in accordance with the terms and conditions of this Agreement, including but not limited to the limitations and approvals of the Oversight Committee as set forth in Section 4.3. Project Manager may engage as contractors only qualified parties capable of performing the work for which such contractor is engaged. Project Manager may enter into such an agreement on behalf of County without further action by County unless the expenditures called for by the agreement or the total expenditures called for by all agreements will cause the Approved Project Budget to be exceeded.

2.3 Permits.

2.3.1 In County's name, on its behalf and with its approval, obtain, maintain and, as necessary or desirable, revise required Permits (other than permits that contractors are required to obtain under GC/CM or Other Contracts, with respect to which Project Manager's duty is limited to managing such Contractor's performance).

2.3.2 During the term of this Agreement, prepare and submit for County all reports required to satisfy compliance with Permits (except to the extent that contractors are required to prepare and submit such reports under the GC/CM or Other Contracts).

2.3.3 Monitor the Permit, Major Institution Master Plan (MIMP), and SEPA conditions and see that the conditions are satisfied with regard to HMC Project work.

2.4 Construction:

2.4.1 On behalf of County, review, approve and pay invoices, sales taxes, insurance and miscellaneous expenses.

2.4.2 Provide to County, Board and Oversight Committee regular progress reports comparing actual performance with the Approved Project Budget and Project schedule.

2.4.3 Maintain true, complete and accurate cost ledgers in accordance with University Policies and Practices regarding the services provided and expenses paid or incurred by it pursuant to this Agreement.

2.4.4 Negotiate and resolve change orders to the GC/CM Contracts and other contracts as required to complete a Project or to resolve GC/CM Contractor or Other Contractor claims. Subject to the limitations set forth in Section 2.4.10, Project Manager may approve change orders unless the individual change order or the total of all change orders will result in the forecast of, or actually cause the Approved Project Budget to be exceeded or exhaust the contingencies contained therein. Oversight Committee approval is required to approve a change order which, if implemented, would result in design or construction contingencies or the Approved Project Budget to be exceeded.

2.4.5 Notify County, Board and Oversight Committee promptly if Construction or Project Management Costs exceed or are expected to exceed the relevant Approved Project Budget.

2.4.6 Manage, on behalf of County County's duties, if any, to inspect for contractor compliance with its duties to develop and maintain safety procedures and effective safety programs, including, without limitation, fire and explosion safety measures and individual protective measures. These Services by Project Manager do not require Project Manager or County to retain any control over any portion of Project work, but is intended to allow for such inspection of contractor's compliance only.

2.4.7 Review drawings, plans, and specifications for work to be performed, monitor work in progress, and provide coordination among GC/CM Contractors, any Other Contractors, any utilities interconnecting with the Projects, and Permit authorities; *provided, however*, that nothing in this Agreement will be construed to require Project Manager to assume or perform the duties of GC/CM Contractors under the GC/CM Contract or any other construction contracts.

2.4.8 Manage the completion of any punch lists.

2.4.9 If a change in circumstances requires that an Approved Project Budget be amended, Project Manager shall assist County and Board in developing an appropriate amendment to the Approved Project Budget.

2.4.10 Project Manager shall not, in the absence of approval by the Oversight Committee, have authority to implement any requested change by Board or County for additional scope that exceeds (a) \$50,000 in a single change order; or (b) together with all other previously approved changes for additional scope would exceed \$100,000 or 20% of the relevant contingency contained within the particular Approved Project Budget, whichever is less. However, once Oversight Committee approval is obtained pursuant to the cumulative change order provision in (b) above, such cumulative provision calculation shall be reset to zero (0) and Oversight Committee approval will only be required if another \$100,000 or 20% of the relevant contingency of the Approved Project Budget of Board or County requested scope change orders are accumulated.

2.5 Insurance.

2.5.1 Obtain and maintain such workers' compensation, unemployment and other employee-related insurance covering Project Manager's employees as is required under law.

2.5.2 Obtain and maintain as an HMC Project expense, such insurance policies and coverage, having such terms and conditions, including, without limitation, such deductibles and exclusions, as are specified by a Party, which shall appropriately protect the Project and the Parties, all in accordance with the Approved Construction Budget.

2.6 Miscellaneous.

Project Manager shall:

2.6.1 In the absence of any specific provisions of this Agreement otherwise, perform its duties and obligations under this Agreement in accordance with standard University Policies and Procedures.

2.6.2 Respond, in a timely manner, to written requests for Project information from County, Board and Oversight Committee, and provide County, Board, and Oversight Committee with full access to all accounting and construction management-related records.

2.6.3 Provide cash management services as requested by County and Board.

2.6.4 During the term of this Agreement, administer any warranty, breach or other claims arising in connection with the goods or services provided to or for the Projects under the GC/CM Contracts or otherwise, subject to Oversight Committee's review and approval for individual claims in excess of \$300,000 or where the total aggregate of claims exceeds \$1,000,000 or 25% of the total value of the contract in question, whichever is less.

2.6.5 Manage the disposal of all Hazardous Substances in a legal and permitted fashion. At all times County shall remain responsible to obtain proper shipping documents and be the "Generator" of such materials as that term is used in any federal, state, or local government, authority, agency, court, or other public body with jurisdiction over the Projects or the Parties.

ARTICLE 3 RESPONSIBILITIES OF THE COUNTY

3.1 Funding of Project Costs Account. Consistent with the Approved Project Budgets, County shall appropriate funds and promptly fund or cause the funding of the Project Costs Account for all periods in a manner sufficient to pay all current Project Costs.

3.2 Timing of the issuance of the authorized bonds shall be consistent with cash flow and interest revenue requirements of the HMC Project financing plan.

3.3 Project Manager's costs to be paid from the Project Costs Account shall be determined in accordance with the rate schedules for each Project described in Exhibit A attached.

3.4 Project Management costs shall be paid monthly from the Project Costs Account.

3.5 County shall provide all information necessary for programming of the HMC Project requirements for King County Medical Examiner.

3.6 County shall implement appropriate internal procedures to oversee its Project administration, including but not limited to compliance with all its programmatic, appropriation and funding requirements and limitations.

ARTICLE 4 MANAGEMENT

4.1 The Parties shall establish a Project Oversight Committee ("Oversight Committee") which shall be comprised of representatives from University, County, and Board to oversee the formation of a comprehensive program scope, budget and schedule for the HMC Bond Program and to review the progress of implementation of the Projects. The Oversight Committee may obtain technical assistance throughout implementation of the Projects. These costs will be funded from the appropriate reserve or contingency accounts established in the Approved HMC Project Budget.

The Oversight Committee shall obtain technical Project monitoring assistance throughout implementation of the Projects. The scope of the Project monitoring technical assistance services will be monitoring of compliance with generally accepted project management practices by a review of the final Section 2.1.4 scope, budget and schedule work product to provide advice to the Oversight Committee prior to adoption; monitoring of compliance with adopted scope, budget and schedule during design and construction phases; and monitoring during all phases to assess the adequacy and accuracy of management reports. Such project monitoring technical assistance shall be provided by an independent project management service provider selected by, and under the direction of the Oversight Committee.

The intent of such review is to provide reasonable assurance to the Parties' governing bodies that financial responsibilities and compliance with generally accepted project management practices are achieved throughout the project. The Parties intend that monitoring by the independent consultants will not impede project implementation in any material way. Information developed during all project phases will be regularly reported to the Oversight Committee and be made available to the University of Washington Board of Regents, Harborview Medical Center Board of Trustees, and the County Executive and County Council.

These costs and all related Project Management costs will be funded from line items in the appropriate accounts established in the Approved HMC Project Budget.

4.2 Unanimous Agreement Required. University, County and Board shall each have one vote on the Oversight Committee, and all actions of the Oversight Committee must be by unanimous agreement of the three voting members to be valid and enforceable.

4.3 Oversight Committee Actions. Oversight Committee shall be involved in the implementation of certain actions, as specifically set forth in this Agreement. Oversight Committee Actions include:

- 4.3.1 Monitor formation of a comprehensive scope, budget and schedule for the HMC Bond Program (§4.1)
- 4.3.2 Review, and approve or disapprove, Project scope statements, Project Budgets and cashflow projections (§5.1.1)
- 4.3.3 Monitor overall progress of a Project, including regular progress report comparing actual performance with the Approved Project Budget and Project schedule (§2.4.2) and receive notification promptly from Project Manager, if construction or PM costs exceed or are expected to exceed the Approved Project Budget (§2.4.4)
- 4.3.4 Review, and approve or disapprove, certain changes to Project scope, budget and schedule as follows:
 - 4.3.4.1 County or Board requested scope change orders in excess of \$50,000 in single change order request (§2.4.10);
 - 4.3.4.2 Cumulative County or Board requested scope change orders that exceed \$100,000 or 20% of approved contingencies, whichever is less (§2.4.10);

- 4.3.4.3 A change order which, if implemented, would result in design or construction contingencies or the Approved Project Budget to be exceeded (§2.4.4);
- 4.3.4.4 Any discretionary change that would result in a forecast that the Approved Project Budget would be exceeded (§5.1.2);
- 4.3.4.5 Solicitations for the principal or primary construction contract (§5.1.3)
- 4.3.5 Review, and approve or disapprove, claims arising in connection with the provision of goods or services under the GC/CM contracts for individual claims in excess of \$300,000 or where the total aggregate of claims exceeds \$1.0 million or 25% of the total value of the contract in question, whichever is less (§2.6.4)
- 4.3.6 Review, and approve or disapprove, the use of unexpended funds based upon Board proposal (§5.1.4)
- 4.3.7 Change design schedule which would materially impact a Project Budget (§4.9)

4.4 County Council, Board and Regent Approvals. The Parties understand and anticipate that their respective voting representatives to the Oversight Committee will secure each Party's required internal reviews and approvals before such representative exercises its voting authority. Each Party shall establish its own internal approval requirements imposed on its respective Oversight Committee representative. The County's voting representative to the Oversight Committee shall secure the King County Council's approval before exercising voting authority on those decisions set forth in King County Ordinance No. 2002-0079.1.

4.5 Board Responsibilities.

4.5.1 Except for Project requirements for King County Medical Examiner, Board shall provide all necessary information for programming of all Projects pertaining to HMC.

4.5.2 Board shall approve funding of the HMC Bond Program from HMC funds in the amount of \$56,000,000 (fifty-six million dollars) or such other amount as Board shall approve to contribute to the funding of the HMC Project.

4.5.3 Scope changes to the Approved HMC Project Budget, or Approved Project Budgets contained therein, may be recommended to the Oversight Committee to be funded by HMC upon approval of Board. The Oversight Committee shall approve such Board requested scope changes, funded by HMC, provided the change facilitates the operation of the medical center and any cost, scope or schedule impacts to other aspects of the HMC Project or portions of same or on HMC's long term capital project budget are adequately addressed by the HMC funding, or otherwise. Such approval shall not be unreasonably withheld.

4.6 Management Dispute Advisory Board.

4.6.1 The Parties shall establish an advisory board ("Management Dispute Advisory Board" or "MDAB") comprised of three persons, none of whom shall be employed by County, Board or University, and none of whom shall be a member of the governing body (i.e., Council or Board of Trustees or Regents) of a Party, to advise the Parties on matters referred to the MDAB. The members of the MDAB shall be individuals with requisite skill and experience appropriate to resolution of issues which may arise in circumstances similar in scope and complexity of the HMC Project. The Parties shall each recommend one or more persons to be appointed to the MDAB. The three appointees shall each be subject to the approval of the Oversight Committee. Each Parties' approval of recommended appointees shall not be unreasonably withheld.

4.6.2 Any Party may refer a matter to the MDAB which is subject to unanimous approval of the Oversight Committee before implementation, but which has not, after diligent efforts to achieve unanimity, received such Oversight Committee approval. The MDAB shall review the matter and advise the Parties of its recommended resolution. The MDAB recommendation is advisory and not binding on the Parties, however it shall be given due consideration by the Parties in attempting to resolve the issues presented.

4.7 Architect Selection. A selection panel consisting of representatives from University, the Washington State Chapter of the American Institute of Architects, HMC staff and physicians and County will review the qualifications of all firms responding to a request for qualifications for architectural services for the HMC Project and recommend preferred firms to an interview panel ("Architect Interview Panel") for selection. The Architect Interview Panel will consist of senior representatives of University, County, Board, and HMC Management. The Architect Interview Panel shall recommend the preferred firm or firms to the Project Manager for appointment.

4.8 General Contractor/Construction Manager (GC/CM). A proposal evaluation panel consisting of representatives from University, the Project Architect, Board and County will review all conforming proposals submitted in response to a request for proposals for GC/CM services and recommend competitive firms to an interview panel ("Contractor Interview Panel") for further evaluation. The Contractor Interview Panel will consist of representatives from the same members that comprise the Architect Interview Panel plus a representative of the Project Architect for the particular Project. The Contractor Interview Panel will interview and rate the firms recommended. The highest ranked firms based upon the evaluation of proposals and the interviews will be asked to submit bids for fee and general conditions in accordance with RCW 39.10. The Contractor Interview Panel shall recommend the preferred contractor to the Project Manager for appointment.

4.9 Any changes to a Project design schedule which will materially affect a Project Budget must be approved by the Oversight Committee.

ARTICLE 5 BUDGETS

5.1 Establishment of the Budget. At the conclusion of the programming and pre-design phases, and before detailed design for each Project may proceed, Project Manager and its consultants will prepare a budget ("Project Budget") and cash flow projection for each of the Projects identified in the HMC Bond Program. Each Project Budget will be prepared on Washington State General Administration's Office of Financial Management (OFM) Form C-100, and will include Project Manager's estimate of the cost for property acquisition, consultant services, construction contracts, Project Management, Construction Management, Technical

Document Review, sales tax, equipment, artwork, contract administration, mitigation, permitting, utilities, security, financing, in-plant support, insurance, bonding and disputes resolution. Each Project Budget will include an appropriate contingency for design and construction commensurate with the complexity and risk of the work. Each Project Budget will also include a management reserve. Project Manager and its consultants will also prepare a scope statement ("Project Scope Statement") that details the scope of work for the Project that is consistent with the Project Budget and schedule. Project scope statements and Project Budgets are subject to the review and approval of the Oversight Committee

5.1.1 Once the Project Scope Statements, Project Budgets and cashflows are approved by the Oversight Committee, Project Manager may proceed with contracts for design and construction provided the funds required for the contracts awarded are within the funds available in the Approved Project Budget. The Project Manager can, except as specifically set forth elsewhere, utilize the design and construction contingencies for changes required during the progress of the work without further approval from the Oversight Committee, provided that those changes are within the scope of the Project and do not exhaust the funds set aside for contingency. The Project Manager shall make regular reports to the Oversight Committee on the status of funds for each Project.

5.1.2 Oversight Committee approval is required before Project Manager shall approve any discretionary change order that would result in a forecast that the Approved Project Budget would be exceeded.

5.1.3 No solicitation for the principal or primary construction contract for any Project shall be undertaken without Oversight Committee approval.

5.1.4 Any unexpended funds remaining in a particular Project Budget after Project closeout shall be transferred to the HMC Project Savings Reserve Account. Funds may be transferred from the HMC Project Savings Reserve Account to the Project Budget for any uncompleted Project upon approval of the Oversight Committee. In the event work for all of the Projects in the HMC Bond Program is completed or forecasted to be completed with unexpended funds remaining in the HMC Project Savings Reserve Account ("Unallocated Funds"), Board

shall propose to the Oversight Committee how such Unallocated Funds shall be utilized.

Utilization of such Unallocated Funds shall be subject to Oversight Committee Approval.

5.1.5 Notwithstanding the provisions of 5.1.4., if funds remain upon completion of Project Manager's services under this Agreement, then Board and County will determine the final disposition of the remaining funds. If the remaining funds are solely attributable to the HMC reserves, the funds will be returned to HMC.

ARTICLE 6 TERM OF THIS AGREEMENT

Unless terminated as provided in Article 7, this Agreement will be effective on the Effective Date and shall remain in effect until the Date of Final Completion.

ARTICLE 7 EVENTS OF DEFAULT

7.1 Event of Default.

7.1.1 County shall be in default under this Agreement if (i) County fails to fund the Project Costs Account sufficient to pay Project Manager within 30 days after presentment of a proper invoice together with supporting materials for reimbursement of Project Manager costs; or (ii) County fails to perform any of its other material obligations in this Agreement.

7.1.2 Project Manager shall be in default if it fails to perform any of its material obligations in this Agreement.

7.1.3 Board shall be in default if it fails to perform any of its material obligations in this Agreement.

7.2 Rights Upon Default.

7.2.1 Upon the occurrence of a default described in Section 7.1(1), Project Manager may, at its option, terminate this Agreement by delivering written notice of termination to County, which notice of termination shall be effective forty-five (45) days after the date it is received by County (fifteen days in the case of a failure to make a payment when due);

provided, however, that if County has cured or undertaken to cure such default within 30 days of actual delivery of such notice of termination to County (ten days in the case of a failure to make payment when due), such notice of termination shall be deemed to have been canceled and shall be null and void. In the event of such termination, County shall pay all amounts due Project Manager, and shall cause any unpaid Construction and Project Management Costs to be paid when due from the Project Costs Account.

7.2.2 Upon the occurrence of a default described in Section 7.1(2), County may, at its option, terminate this Agreement by delivering written notice of termination to Project Manager, which notice of termination shall be effective forty-five (45) days after the date it is received by Project Manager; *provided, however*, that if Project Manager has cured or undertaken to cure such default as approved by King County within 30 days of actual delivery of such notice of termination to Project Manager, such notice of termination shall be deemed to have been canceled and shall be null and void. In the event of such termination, County shall cause any unpaid Construction or Project Management Costs to be paid when due from the Project Costs Account.

7.2.3 Dispute Resolution. If the Parties are unable to resolve a dispute concerning any Party's rights, duties or obligations under this Agreement, a Party may send a notice to the other requesting a meeting at which senior officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within a reasonable time after the meeting notice is received by the Parties to whom it is directed (a reasonable time shall be determined by the circumstances giving rise to the dispute), any Party may demand that the matter be submitted to mediation before a mediator with significant relevant experience. If the Parties fail to resolve the dispute through mediation, unless the Parties agree otherwise, any party may initiate an action in King County Superior Court, Seattle, Washington. The Parties shall bargain in good faith and not unreasonably refuse to settle their differences at mediation, if any.

ARTICLE 8 INDEMNIFICATION

Subject to the limitations set forth in Article 9 and to the extent allowed by law, each Party shall indemnify and hold harmless the other and their respective elected or appointed officials, directors, officers and employees, from and against all losses, claims, damages,

expenses or liabilities, to the extent such losses, claims, damages, expenses or liabilities (or actions, suits or proceedings including any inquiry or investigation or claims in respect thereof) arise out of the transactions contemplated by this Agreement and are caused by the negligent acts or omissions of the indemnifying Party; *provided, however*, that no Party shall be indemnified for its own negligence or willful misconduct.

ARTICLE 9 STANDARD OF CARE AND LIMITATIONS OF LIABILITY

9.1 Standard of Care: Project Manager acknowledges its relationship of trust and confidence with County and Board and shall act accordingly. Project Manager shall use that skill, care, diligence and judgment consistent with the standards of its profession and no less than that exercised by project managers of similar reputation performing work for projects of a size, scope and complexity similar to these Projects and to further the interests of County and Board through efficient management and administration of its services.

9.2 Limitation of Liability. Project Manager's aggregate total liability to County and Board for an occurrence or occurrences that give rise to one or more Claims shall not exceed insurance proceeds available from the insurance procured pursuant to Section 2.5.2 to satisfy such Claim or Claims. The term "Claim" means all claims of any kind (excluding death or bodily injury), whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the term of this Agreement.

9.3 Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including negligence) or otherwise, shall any Party be liable for special, incidental, exemplary, indirect or consequential damages including, but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities or services, downtime costs, or claims of customers of County, Board or Project Manager for such damages.

**ARTICLE 10
ASSIGNMENT**

10.1 Restriction on Assignment by County. Neither County nor Board may assign or otherwise transfer or permit the transfer of (collectively, "Transfer") this Agreement without Project Manager's prior written consent.

10.2 Restriction on Assignment by Project Manager. Project Manager may not assign this Agreement without County's and Board's prior written consent.

10.3 Assumption of and Release from Liabilities. Any permitted assignee or transferee of a Party's interest in this Agreement shall assume all existing and future obligations of transferor Party to be performed under this Agreement. Upon any permitted assignment of this Agreement, a transferor Party shall be released from any and all liability accruing from and after the date of the assignment, except as to liabilities imposed by legal requirements.

10.4 Binding Effect. This Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

10.5 Limitation of Project Manager's Liability for Financing. Project Manager shall have no liability whatsoever for County's obligations under (i) the Bond Ordinance, or (ii) any other contract between County and any other Person.

**ARTICLE 11
MISCELLANEOUS**

11.1 Independent Contractor. Except as otherwise expressly stated in this Agreement, Project Manager shall at all times be deemed an independent contractor and not by reason of this Agreement a joint venturer, general agent or principal of County or Board. Similarly, none of Project Manager's officers, directors, partners, employees, agents or representatives or the officers, directors, partners, employees, agents or representatives of its subcontractors shall be considered officers, directors, partners, employees, general agents or representatives of County or Board.

11.2 Severability. The invalidity, in whole or in part, of any of the foregoing articles, sections or paragraphs of this Agreement will not affect the validity of the remainder of such articles, sections or paragraphs.

11.3 Amendment. No modification, amendment, or other change to this Agreement will be effective unless consented to in writing by the Board of Regents, the Board of Trustees, and the King County Council.

11.4 Waiver. Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

11.5 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

11.6 Choice of Law. This Agreement shall be governed by the laws of the State of Washington without reference to conflict of laws or the principles thereof.

11.7 Effect of Force Majeure. Project Manager, Board or County, as the case may be, shall be excused from performance under this Agreement to the extent, but only to the extent, that performance hereunder is delayed or prevented by an act or event beyond the reasonable control of Project Manager, Board or County, as the case may be, or by an event of Force Majeure. Project Manager, Board or County, as the case may be, shall use reasonable efforts to overcome or mitigate the effects of such an act or event of Force Majeure and complete the project within the approved and amended scope, schedule and budget; *provided, however*, that nothing in this Agreement shall be deemed to obligate the Party affected by an act or event of Force Majeure to forestall or settle any strike, lock-out or other labor dispute against its will.

11.8 Interest on Amounts Due. Any amounts owing Project Manager but unpaid 30 days after the due date thereof shall bear interest at the Prime Rate plus two percent (2%); *provided, however*, that the interest rate will at no time exceed the interest earnings the University would have received had such amounts been paid when due.

11.9 Interest on Cash Balances. Any County or Board cash balances will be managed by University and credited with interest earned, if any, to the HMC Bond Program in a manner consistent with cash balances managed for similar University capital project accounts.

11.10 Further Assurances. The Parties shall do and shall perform all such acts and things and shall execute all such deeds, documents and writings and shall give all such further assurances as may be necessary to carry out the intent of this Agreement. In particular, if any governmental or administrative approval, permit, order or other authorization shall be necessary relative to this Agreement and any provision of this Agreement or any transaction contemplated by this Agreement, each Party shall use all reasonable efforts to assist in the obtaining of such approval, permit, order or other authorization.

11.11 No Third Party Beneficiaries. Except for Persons to whom this Agreement is assigned in compliance with the terms of this Agreement, there are no third party beneficiaries to this Agreement, and this Agreement shall not impart any rights enforceable by any Person that is not a Party.

11.12 Headings. The various headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the provisions.

11.13 Interpretation. Whenever the singular or masculine or neuter is used in this Agreement, the same shall be construed as meaning the plural or feminine or body politic or corporate and vice versa, as the context so requires. Whenever the words include(s) or including are used in this Agreement, they should be interpreted to mean include(s) or including, but not limited to. Because all Parties have participated in the drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply.

11.14 Notices. Any notice or notification required, permitted or contemplated under this Agreement shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice under this Agreement, and shall be deemed to have been validly served, given or delivered (i) five Business Days following deposit in the United States mails, with proper first class postage prepaid, (ii) the next Business Day after such notice was delivered to a regularly

As amended by BFM February 13, 2002

14295

As amended by Council February 25, 2002, March 4, 2002

scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (iii) upon receipt of notice given by telecopy, mailgram, telegram, telex, or personal delivery:

If to Project Manager:

Associate Vice President for Capital Projects
Capital Projects Office
45 University Facilities Bldg.
UW Mail Box 352205
University of Washington
Seattle, Washington 98195

with a copy to:

Director, Capital Projects South
Capital Projects Office
University Facilities Annex 2
UW Mail Box 352205
University of Washington
Seattle, Washington 98195

If to County:

Manager, Division of Construction and Facilities Management
Mail Stop ADM CF 0800
500 Fourth Avenue
Seattle, Washington 98104

If to Board:

President, Board of Trustees
Harborview Medical Center
325 Ninth Avenue
Box 359717
Seattle, Washington 98104

with a copy to:

Executive Director
Harborview Medical Center
325 Ninth Avenue
Box 359717
Seattle, Washington 98104

11.15 Entire Agreement. This Agreement and any amendments to this Agreement contain the complete agreement between County, Board and Project Manager with respect to the matters contained in this Agreement and supersede all other agreements, whether written or oral, with respect to the matters contained in this Agreement.

11.16 Termination for Convenience. County may terminate this Agreement at any time for County's convenience and without cause by providing written notice to Board or Project Manager. Upon receipt of written notice Project Manager shall:

11.16.1 Cease operations as directed by County in the notice;

11.16.2 Take actions necessary, or that County may direct, for the protection and preservation of the Project work; and

11.16.3 Except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts, subcontracts, and purchase orders, and enter into no further contracts, subcontracts or purchase orders.

In case of such termination for County's convenience, Project Manager shall be entitled to receive payment for all work done prior to the effective date of the termination, plus reasonable costs incurred by reason of the termination.

As amended by BFM February 13, 2002

14295

As amended by Council February 25, 2002, March 4, 2002

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BOARD OF TRUSTEES OF
HARBORVIEW MEDICAL CENTER

Approved as to form
Deputy Prosecuting Attorney

By: David T. McDonald
Title: President

By: Jane McKenzie

Approved by HMC Board of Trustees
Action Item dated January 4, 2002.

KING COUNTY

Approved as to form
Deputy Prosecuting Attorney

By: Ron Sims
Title: Executive

By: Sally Tenney

Authorized by King County
Motion # _____ dated _____, 2002.

BOARD OF REGENTS OF THE
UNIVERSITY OF WASHINGTON

Approved
Assistant Attorney General

By: Weldon Ihrig
Title: Executive Vice President

By: Karin Nyrop

Approved by Board of Regents'
Action Item dated _____, 2002.

EXHIBIT A

PROJECT MANAGEMENT COSTS

Project Manager shall be reimbursed for costs incurred in accordance with the following schedule: All rates are subject to annual adjustment to reflect any change in actual costs to University.

Hourly Rate*

I. Project Management Team Personnel

CPO

Unit Manager	<i>\$114.90</i>
Contract Construction Manager	<i>\$161.64</i>
Construction Manager	<i>\$111.48</i>
Project Manager	<i>\$110.95</i>
Construction Coordinator	<i>\$100.65</i>
Administrative Assistant	<i>\$47.05</i>
Landscape Architect	<i>\$75.02</i>
Estimator	<i>\$64.59</i>
Accountant	<i>\$54.58</i>

Engineering Services

Assistant Director	<i>\$90.00</i>
Manager	<i>\$80.00</i>
Staff Engineer	<i>\$70.00</i>
Clerical	<i>\$35.00</i>

Environmental Health & Safety

Director	<i>\$93.00</i>
Manager	<i>\$69.00</i>
Fire Protection Engineer	<i>\$60.00</i>
Environmental Health Professional	<i>\$50.00</i>
Clerical	<i>\$34.00</i>

*Hourly rates are fully burdened to include salary, benefits, overhead, supervision, support services within the UW Capital Projects Office and cost recovery for other Capital Projects Office Support and University Services. .

II. Project Administrative Support

Monthly Lump sum *\$6500.00* to reimburse for estimated and anticipated Project Team Overhead (To be defined and agreed)

III. Reimbursable Expenses

-Third Party Costs

As amended by BFM February 13, 2002

14295

As amended by Council February 25, 2002, March 4, 2002

-Travel expenses

-Reproduction and Publishing

-Permits