

REQUEST FOR PROPOSALS

PARK CITY WATER SYSTEM TANK INSPECTION AND CLEANING



Park City Municipal Corporation

P.O. Box 1480

Park City, Utah 84060

June 2, 2017

GENERAL INFORMATION

Introduction

Park City Municipal Corporation (PCMC), located in Summit County Utah, is seeking the services of a qualified consulting firm for the purpose of providing potable water tank inspection and cleaning services over the next three years.

Scope of Project

The proposed work will provide inspections and cleaning of twenty three (23) potable water storage tanks over the next three years, sampling of accumulated sediment, as well as a condition assessment report detailing observations, deficiencies, and recommended corrective actions.

The tanks are all located within the approximately 14 square miles of Park City limits but outdoor tanks are accessible only by two-track dirt road with adequate parking for a truck and trailer. The water treatment plant (WTP) wetwells are located indoors but in close proximity to adequate parking for a truck and trailer accessible via roll-up door.

Tank Name:	Capacity (gal):	Diameter/ Dimensions (ft)	max depth	tank type	hatch size	special considerations	planned cleaning date
Bald Eagle	1,000,000	55 x 122	21.00	buried concrete	36 x 60"		2017
Empire	1,000,000	73	32.32	above ground steel	36" diameter		2017
Sandstone Cove	250,000	55	15.50	buried concrete	48" x 48"		2017
Neck	800,000	90	17.00	buried concrete	36" x 36"		2017
Thaynes #1	500,000	60	23.50	buried concrete	36" x 72"		2017
Thaynes #2	1,000,000	86	24.50	buried concrete	24" x 24"		2017
Aerie	1,000,000	69 x 127	21.67	buried concrete	36" x 36"	45' sloped walls	2017
Iron Canyon	300,000	52	19.75	buried concrete	48" x 48"		2017
Spiro WTP Finish #1	10,000	6 x 36	0.00	indoor concrete	40" x 36"	pumps in tank	2018
Spiro WTP Finish #2	280,000	45 x 60	0.00	indoor concrete	40" x 36"	pumps in tank	2018
Spiro WTP Raw Wetwell	10,000	20 x 10	15.00	indoor concrete	40" x 36"	pumps in tank	2018
Boothill #1	1,000,000	83	24.66	buried concrete	36" x 36"		2018
Boothill #2	2,000,000	120	24.33	buried concrete	60" x 84"		2018
Flagstaff	1,000,000	98	19.50	buried concrete	48" x 72"		2018
North Lake Flat	200,000	60	14.67	buried concrete	48" x 48"		2018
Red Cloud	1,000,000	98	19.50	buried concrete	48" x 72"		2018
Fairway Hills	1,000,000	86	23.25	buried concrete	36" x 60"		2019
Quarry Mountain	400,000	62	17.00	buried concrete	42" x 42"		2019
Solamere	600,000	70	21.17	buried concrete	36" x 36"		2019
Masonic	500,000	60	23.80	buried concrete	36" x 36"		2019
Silver Lake	600,000	70	20.50	buried concrete	30" x 30"		2019
Quinns WTP Finish Wetwell	135,000	70 x 20	15.00	indoor concrete	46" x 46"	baffle wall, pumps in tank	2019
Woodside	500,000	60	23.20	buried concrete	24" x 24"		2019

Work will be carried out in accordance with AWWA and any other applicable Standards.

Contractor will provide any necessary safety equipment and follow OSHA and any other applicable standards.

Tanks must remain in service during the inspection, sampling, and cleaning.

The Contractor shall collect two 1-Pint water samples, in unpreserved lab supplied sample bottles, from the bottom of the tank and collect a 40 ml container of any solids with water from the bottom of the tank. At the Contractor's request the City will provide bottles with five (5) day notification. Each tank will be inspected for internal and external condition of structural material, reinforcing structures, paint and/or coatings, safety appurtenances, and sanitary/security equipment. The tanks will be assessed for seismic and corrosivity concerns as well as general maintenance items. The Contractor will provide recommendations for repairs that the City should make.

Discharge of water as a byproduct of cleaning will be mitigated on site by the contractor.

Access to the interiors of tanks must take place from Monday through Friday beginning no earlier than 7:30 a.m. and ending at 5:00 p.m. All inspections and cleaning must take place before significant snowfall occurs, generally in late October.

Project Timeline

The following preliminary schedule is anticipated for completion of this project.

- RFP advertised June 2, 2017
- Proposals Due (4:00 p.m.) June 21, 2017
- Evaluation and Selection June 23, 2017
- 2017 Inspection and Cleaning Complete October 31, 2017
- 2017 Final Report Due November 30, 2017
- 2018 Inspection and Cleaning Complete October 31, 2018
- 2018 Final Report Due November 30, 2018
- 2019 Inspection and Cleaning Complete October 31, 2019
- 2019 Final Report Due November 30, 2019

PROPOSAL REQUIREMENTS AND CONTENTS

Statement of Qualifications

The City is interested in the experience of the proposed staff and their experience performing tank inspections and cleanings. Provide a concise Statement of Qualifications (SOQ) describing your firm's experience on similar projects and the expertise of your staff to complete the components included in the scope of work.

Method of Inspection and Cleaning

Provide a detailed outline of methods, equipment, and manpower necessary to complete each task in a safe and efficient manner. Please note any cost, reduction of risk, or efficiencies to be gained by the City by employing the contractor's methods.

Sample Condition Assessment Report

Park City requires a sample of the proposed condition assessment report, as well as the format of the deliverable, including written and electronic (pictures and video) documentation. This will include details of what will be inspected as well as sample assessment data and written recommendations for repair and rehabilitation.

Schedule of Work

A schedule of proposed dates for the inspection and cleaning of each tank, as well as the estimated duration for each task must be provided.

Fee Proposal

Please provide a fee proposal in the form attached to the RFP. Provide a detailed fee breakdown reflecting the scope of services including:

- a) Hourly charge-out rate table for all anticipated personnel classifications.
- b) Mobilization and demobilization costs, including potential savings gained from timing work to coincide with that carried out by the contractor in nearby water systems.
- c) Inspection and cleaning costs per tank.
- d) All specialized equipment, travel, and related expenses, and other indirect costs.

Inquiries

Questions must be submitted **in writing** and received no later than 4:00 p.m., June 14, 2017. Email inquiries are strongly encouraged. Questions concerning this request for proposals should be submitted to:

Park City Municipal Corporation
Attention: Kyle MacArthur, Water Distribution Manager
P.O. Box 1480
Park City, UT 84060
kmacarthur@parkcity.org (e-mail)

Any interpretation of the documents will be made by Addendum duly issued. Verbal answers, oral explanations, or instructions given before the award of the contract or at any time will not be binding on the City. Addenda shall be issued within a reasonable time, but not less than two (2) working days prior to receipt of proposals.

Submittal Delivery

- A. To be considered, submit one (1) copy of your proposal in a sealed envelope clearly marked:

“PROPOSAL FOR PCMC WATER TANK INSPECTION AND CLEANING”

To: Park City Municipal Corporation
Attn: Kyle MacArthur, Water Distribution Manager

- B. Proposals must be received at the Park City Public Works Building, 1053 Iron Horse Drive, Park City, UT 84060, no later than **June 21, 2017, at 4:00 p.m. (local time)**.

- C. If submitting by mail, submit to:

Park City Municipal Corporation.
Attn: Water Department, Kyle MacArthur, Water Distribution Manager
P.O. Box 1480
Park City, Utah 84060

- D. Email or Facsimile submittals will not be accepted.
- E. Park City assumes no responsibility for delayed or undelivered mail or express packages. Additionally, the use of a FTP site to download the proposal will not be considered responsive. Proposals which are not delivered to Park City by the above specified time and date will not be considered.

Additional Proposal Requirements

1. Proof of insurance as outlined in the sample Construction Agreement attached hereto as Exhibit "A" as well as proof of worker's compensation or exemption.
2. Written affirmation that the firm has a policy of nondiscrimination in employment because of race, age, color, sex, religion, national origin, mental or physical handicap, political affiliation, marital status, or other protected class, and has a drug-free workplace policy and an equal opportunity employer and being otherwise qualified by law to enter into the Construction Agreement.

Proposal Limits

1. Please provide a fee proposal in the form attached to the RFP.
2. Please limit the SOQ to five (5) pages including cover page, resumes, table of contents, dividers, etc. The Sample Condition Report added to the back of the SOQ will not count against the five (5) page limit.

Provider Service Agreement

Park City Municipal Corporation (City) is expecting to enter into a Construction Agreement with the selected Contractor (offeror) for services necessary to provide and complete the Park City Water System Tank Inspection and Cleaning. A sample of the Construction Agreement is attached. The offeror selected to provide the services/products shall be required to enter into a written agreement in substantially the form as shown in the attached sample agreement which shall be the basic form used to develop the final agreement.

- Signature on an offeror's proposal acknowledges that the offeror is willing to enter into the agreement if awarded the contract. Offerors are advised to read thoroughly the sample agreement, as the selected offeror will be required to comply with its requirements.
- If offeror takes exception to any term or condition set forth in this proposal and/or the sample agreement and any of its exhibits and attachments, said exceptions must be clearly identified in the response to this RFP. **Exceptions or deviations to any of the terms and conditions must be submitted in a separate document accompanying offeror's proposal (included in Section I of the proposal) identified as "Exceptions." Such exceptions shall be considered in the evaluation and the award process. All questions about the insurance requirements or indemnification language found in Paragraphs 3 and 11 of the sample Construction Agreement must be resolved prior to submitting an SOQ.** The City shall be the sole determiner of the acceptability of any exception.
- It is the City's express desire to enter into a Construction Agreement which includes all services necessary for this project, whether or not the services are specifically outlined in this RFP.

Preparation of Qualifications/Proposals

- A. Failure to Read. Failure to read the Request for Proposals and these instructions will be at the offeror's own risk.
- B. Cost of Developing Qualifications/Proposals. All costs related to the preparation of the qualifications/proposals and any related activities are the sole responsibility of the offeror. The City assumes no liability for any costs incurred by offerors throughout the entire selection process.

Confidentiality

All responses, inquiries, and correspondence relating to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the offeror that is submitted to the City, as part of the proposal or otherwise, shall become the property of the City when received by the City and may be considered public information under applicable law. The City is subject to the disclosure requirements of the Government Records Access and Management Act, Title 63, Chapter 2, Utah Code Annotated. The City generally considers proposals and all accompanying material to be public and subject to disclosure.

Any material considered by the offeror to be proprietary must be accompanied by a written claim of confidentiality and a concise written statement of reasons supporting the claim. Blanket claims that the entire RFP is confidential will be denied. The City cannot guarantee that any information will be held confidential. Under Section 63-2-309 of the Government Records Access and Management Act, if the offeror makes a claim of confidentiality, the City, upon receipt of a request for disclosure, will determine whether the material should be classified as public or protected, and will notify the offeror of such determination. The offeror is entitled under the Government Records Access and Management Act to appeal an adverse determination. The City is not obligated to notify the offeror of a request, and will not consider a claim of confidentiality, unless the offeror's claim of confidentiality is made in a timely basis and in accordance with the Government Records Access and Management Act.

PROPOSAL SELECTION**Selection Process**

The City intends to award a contract to the highest ranking firm based on the selection process and evaluation criteria stated below.

The selection process will proceed on the following schedule.

1. Proposals will be received by Park City at the time and place designated in the RFP.

2. A selection committee comprised of City staff will review the submitted Statements of Qualifications, rank them according to the following evaluation criteria, and make a selection.
3. Park City staff will negotiate a final scope and fee with the top ranked consultant. In the event that negotiations are not successful, the City reserves the right to enter into negotiations with other ranked firms.
4. City staff will present a recommendation to City Council to enter into a Construction Agreement with the selected firm(s). Award of the contract is subject to approval by City Manager after approval by City Council.

Qualification/Proposal Information

- A. **Discussions With Offerors.** The City reserves the right to enter into discussions with the offeror(s) determined to be reasonably susceptible of being selected for award, or to enter into exclusive discussions with the offeror whose proposal is deemed most advantageous, whichever is in the City's best interest, for the purpose of negotiation. In the event that exclusive negotiations are conducted and an agreement is not reached, the City reserves the right to enter into negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.
- B. **Equal Opportunity.** The City will make every effort to ensure that all offerors are treated fairly and equally throughout the entire advertisement, review, and selection process. The procedures established herein are designed to give all parties reasonable access to the same basic information. Park City's policy, subject to federal, State, and local procurement laws, is to provide reasonable attempts to support Park City businesses by purchasing goods and services through local vendors and service providers.
- C. **Proposal Ownership.** All proposals, including attachments, supplementary materials, addenda, etc., shall become the property of the City and will not be returned to the offeror.
- D. **Rejection of Proposals.** The City reserves the right to reject any or all proposals received and disqualify incomplete or late proposals. Proposals lacking required information will not be considered. Furthermore, the City shall have the right to waive any informality or technicality in proposals received when in the best interest of the City. No proposal shall be accepted from, or contract awarded to, any person, firm or corporation that is in arrears to the City, upon debt or contract or that is a defaulter, as surety or otherwise, upon any obligation to the City, or that may be deemed irresponsible or unreliable by the City. Offerors may be required to submit satisfactory evidence that they have the necessary financial resources to perform and complete the work outlined in this RFP.
- E. **Scope of Services.** The City reserves the right to change the nature or scope of the project generally described in the RFP without the need to repeat the formal solicitation process.

- F. City's Best Interest. The City reserves the right to take any steps deemed necessary to act in the City's best interest.
- G. GRAMA. All submittals shall be public records in accordance with government records regulations ("GRAMA") unless otherwise designated by the applicant pursuant to UCA § 63G-2-309, as amended.
- H. Proposal Term. Proposals shall be good for six (6) months from submittal deadline.
- I. Reservation of Rights. Park City Municipal Corporation reserves the right to cancel or modify the terms of this RFP and/or the project at any time and for any reason preceding contract award and reserves the right to accept or reject any or all proposals submitted pursuant to this request for proposals. Park City will provide respondents written notice of any cancellation and/or modification. Furthermore, the City shall have the right to waive any informality or technicality in proposals received when in the best interest of the City.

Evaluation Criteria

Statements of Qualifications and Fee Proposal will be evaluated by the selection committee on the criteria and the corresponding weight factors listed below:

	Maximum Points
A. Rate Structure and Fee	(20)
B. Safety and Efficiency of Methods of Inspection and Cleaning	(20)
C. Sample Condition Assessment Report	(20)
D. Level of Contractor Staff Experience/Qualifications, With Respect to Inspection, Cleaning, and Condition Assessments	(20)
E. Information Obtained from References and Other Factors Deemed Relevant by the Selection Committee	(20)
Maximum Total Points	100

Price may not be the sole deciding factor.

Protests

Proposers are directed to the Appeals Procedure contained in City's Contracting and Purchasing Policy.

EXHIBIT "A"

SAMPLE CONSTRUCTION AGREEMENT CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20__, 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 _____ 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 general liability and auto liability 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 aggregate amount not to exceed the Contract Amount or as detailed in an attached payment schedule (if attached, will be **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, unless exempted by Utah Code Ann. § 63G-12-302.

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, 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

STATE OF UTAH)
) ss.
COUNTY OF SUMMIT)

On this ____ day of _____, 20____, 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.

Notary Public