



REQUEST
FOR
STATEMENT OF QUALIFICATIONS
FROM
GENERAL CONTRACTORS
FOR
PARK CITY
TRANSIT RESIDENTIAL BUILDING

ISSUED: December 26, 2012

Date Due: January 9, 2013

Park City, Utah

NOTICE TO GENERAL CONTRACTOR FIRMS

Revised Aug. 21, 2012

REQUEST FOR STATEMENT OF QUALIFICATIONS
TRANSIT RESIDENTIAL BUILDING

PROPOSALS DUE: **3:00 p.m., January 9, 2013**, at the Park City Public Works Office, 1053 Iron Horse Drive, Park City, Utah 84060

PROJECT NAME: General Contractor SOQ – Transit Residential Building

SOQ AVAILABLE FOR FIRMS: **3:00 p.m. on December 26, 2012**, email from Brooks@parkcity.org. You will be directed to a non-public link for full documentation.

PROJECT LOCATION: Park City, Utah

PROJECT DESCRIPTION: General Contractor Services – Transit Residential Building

OWNER: Park City Municipal Corporation
P.O. Box 1480
Park City, Utah 84060

CONTACT: Brooks Robinson, Senior Transportation Planner (all questions shall be in writing) Brooks@parkcity.org

Park City reserves the right to reject any or all proposals received. Furthermore, the City shall have the right to waive any informality or technicality in proposals received when in the best interest of the City.

PARK CITY TRANSIT RESIDENTIAL BUILDING

REQUEST

For

STATEMENT OF QUALIFICATIONS

From

GENERAL CONTRACTORS

I. INTRODUCTION

The Park City Municipal Corporation (PCMC) is soliciting statements of qualifications from General Contractors interested in bidding on the construction of a new building on the existing Iron Horse Transit Operations Facility site located at 1053 Iron Horse Drive in Park City, Utah.

II. THE PROJECT

The project consists of the following:

- Selective site demolition (remove asphalt parking lot, landscaping, site lighting, concrete flatwork, etc.).
- Construction of a slab-on-grade, 3-story wood and steel framed building for the storage of City transit vehicles on the ground floor and the housing of city transit personnel in single-room occupancy residential units (approx 250 s.f. each) on the second and third floors. The ground floor footprint is approximately 2,500 s.f. and the second and third floor footprints are approximately 2,700 s.f.
- Construction of a small roof patio (approx 550 s.f.) for use by residents as well as a green-roof landscape planting systems (approx 400 s.f.). The roof will also contain photovoltaic electric panel system and a solar hot water panel system to supplement the building utility systems.
- Construction of new ground level landscaping areas (approx 1,200 s.f.) and site amenities (fencing, gates, concrete sidewalks, etc.).
- Connection of building services to existing site utilities (sewer, domestic

water, fire sprinkler water and electrical feed were stubbed in to the site under a previous contract).

- Gas service (existing gas pipe located adjacent to the site) will need to be stubbed in, metered and connected to this building under this contract.
- Finish materials are painted cementitious siding system, pre-finished corrugated metal panel system, 2-coat stucco system, flat membrane roof and sloped standing-seam metal roofing systems.
- Project is not required to be LEED Certified, but it will comply with the Park City sustainable buildings initiatives.
- Incidental construction as outlined in plans & specifications.

All work must be phased to allow ongoing transit facilities to continue to operate throughout the construction period. A contractor's staging area of approximately 30' x 48' is available adjacent to the construction site.

III. CONTRACT PROCESS

Park City Municipal Corporation has received a Livability Initiative Grant from the Federal Transit Authority for the bulk of the funding for this project, therefore all federal procurement guidelines must be adhered to including, but not limited to, the "Buy America" act, the "Byrd Anti-Lobbying Amendment", the use of a "Disadvantaged Business Enterprise" as a percentage of your sub-contractor bids, and the adherence to "Davis-Bacon" minimum wages.

The Park City Municipal Corporation has hired CRSA from Salt Lake City, Utah as the Architect for the project. The drawings have been submitted for permitting and are nearing completion.

This request for statement of qualifications (SOQ) is open to all licensed, qualified general contractors. The client's review committee will meet and short list five (5) to seven (7) firms based upon the statement of qualifications. Oral interviews may be taken. The firms will then be asked to submit bids on the project as required by Park City. The contract award will be to the low responsive bidder.

The form of contract will be the Park City Construction Contract. The contract will be between the Park City Municipal Corporation and the successful contractor.

Park City reserves the right to:

Revised Aug. 21, 2012

1. Disqualify incomplete proposals.
2. Waive minor defects in the proposals submitted.
3. Request additional information from respondents.
4. Change the nature or scope of the project without penalty.
5. Negotiate terms with one or more of the short listed firms.
6. Reject any or all proposals for any reason, without penalty.
7. Take any steps deemed necessary to act in the City's best interest.

IV. STATEMENT OF QUALIFICATIONS SUBMISSION REQUIREMENTS

- A. Size of submittal.** To assist PCMC with a timely and effective review period, submitters are asked to keep their SOQ's to 20 doubled-sided 8-1/2"x11" content pages (not including front and back covers).
- A. Firm's Qualifications.** Provide a brief description of your firm's historical background, its focus, the scope and nature of services. Provide a letter from your bonding company stating that you will be able to provide a payment and performance bond for a project budgeted at \$1 million.
- B. Project Team.** Provide resumes of principals, project managers and key people involved in the project. Provide an organizational chart showing the level of organizational responsibility for all major participants of your firm's proposed project team. For each person listed on the chart, provide the percentage of time the person is expected to work on this project. By listing the individuals in the proposal, the firm is making a commitment that, barring unforeseen circumstances, they are the personnel who will be assigned to the project. The owner must approve any changes to the personnel indicated. Changes to personnel originally submitted can result in the forfeiture of the contract.
- C. Relevant Experience.** Provide detailed relevant experience of similar projects which shall include the following: Completion date; name of client; contact person; current phone; brief description of service performed or project; original and final contract amount and any other pertinent information regarding experience. Provide your experience for federal government projects.

- D. Project Schedule.** Time is of the essence for the construction of this project. This project must be built while working around Park City's ongoing transit operations. The contractor will be required to achieve substantial completion of the project by December 15th, 2013.
- E. Experience with Park City Construction.** List your experience building in Park City, limited access construction, & working around existing operations.
- F. References.** List three references with phone numbers for recent projects. At least two of these references should be architects who have designed structures built by your firm.
- G. Submittals.** Six copies of your firm's statement of qualifications are due to Brooks Robinson at Park City Iron Horse Transit Operations Facility, 1053 Iron Horse Drive, Park City, Utah on January 9, 2012 at 3:00 p.m. MST. A short list will be developed from the submittals. A bid opening is tentatively scheduled for February 8, 2013.
- H. Form of Contract.** It is the intent of The Park City Municipal Corporation to use the attached Agreement between the Owner and General Contractor-stipulated sum (Attachment 1). The contract also includes several federal requirements and guidelines (Attachment 2).
- I. Project Questions.** Please direct all questions and correspondence through the Project Architect, Joe Milillo at CRSA, 649 E. South Temple, Salt Lake City, UT 84102. (801) 355-5915, joe@crsa-us.com.

List of Attachments (to be provided upon request):

- | | |
|---------------|---------------------------------|
| Attachment 1: | Park City Construction Contract |
| Attachment 2: | Federal Requirements |
| Attachment 3: | Reference Architectural Plans |

Resolution No. 12-07

A RESOLUTION ADOPTING GREEN HIGH PERFORMANCE BUILDING REQUIREMENTS FOR ALL NEW OR RENOVATED PUBLIC BUILDINGS, OWNED AND CONTROLLED BY PARK CITY, UTAH AND ALLOCATION OF 4% MAXIMUM ADDITIONAL BUDGET TO ACHIEVE HIGHER LEVELS OF CERTIFICATION AND PROMOTE ENERGY EFFICIENCY AND SUSTAINABLE DESIGN.

WHEREAS, the City desires to promote sound environmental practices in new construction and renovation of facilities that are funded by the City; and

WHEREAS, high performance building standards promote a healthy environment, provide long-term cost benefits through the efficient use of energy, optimize building performance, and create healthier workplaces for employees and visitors; and

WHEREAS, a strategic approach to sustainable buildings and energy management can produce twice the savings for the bottom line and the environment as typical approaches; and

WHEREAS, the Environmental Protection Agency (EPA) and Department of Energy (DOE) Energy Star Program is designed to help reduce energy costs and protect the environment through efficient products, homes, industrial plants, and buildings; and

WHEREAS, the Energy Star program includes free online benchmarking and monitoring tools for simple implementation of the program; and

WHEREAS, it is accepted by the professional engineering community that an Energy Star rating of a minimum of 75 can be achieved with no net impact on the first costs of a project; and

WHEREAS, the Leadership in Energy and Environmental Design (LEED) rating system, which is a system created by the United States Green Building Council (USGBC) to provide a national standard for healthy environmental and energy efficient design; and

WHEREAS, many professionals in our region are familiar with the LEED process, which is considered to be a consensus-based national standard for developing high-performance, sustainable buildings; and

WHEREAS, the foregoing alternative standards provide for various certifications designated as "Certified," "Silver," "Gold," or "Platinum," based on the number of specified environmental practices incorporated into a project, with "Certified" being the lowest level of certification; and

WHEREAS, there is consensus in the professional community that LEED Certification can be achieved with no net effect on initial budgets; and

WHEREAS, Park City understands that additional energy efficiencies, further reductions in environmental impact, and increased benefits to health and safety of employees and visitors can be achieved by achieving higher levels of Energy Star rating and LEED certification; and

WHEREAS, the purpose of this Policy is to adhere to high performance building practices, and provide additional funding to ensure Park City facilities are the most energy efficient, cost effective, environmentally responsible, and safe and healthy buildings in the State of Utah; and

WHEREAS, the City has determined to require the use of Energy Star and LEED standards on all new construction and major renovations in order to obtain the benefits promoted by those standards.

NOW THEREFORE, be it resolved by the City Council of Park City as follows:

SECTION 1. REQUIRE FACILITIES BE DESIGNED TO MEET ENERGY STAR.

It is the intent of the City Council of Park City that all new buildings and major renovations be designed to meet Energy Star certification to a score of 75 or higher. The City Council understands that Energy Star certification cannot be awarded until an entire year of building operations have past. After one year, energy use will be reviewed, buildings will be benchmarked using the Energy Star inventory, and Energy Star certification will be achieved. Energy Star knowledge and implementation experience shall be required, but not individually controlling, selection criteria for service providers and contractors for all Park City building projects.

SECTION 2. REQUIRE FACILITIES BE DESIGNED TO LEED "CERTIFIED" LEVEL OR COMPARABLE INDUSTRY STANDARD.

It is the intent of this Policy that, in order to obtain the benefit of reduced operating and maintenance costs and other building efficiencies, as well as cost-saving healthy environmental practices, all new construction and major renovation projects meet the LEED Certified level or comparable industry standard such as . This policy does not require the City go through the process of receiving LEED certification from the United States Green Building Council, instead, certification can be reviewed on a case by case basis.

SECTION 3. APPLY THIS RESOLUTION TO THE FOLLOWING PROJECTS.

Park City will apply this policy to the following construction projects when the project's design contract is first solicited after the date of this Resolution, except as exempted or waived under this Resolution: All new construction to construct buildings owned and controlled by the City that are larger than 3,000 square feet, all affordable housing projects developed by the City, and all major renovations of buildings owned and controlled by the City that are larger than 3,000 square feet when the building has a remaining useful life in excess of fifteen years. The term "major renovation" means a construction project affecting more than 25% of the building's square footage.

SECTION 4. EXEMPT PROJECTS FROM THIS POLICY WITH CITY COUNCIL APPROVAL.

Park City will not apply this resolution to the following, and City departments are required to document the reason for the exemption:

- Any improvement that is not a building.
- Buildings that will not be occupied, or that serve specialized functions (including pump stations, garages, storage buildings, equipment areas, etc.)
- Projects where the useful life of an improvement or other factors do not justify whatever additional expense would be incurred to increase a building's long-term efficiency.
- Projects where the application of LEED factors will increase construction costs beyond the City's funding capacity for the project.
- Projects where the use of LEED factors will create an impediment to construction due to conflicts of laws, building code requirements, federal or state grant funding requirements, or other similar requirements.
- Projects where LEED factors are not attainable due to the nature of the facilities or the schedule for construction.

In addition to the exemptions stated above, particular LEED factors shall not prevail over any prohibition in the City Code. The documentation for any of the above exemptions shall be maintained in the project file of the Department with a copy to the City Council.

SECTION 5. ADDITIONAL FUNDING FOR PROJECTS TO ACHIEVE INNOVATIVE ENERGY AND ENVIRONMENTAL PERFORMANCE.

At completion of the schematic design process, a professional cost estimate will be done and a list of green elements, with differential pricing, will be provided to the City Council. The City Council will approve green design elements and allocate any additional funding, not to exceed 4% of total building costs, including approved change orders, to be utilized to design and construct a high performance building above levels previously described in this resolution. If the City Council is unable to allocate the full 4% of the total building costs the remaining amount may at the Council's discretion be placed into a CIP budget for energy and environmental improvements to other City facilities.

SECTION 6. EFFECTIVE DATE. This resolution shall become effective upon adoption.

PASSED AND ADOPTED this 24th day of May, 2007.

PARK CITY MUNICIPAL CORPORATION



Mayor Dana Williams

Attest:



Janet M. Scott, City Recorder

Approved as to form:



Mark D. Harrington, City Attorney



Federal Clauses for Construction Contract – (Sample)

The construction contract will be funded in part by the Federal Transit Administration. Therefore applicable Federal regulations will apply. Those firms submitting SOQ's must review and certify that they have read and understand all contract clauses, attachments and certifications, which include (but are not limited to):

- (1) Exhibit 1-A: Buy America Certificate
- (2) Exhibit 1-B: DBE Requirement
- (3) Exhibit 1-C: Certificate Regarding Debarment/Suspension
- (4) Exhibit 1-D: Certificate of Restrictions on Lobbying
- (5) Exhibit 1-E: Non-Collusion Affidavit
- (6) Exhibit 1- F: Fly America and Cargo Preference
- (7) Exhibit 1-G: Access Requirement for Person with Disabilities
- (8) Exhibit 1-H: Additional Federal Contract Clauses

Forms that will be required to be submitted with future bid package are included below.

Exhibit 1-A

BUY AMERICA CERTIFICATE

The contractor/Service Provider agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 5323(j)(2)© and 49 CFR661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those

subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

The proposer must check the appropriate box or boxes, provide the information requested, and sign this certificate.

- 1. The proposer or offer hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.
- 2. The proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C.5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date: _____

(Company name)

By: _____
(Signature)

Name: _____

Title: _____

Exhibit 1-B
Disadvantage Business Enterprise
(DBE) Certification

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. **The agency's overall goal for DBE participation is 3 %. A separate contract goal of 3% DBE participation has been established for this procurement.** A complete list of qualified DBE's are available on the UDOT website in the Civil Rights section under the title UUCP DBE Directory. Only businesses listed in the current UUCP DBE Directory are certified as a DBE in the State of Utah and will count towards the contract goal.

The SERVICE PROVIDER shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The SERVICE PROVIDER shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the SERVICE PROVIDER to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as **the City** deems appropriate. Each subcontract the SERVICE PROVIDER signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following **concurrent with and accompanying sealed bid**:

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

Bidders must present the information required above **with initial proposals** (*see* 49 CFR 26.53(3)).

The SERVICE PROVIDER is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the SERVICE Provider's receipt of payment for that work from the **CITY**. In addition, **the SERVICE PROVIDER may not hold retainage from its subcontractors as required.**

Page 2 of Exhibit 1-B

**Disadvantage Business Enterprise
(DBE) Certification**

SERVICE PROVIDER is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the The CITY and SERVICE Provider's receipt of the partial retainage payment related to the subcontractor's work.

The SERVICE PROVIDER must promptly notify **The City**, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The SERVICE PROVIDER may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of **the City**.

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The SERVICE PROVIDER shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause The City to be in violation of the FTA terms and conditions.

One purpose for this is to ensure nondiscrimination, fair competition, remove barriers and create a level playing field, in the award of purchases and/or contracts.

_____ hereby certifies the company I represent has complied with the DBE requirements of: Sub part D of 49 CFR, Section 26 of the Transportation Assistance Act of 1982.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Exhibit 1-C
Certificate Regarding Debarment and Suspension

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor/ service provider is required to verify that none of the contractor/service provider, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Park City Transit. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Park City Transit**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Date: _____

Signature: _____

Company Name: _____

Title: _____

Exhibit 1-D
CERTIFICATION OF
RESTRICTIONS ON LOBBYING

I, _____, hereby certify on
(name and title of contractor official)
behalf of _____ that:
(Contractor firm name)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by U.S.C. Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this _____ day of _____, 2010.

By: _____
(signature of authorized official)

(title of authorized official)

Exhibit 1-E

NON-COLLUSION AFFIDAVIT

I state that I am (sole owner) (a partner) (officer of the foregoing corporation) (agent of the above bidder) of _____ and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

- (1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication, or agreement with any other contractor, bidder, or potential bidder, except as disclosed on the attached appendix.
- (2) That neither the price(s) nor the amount of this bid, and neither the approximate prices(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before the bid opening/closing.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or competitive bid or other form of complementary bid.
- (4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other form of competitive bid.
- (5), its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by state or federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as described on the attached appendix.

I state that _____ understands and acknowledges that the above representations are material and important, and will be relied on by Park City Municipal Corporation in awarding the contract(s) for which this bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from Park City Municipal Corporation of the true facts relating to the submission of bids for this contract.

Name of Person

Position:

Exhibit 1- F

FLY AMERICA REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Cargo Preference

46 U.S.C. 55305 and 46 CFR Part 381 impose cargo preference requirements in contracts and subcontracts in which equipment, materials or commodities may be transported by ocean vessel in carrying out the project. If the Contractor has knowledge of or anticipates any equipment, materials or commodities that may be shipped by ocean vessel, the Contractor is obligated to inform Park City Municipal Corporation, so that additional requirements and clauses may be attached to this Contract.

- [] 1. The proposer or offeror hereby certifies that it will meet the requirements of Fly America Requirement and Cargo Preference.
- [] 2. The proposer hereby certifies that it cannot comply with the requirements of Fly America and Cargo Preference.

Date: _____

(Company name)

By: _____
(Signature)

Name: _____

Title: _____

Exhibit 1 – G

ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;
3. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. U.S. GSA regulations, "Accommodations for the Physically Handicapped" 41 C.F.R. Subpart 101-19; U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609;
9. And any implementing requirements FTA may issue.

Company name: _____ Date: _____

Name: _____ Title: _____
(Signature)

Exhibit 1- H

Additional - Federal Contract Clauses

Energy Conservation - The SERVICE PROVIDER agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Clean Water - (1) The SERVICE PROVIDER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The SERVICE PROVIDER agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The SERVICE PROVIDER also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person

or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

- Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A.

Access to Records - The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the SERVICE PROVIDER agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the SERVICE PROVIDER which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. SERVICE PROVIDER also agrees, pursuant to 49 C.F.R. 633.17 to

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provide the FTA Administrator or his authorized representatives including any PMO Contractor access to SERVICE PROVIDER's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. The SERVICE PROVIDER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
3. The SERVICE PROVIDER agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case SERVICE PROVIDER agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
4. FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes - SERVICE PROVIDER shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. SERVICE Provider's failure to so comply shall constitute a material breach of this contract.

Clean Air - (1) The SERVICE PROVIDER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The SERVICE PROVIDER agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The SERVICE PROVIDER also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

Recovered Materials - The SERVICE PROVIDER agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247,

and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

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No Obligation by the Federal Government.

(1) The Purchaser and SERVICE PROVIDER acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, SERVICE PROVIDER, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The SERVICE PROVIDER agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts.

(1) The SERVICE PROVIDER acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the SERVICE PROVIDER certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the SERVICE PROVIDER further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the SERVICE PROVIDER to the extent the Federal Government deems appropriate.

(2) The SERVICE PROVIDER also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the SERVICE PROVIDER, to the extent the Federal Government deems appropriate.

(3) The SERVICE PROVIDER agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

-Continued Additional - Federal Contract Clauses

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the SERVICE PROVIDER is required to verify that none of the SERVICE PROVIDER, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The SERVICE PROVIDER is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by **the City**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **the City**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Civil Rights - The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the SERVICE PROVIDER agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the SERVICE PROVIDER agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

- (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the SERVICE PROVIDER agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375,

(b) **-Continued Additional - Federal Contract Clauses**

(c)

(d) "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The SERVICE PROVIDER agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the SERVICE PROVIDER agrees to comply with any implementing requirements FTA may issue.

(e)

(f) (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the SERVICE PROVIDER agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the SERVICE PROVIDER agrees to comply with any implementing requirements FTA may issue.

(g)

(h) (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the SERVICE PROVIDER agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the SERVICE PROVIDER agrees to comply with any implementing requirements FTA may issue.

(i)

(j) (3) The SERVICE PROVIDER also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(k)

(l) **Incorporation of Federal Transit Administration (FTA) Terms** - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The SERVICE PROVIDER shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause The City to be in violation of the FTA terms and conditions.

(m)

(n) By signing and submitting a proposal, the bidder or proposer certifies compliance with these additional Federal Clauses.

(o)

(p) Name: _____ Date: _____

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2012, by and between PARK CITY MUNICIPAL CORPORATION, P O Box 1480, Park City UT 84060, a municipal corporation of the state of Utah (hereinafter "City"), and <insert CONTRACTOR NAME and address here>, which is a (check one) ____ corporation ____ partnership ____ sole proprietorship ____ limited liability company (hereinafter "Contractor").

PURPOSE: For the project known as the (project name) (hereinafter "Project"), which consists of (brief description of work and address).

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

SECTION 1. SCOPE OF WORK. Contractor shall furnish all labor, materials and equipment to complete the Project, consisting of the work described in the Information for Bidders as the Basic Bid, and the following additive alternates: _____, as specifically set out in the contract specifications, which is made a part hereof by reference, herein called the "Project."

The Project will be bound by the specifications referenced herein, according to the Advertisement for Bid, the Information for Bidders, the General Project Requirements and Specifications provided by City, the Bid of the Contractor, Bid Bond, Drawings, Notice of Award and Notice to Proceed, collectively referred to as the Contract Documents, all of which are incorporated herein by reference and on file in the _____ Department. To the extent that this Agreement conflicts in any way with a proposed form agreement which may have been submitted as part of the bid specifications, this Agreement shall control.

If any of the work performed by Contractor in any phase of the Project does not meet City standards as outlined in the bid documents and specifications, then Contractor shall immediately repair or correct the work at no additional cost to City.

A. SUBCONTRACTORS. No part of this contract shall be subcontracted by the Contractor without prior written approval by City through the Project Manager/Engineer. The Contractor shall be fully responsible to the City for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

If written approval is granted to subcontract a part of this contract the Contractor shall require each subcontractor that physically performs services within Utah to submit an affidavit to the Contractor stating that the subcontractor has used E-

Verify, or equivalent program, to verify the employment status of each new employee.

The Contractor shall, within ten (10) days of submittal of request for final payment, include an affidavit showing satisfactory evidence that all claims of subcontractors, laborers and material men who supplied services or materials to the Project have been fully paid, discharged, or waived. The Contractor shall submit lien waivers for each pay release.

If the City reasonably believes that Contractor has failed to pay Subcontractors, material men, or laborers for work on the Project within a reasonable time of when payment is due, then City may, after having notified the Contractor, either pay unpaid bills or withhold from the release of Contractor's payment bond for this Project, a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged and a ten percent (10%) fee for administering such claims.

B. STANDARDS OF WORKMANSHIP. Contractor shall demonstrate workmanship equal to or better than current industry standards for this Project. Where Park City specifications exist (for example, asphalt, concrete, irrigation, sprinkling system and landscaping), they shall provide the benchmark for determination of acceptability.

C. INSPECTION AND TESTING. All materials and equipment used in the construction shall be subject to inspection by the Project Manager/Engineer. If laws, ordinances, rules or regulations of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than Project Manager/Engineer, the Contractor shall give the Project Manager/Engineer timely notice of readiness. Inspections, tests or approvals by the City or appropriate authorities will not relieve the Contractor from obligations to perform the work in accordance with the requirements of the Contract Documents and/or provisions. The Project Manager/Engineer and other designated persons will at all times have access to the work. All work shall ultimately be inspected for final acceptance by the Project Manager/Engineer within a reasonable time upon receipt of notice from the Contractor that work is complete and ready for final inspection.

During construction, the work will be inspected and observed by the Project Manager/Engineer or his designated representative. All work that is deficient or does not meet specifications shall be removed and replaced with proper material at Contractor's expense.

D.WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least one

(1) year following the date of substantial completion of the Project under the terms of the performance bond or as provided in the project specifications and construction documents, whichever is longer.

E. ADOPTED CODES. All work shall be completed at a minimum in accordance with all building, electric and energy codes adopted by Park City.

SECTION 2. PERFORMANCE AND PAYMENT BONDS. Contractor shall furnish to the City payment and performance bonds satisfactory to the City guaranteeing Contractor's payment and performance, in the amount, for each separately, of one hundred percent (100%) of the Contract Amount.

SECTION 3. INSURANCE. Unless otherwise specified in the bid documents, the Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees, or subcontractors.

The Contractor shall provide Park City Municipal Corporation a Certificate of Insurance evidencing:

- A.** General Liability insurance written on an occurrence basis with limits no less than two million dollars (\$2,000,000) combined single limit per occurrence and four million dollars (\$4,000,000) aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if specifically requested; and employer's practices.

The Service Provider shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63G-7-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

- B.** Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and

property damage.

- C. Workers Compensation insurance limits written as follows:
Bodily Injury by Accident \$500,000 each accident;
Bodily Injury by Disease \$500,000 each employee, \$500,000 policy limit

“Park City Municipal Corporation” shall be named as an additional insured on the insurance policies and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request certified copies of any required policies. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

The Contractor's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor the total sum of (insert amount, *in words*) (\$ numerically) (“Contract Amount”) for all work and materials expended to complete this Project, which shall include the cost of all bonds, insurance, and all charges, fees, permits (including water and sewer fees, unless waived), expenses or assessments of whatever kind or character that are or may be necessary to complete this Project, including any additive alternates listed within the Scope of Work described in Section 1.

SECTION 5. PERMITS AND FEES. As set out in Section 4 above, the Contract Amount includes the price of all normally applicable fees and permits. The City may, at its discretion, arrange for the waiver of certain fees, permits and expenses.

SECTION 6. TERMS OF PAYMENT. The City shall pay for services provided hereunder according to and in an amount not to exceed that detailed in the attached payment schedule (Attachment A) and only upon Contractor's request on forms approved by and submitted to the Project Manager. The City shall make payment within thirty (30) days thereafter. Requests for a more rapid payment may be considered if a discount is offered for early payment. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work. No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in

whole or part from the Contractor for non-compliance with the provisions of the Contract Documents.

A. RETAINAGE. The City may, in its sole discretion; (1) retain five percent (5%) of the value of all work done and materials or equipment supplied as part security for the fulfillment of the Agreement by the Contractor; or (2) retain the final payment of up to five percent (5%) of the total project amount. As work nears completion and solely at the City's discretion, the City may reduce the retainage to an amount more in line with the work remaining. The City reserves the right to retain all amounts previously withheld or due, including any liquidated damages, until all services specified herein are complete. Any money withheld pursuant to this section shall be placed in an interest bearing account and the interest shall also be payable to the Contractor upon final payment.

Before final payment is made, the Contractor must submit evidence satisfactory to the City that all payrolls, material bills, subcontracts and all outstanding indebtedness in connection with the Project have been paid for.

The City may withhold a reasonable amount of the payment bond sufficient to cover any outstanding indebtedness or monies owed or claimed by any person who supplied work or materials to the Project plus ten percent (10%) of such indebtedness as the City's cost of administering such claims until Contractor supplies a release satisfactory to the City, signed by all persons who have supplied labor or materials to the Project or, at the City's option if no claim is made, until 105 days after the date on which any person performed the last of the labor or supplied the last of the material for the Project and upon written request from the Contractor.

The Contractor shall supply to the Project Manager/Engineer within a reasonable time after his request a signed statement verifying all the suppliers, subcontractors and other persons who have supplied labor or materials to the Project.

B. FINAL PAYMENT. Acceptance by the Contractor of the final payment from the City shall release the City of all claims, demands and liability of the Contractor, its officers, agents, employees and subcontractors, whether communicated or not by the Contractor, except with respect to those matters referred to in writing delivered to the Contractor and approved in a signed writing by the Project Manager.

SECTION 7. COMPLETION TIME. The work on this Project shall commence within ten days of receipt of the Notice to Proceed and shall be completed by <<insert date>>. Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by Change Order, no damages shall become due to Contractor for City caused delay. A Change Order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The Change Order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City **One Hundred Dollars (\$100.00)**, _____ (**Contractor Initials**) which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair

estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

SECTION 8. ADDITIONAL WORK/CHANGE ORDERS. The City may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. The City shall pay Contractor for any additional work so requested, and shall reduce the payment to the Contractor for any reduction in labor, materials, overhead and profit margin resulting from the reduction in the work. Except as the City shall so notify the Contractor in writing, it is understood and agreed by the parties hereto that no money will be paid to the Contractor for any new or additional labor or materials furnished unless a written modification is agreed to in a document signed by both parties.

The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in order of precedence listed below:

- A. An agreed lump sum; or in the event the parties cannot agree; then
- B. The unit rate for the work bid by the Contractor, if applicable, or in the event there was no such rate bid; then

C. The actual cost for: (1) labor; (2) materials; (3) supplies; (4) equipment; (5) direct overhead (not to exceed 5% of the sum total of items 1-4, unless approved by the City); and (6) other services necessary and approved by the City to complete the work. In the event of a net increase in the Contract Amount for a change order as a whole, the City shall allow a payment to the Contractor of an additional ten percent (10%) of the actual cost of the work, not including direct overhead or bond costs, to cover the cost of general overhead and profit. The Contractor may also charge the City for actual cost of the net increase in bond costs as a result of the overall change to the Contract Amount. The City specifically reserves the right to request documentation, including but not limited to payroll stubs, bond bills, and invoices, to validate the Contractor's calculations.

SECTION 9. DISPUTES. Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish the City a written signed appeal addressed to the Project Manager/Engineer. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the contract and in accordance with the City's decision. The decision of the City shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

SECTION 10. DEFAULT, REMEDY AND TERMINATION. The City may terminate this agreement upon the occurrence of one or more of the following events:

- A.** If Contractor or any Subcontractor should substantially violate any of the provisions of this contract;
- B.** If Contractor substantially fails to perform any part of this Agreement;
- C.** If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of seventy two (72) hours;
- D.** If Contractor (1) shall become insolvent in a bankruptcy sense; (2) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (3) shall suffer, voluntarily or involuntarily, the entry of an order by any

court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. '101[10]), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (4) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (5) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (6) shall be dissolved; (7) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (8) shall voluntarily suspend substantially all of its business operations; (9) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by, controlling, or under common control with the Contractor; or (10) shall take action for the purpose of any of the foregoing,

After serving ten (10) days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within ten (10) days after serving such notice, the violation is not corrected to City's reasonable satisfaction, the City then may take over the work and prosecute it to completion by contract or by any other method it may deem advisable at the expense of the Contractor. The Contractor and the bonding company shall be liable to the City for any reasonable cost occasioned by the City in excess of the amount agreed for the service herein.

The Contractor shall be entitled to a hearing before a City hearing officer upon the issue of termination if it submits a written request therefore within seven (7) days of the service of the notice of the City's intent to terminate. The Contractor shall be entitled to be heard at such hearing on the issue of termination. The Contractor shall not bring an action against the City, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by the City's hearing officer(s).

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of any provision of this Agreement shall not be construed to be modification of the terms of this Agreement, unless stated to be such in writing, signed by the City's authorized representative.

The Contractor shall continue the performance of this agreement to the extent not terminated under the provisions of this section.

The rights and remedies of the City provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

SECTION 11. HOLD HARMLESS INDEMNIFICATION. The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, employees, and officers, harmless from and shall process and to defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or others; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

SECTION 12. CONTROLLING LAW. These general conditions shall be construed in accordance with and enforced under the laws of the State of Utah. Any action of law, suit in equity, or judicial proceeding for the enforcement of the Agreement, or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

SECTION 13. ASSIGNMENT. The Contractor shall not assign nor transfer any interest in this agreement without the prior written consent of the City, provided however, that claims for compensation due or to become due the Contractor from the City under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment shall be promptly furnished to City.

SECTION 14. SAFETY AND TRAFFIC CONTROL. Contractor shall take all reasonable precautions to protect the safety of pedestrians, school children, motorists, and others who may use or come near to the Project site, including but not limited to compliance with the Manual of Uniform Traffic Control Devices.

SECTION 15. SAFETY AND PROTECTION OF THE WORK. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the project work. Contractor shall provide reasonable protection to prevent damage, injury or loss to employees on the Project work and all other persons who may be affected thereby, materials and equipment, whether on or off the site, and other property at the work site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. In addition, the Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

The Contractor shall erect and maintain, as required by the existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, setting safety regulations, and notifying owners and user of adjacent utilities.

The Contractor shall promptly remedy all damage or loss to any property referred to in this Section caused in whole or in part by the Contractor, any subcontractor, sub-subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible, except for acts or omissions by the City or anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor. Contractor shall remove from the site all cuttings, debris, equipment and unused material.

SECTION 16. UNENFORCEABLE CONTRACT, WAIVERS. In the event that any provision of this contract shall be ruled invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same provision by the other party.

SECTION 17. ENTIRE AGREEMENT. This contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations,

representations or agreements, either written or oral. This agreement may be amended only by written modification signed by both parties.

SECTION 18. COMMENCEMENT OF WORK. Contractor will commence work as required by the specifications within ten calendar days after receiving the NOTICE TO PROCEED.

SECTION 19. UTILITIES. The right is reserved to the owners of public utilities and franchises to enter upon the street or work site for the purpose of making repairs or changes of their property that may become necessary by the work. The City shall also have the privilege of entering upon the street or work site for the purpose of repairing culverts, storm drains, water system repairs or adjustments and any and all other necessary City work.

The Contractor takes the whole risk, responsibility and expense with respect to the location of utilities, and in working with utility owners about locating, moving, repairing, and modifying utilities. All utility locations shown on the plans and specifications are approximate and are marked on the plans, if at all, only for convenience. The City makes no representation about the location of any such utilities, and Contractor is encouraged to contact utility companies and owners about the location of all utilities that may be impacted by or impact the Project work.

SECTION 20. HOURS AND DAYS OF WORK. All work performed by the Contractor, its subcontractors, material men, agents and employees shall be performed during work hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday unless otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction Mitigation Plans, the Building Official may further reduce the hours or days of work for Special Events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction:

- A. Interior work on individual single-family home construction or addition projects not involving materials or supply deliveries
- B. Construction of decks, patios, landscape walls less than 4 feet in height, and fences on individual single-family lots
- C. Non-mechanized exterior painting on individual single-family residences

- D. Non-mechanized landscaping on individual single-family residences
- E. Survey work not involving grading or use of power equipment to cut vegetation.

Extended Hours Special Permit. The Building Official may authorize extended hours for construction operations or procedures which, by their nature, require continuous operation or modify or waive the hours of work on projects in generally isolated areas where the extended hours do not impact upon adjoining property occupants. In such cases, the Building Official shall issue a Special Permit identifying the extended hours. Contractor shall display the special permit on site.

Special Event Regulations. The Building Official and/or Police Chief may, at their discretion, restrict construction activity, including governmental or special improvement agencies, in order to assure the public safety during special events within the City. Special events shall include, but not be limited to the Art Festival, Film Festival, ski events, and holiday events.

SECTION 21. CONSTRUCTION MANAGEMENT PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the City Engineer or his designee, for all building permits. The Community Development Department may waive this requirement for minor remodels, additions and interior construction where the impact on adjacent property is minimal. This plan shall be written and shall address, to the satisfaction of the City Engineer or his designee.

A. Hours and Days of Operation. The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.

B. Parking. The Construction Mitigation Plan shall include a parking plan. Construction vehicle parking may be restricted at construction sites so as to not block reasonable public and safety vehicle access along streets and sidewalks. Construction parking in paid or permit only parking areas require the Public Works Department review and approve a parking plan. The plan shall also include anticipated temporary parking, e.g. delivery vehicles, large equipment parking.

C. Deliveries. The Construction Mitigation Plan shall identify proposed delivery locations and routes. Deliveries of construction materials and supplies

including concrete may be regulated as to time and routing if such deliveries will cause unreasonable noise, parking, or access issues. In order to reduce the number of delivery trips to construction sites, the stockpiling of materials on or near the site may be required. In the case of multiple construction sites in close proximity, a common materials storage and staging site may be required.

D. Construction Phasing. Due to the narrow streets, small lot configuration, topography, traffic circulation, weather, construction parking and material staging problems, projects in the Historic District and other areas of the City may be required to be phased if more than one project is under construction in close enough proximity to create public safety or nuisance problems. In cases where phasing is deemed necessary by the City Engineer or his designee, the first project to receive a building permit shall have priority, however, the Building Official shall have the authority to phase projects as necessary to assure efficient, timely and safe construction.

E. Trash Management and Recycling. Construction sites shall provide adequate storage and a program for trash removal.

F. Control of Dust and Mud on Streets. A program for the control of dust or other airborne debris shall be required. Provision must be made to eliminate the tracking of mud on streets and a program shall be required to remove any such mud daily.

G. Noise. Construction activity shall not exceed the noise standards as specified in Section 6-3-9 of the Park City Municipal Code.

H. Grading and Excavation. Because of the truck hauling involved in grading and excavation, restrictions on trucking routes as well as the hours of operation may be necessary to mitigate the adverse impacts from such operations. Destination and total cubic yards of excavated material shall be noted.

I. Construction Sign Requirements. A sign, indicating the name of the party responsible for the Project shall be posted in a location where such sign is readable from the street or driveway to the construction site. The sign shall not exceed 12 square feet in size, six feet in height and shall not exceed a letter type of 4". Information on the sign shall include, at a minimum:

1. Name, address and phone number of contractor;
2. Name, address, and phone number of person responsible for the project; and
3. Phone number of party to call in case of emergency.

No additional fee is required for this sign.

SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

A. The Contractor shall obtain and maintain on the site a container of suitable size and design to hold and confine trash, scraps, and other construction related refuse created or accumulated on the site. All such construction refuse shall be maintained in a closed container at all times, until transferred to the landfill. Containers may be placed in setback areas, provided that the placement of the container does not obstruct the view of motorists on adjoining streets and thereby create traffic hazards. Contractor shall not permit accumulated debris, litter, or trash on the construction site to blow or scatter onto adjoining properties, including the public street or to accumulate on the site outside of the container, or on transit to the landfill or dump. The owner or contractor shall service the container as frequently as needed to prevent trash from over-flowing.

B. The Project site shall have permanent toilets, or an approved temporary toilet facility positioned in a location approved by the Building Department, at the rate of one toilet per fifteen on-site employees (1-15 employees = one toilet, 16-30 employees= two toilets and so on).

SECTION 23. OBEY LAWS.

A. The Contractor shall obey all laws, ordinances and regulations of the United States, the State of Utah, and Park City in performing this Agreement.

B. The Contractor shall register and participate in E-Verify, or equivalent program. The Contractor agrees to verify employment eligibility through E-Verify, or equivalent program, for each new employee that is employed within Utah.

SECTION 24. NONDISCRIMINATION.

A. The City is an equal opportunity employer.

B. In the performance of this Agreement, the Contractor will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination

in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Contractor shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

C. The Contractor will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.

D. If any assignment or subcontracting has been authorized by the City, said assignment or subcontract shall include appropriate safeguards against discrimination. The Contractor shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein

SECTION 25. THIRD PARTY RIGHTS. Nothing herein is intended to confer rights of any kind in any third party. No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 26. PROJECT MANAGER/ENGINEER. The Project Manager/Engineer for this Project is _____, or such other person designated by the City Engineer or Public Works Director to the Contractor orally or in writing.

SECTION 27. PARTIES' REPRESENTATIVES. For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered or mailed, or sent by facsimile transmission certified mail, postage pre-paid, to the parties at the following addresses:

Contractor: _____, or such other person designated in writing by the Contractor's chief administrative officer, at the Contractor's address set out first above;

Park City: Project Manager/Engineer, at the address set out first above for the City, or when given to such other person as either of the above representatives shall designate in writing. The designation of any address may be changed by notice given in the same manner as provided in this paragraph.

SECTION 28. SEVERABILITY. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. If any provision of this Agreement is held invalid or unenforceable with respect to particular circumstances, such provision shall nevertheless remain in full force and effect in all other circumstances.

IN WITNESS WHEREOF, the parties have entered into this agreement on the day and year set out at the top of this Agreement.

PARK CITY MUNICIPAL CORPORATION

Diane Foster, Acting Interim City Manager

ATTEST:

City Recorder's Office

APPROVED AS TO FORM:

City Attorney's Office

INSERT CONTRACTOR NAME

Address:

Address:

City, State, Zip:

Utah Contractor License No.

Tax ID#: _____

Signature

Printed name

Title

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 2012, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _____ (*title or office*) of _____ Corporation by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (*title*) for _____, a _____ corporation.