



**BUS SHELTER IMPROVEMENTS
(SHELTER PROCUREMENT)
PARK CITY MUNICIPAL CORPORATION**

CONTRACT DOCUMENTS

April 4, 2023

**BUS SHELTER IMPROVEMENTS
(SHELTER PROCUREMENT)
PARK CITY, UTAH**

INVITATION TO BID

Bids must be submitted electronically to the Utah Public Procurement Place (“U3P”) by **1:00 p.m. on Friday, April 14, 2023**, for a public bid opening at 1:15 p.m. that same day. Bidding Documents will be available on U3P beginning at **2:00 p.m. on Tuesday April 4, 2023**.

The Project consists of furnishing all labor, tools, materials, equipment, transportation and services required for the construction of the following items of work pertinent to two large shelters on Park Avenue: 1) Installation of new bus shelters at locations A (north side of Park Avenue near Homestake Road) & B (west side of Park Avenue near Homestake Road) including connection to a metered power service and shelter lighting; and 2) Installation will be on bus stop site improvements that will be performed by a separate contractor and will include sidewalk, retaining walls, and footings/pillars for the shelter installation. More specifically prospective bidders are hereby advised that the work includes but is not limited to: fabricated structural steel columns, roof beams, brackets and edge beams, exterior rough carpentry, formed metal roof panels, plastic glazing, staining, transparent finishing, wiring from power meter to panel in pre-installed conduit by others, and shelter lighting fixtures. Pre pour verification of site civil work prior to installation, shipping of structures, installation of structure and welding of in-bed plates.

Power conduit and meter infrastructure to be provided to site by civil contractor. Prospective bidders to coordinate with other contractor and Rocky Mountain Power for activation of service when shelter is installed, and panel board provided by this contract is ready for inspection and activation of the service. Coordinate with Park City for the size and placement of junction boxes within shelter for connection of additional amenities to be installed by Park City.

Bid Security of five percent (5%) is required to accompany each bid

PCMC reserves the right to reject all bids and rebid the project, and/or make reductions in, or expand the scope of work, and waive any minor irregularities. Direct all questions to U3P by April 7, 2023. It is anticipated that the City Council will consider the lowest responsive, responsible bid on Thursday April 27, 2023.

BUS SHELTER IMPROVEMENTS (SHELTER PROCUREMENT)

Table of Contents

**Section
Number**

Title

BID

C-200	Instructions to Bidders (Refer to Section for Table of Contents)
C-410	Bid Form (Refer to Section for Table of Contents)
C-410M	Bid Form Supplemental
C-420S	Affidavit of Non-Collusion
C-430	Bid Bond
C-450S	Measurement and Payment

AGREEMENT

C-510	Notice of Award
C-520 S	Construction Agreement
C-550	Notice to Proceed

CONSTRUCTION BONDS AND PROCEDURAL DOCUMENTS

C-610	Performance Bond
C-615	Payment Bond
C-620	Application for Payment
C-625	Substantial Completion

CONDITIONS OF THE CONTRACT

C-700	General Conditions
C-800S	Supplementary Conditions

PROCEDURAL DOCUMENTS CONTINUED

C-940	Work Change Directive
C-941	Change Order
C-942	Field Order
C-950S	Certificate of Final Completion

SUPPLEMENTAL SPECIFICATIONS AND SPECIAL PROVISIONS

00 00 00 S	Project Specifications
01 31 30 S	Access & Contract Incentive

INSTRUCTIONS TO BIDDERS

PARK CITY, UTAH

BUS SHELTER IMPROVEMENTS
(SHELTER PROCUREMENT)

TABLE OF CONTENTS

	Page
Article 1 – Defined Terms	2
Article 2 – Copies of Bidding Documents	3
Article 3 – Qualifications of Bidders	3
Article 4 – Examination of Bidding Documents, Other Related Data, and Site	3
Article 5 – Pre-Bid Conference	4
Article 6 – Site and Other Areas	4
Article 7 – Interpretations and Addenda	4
Article 8 – Bid Security.....	5
Article 9 – Contract Times	5
Article 10 – Liquidated Damages	5
Article 11 – Substitute and “Or-Equal” Items	5
Article 12 – Subcontractors, Suppliers and Others.....	5
Article 13 – Preparation of Bid.....	6
Article 14 – Basis of Bid; Comparison of Bids	6
Article 15 – Submittal of Bid.....	7
Article 16 – Modification and Withdrawal of Bid.....	7
Article 17 – Opening of Bids	7
Article 18 – Bids to Remain Subject to Acceptance.....	7
Article 19 – Evaluation of Bids and Award of Contract.....	7
Article 20 – Contract Security and Insurance.....	8
Article 21 – Signing of Construction Agreement.....	8
Article 22 – Retainage	8

ARTICLE 1 – DEFINED TERMS

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

- A. *Owner* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

John Robertson

Park City Municipal Corporation, Engineering

Division 445 Marsac Ave.

P.O. Box 1480

Park City, Utah 84060

- B. *Engineer* – The office or person designated as the Owner’s representative and agent for the Bidding Documents and Construction Contract, acting in the scope of the particular duties entrusted to such a person or office.

Jarl D. Jacobson

AECOM

756 East Winchester

Street Suite 400

Salt Lake City, UT

84107

- C. *Site* – Location of construction as shown on Attachments to this bid 7.01 F – Site Installation Location Exhibit of the Bid Form.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents may be obtained from U3P or the Issuing Office.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.
- 2.04 Award of Contract is subject to approval by the City Council.
- 2.05 All bids 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.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder’s qualifications to perform the Work, Bidder shall submit written evidence in the form of the completed Bidder’s Status Report on the Supplemental Bid Form provided in Section C-410 M.

ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 Underground Facilities

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

- 4.02 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates. If Bidder’s conduct site visits other than those scheduled and advertised within these contract documents, proper notification shall be made to the Engineer or Owner to secure accessibility to the site.

4.03 It is the responsibility of each Bidder before submitting a Bid to:

- A. Examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;
- B. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- C. Carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been provided as part of the Bidding Documents.
- D. Agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;
- E. Become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- F. Correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;
- G. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- H. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

- 4.04 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable

to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 – PRE-BID CONFERENCE

- 5.01** A pre-bid conference is being held at 10:00 a.m. on Friday, April 7, 2023 via Zoom. All bidders are required to attend. The link to this meeting is included on U3P as an attachment to this solicitation. Bidders may email Gabriel Shields at gabriel.shields@parkcity.org to be invited directly.

ARTICLE 6 – SITE AND OTHER AREAS

- 6.01 The Site is defined in the Instruction to Bidders. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto (not already identified in the Bidding Documents) required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to the Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 – BID SECURITY

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five percent (5%) of Bidder's maximum Bid price and in the form of a certified check, bank money order, or a Bid bond (on the form attached) issued by a surety meeting the requirements outlined in the attached Construction Agreement.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Construction Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.
- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, Milestones are to be achieved and the Work is to be substantially completed and ready for final payment are set forth in the Construction Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages are set forth in the Construction Agreement.

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Construction Agreement.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS

- 12.01 Information relating to Subcontractors, Suppliers, individuals, or entities, as required in the Subcontractor’s & Supplier’s Report (Section C-410 M) shall be submitted with the Bid Form. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.
- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Construction Agreement.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from the Engineer’s Office at cost.
- 13.02 All blanks on the Bid Form shall be completed electronically, by printing in ink, or by typewriter and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each Bid item listed therein.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.
- 13.06 A Bid by an individual shall show the Bidder’s name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown below the signature.
- 13.08 All names shall be typed or printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

- 13.10 The address and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS

14.01 *Lump Sum – Not Used*

14.02 *Unit Price*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.
- 14.03 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in Paragraph 11.02 of the General Conditions.

ARTICLE 15 – SUBMITTAL OF BID

- 15.01 With each copy of the Bidding Documents, a Bidder is furnished a copy of the Bid Book, which includes the Bid Form, Bid Form (Supplemental), and Bid Bond Form. The Bid Book is to be completed and submitted with the Bid security and all other required attachments.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Bid Form (Supplemental).
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.
- 19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.
- 19.07 If the Contract is to be awarded, it will be based on state law and PCMC local procurement requirements.

ARTICLE 20 – CONTRACT SECURITY AND INSURANCE

- 20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth the Successful Bidder's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Construction Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 – SIGNING OF CONSTRUCTION AGREEMENT

- 21.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Construction Agreement with the other Contract Documents which are identified in the Construction Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Construction Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed agreement to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 22 – RETAINAGE

- 22.01 Provisions concerning Contractor's rights to deposit securities in lieu of retainage are set forth in the Construction Agreement.

BID FORM
PARK CITY, UTAH
BUS SHELTER IMPROVEMENTS
(SHELTER PROCUREMENT)

TABLE OF ARTICLES

	Page
Article 1 – Bid Recipient.....	1
Article 2 – Bidder’s Acknowledgements	1
Article 3 – Bidder’s Representations	1
Article 4 – Further Representations	2
Article 5 – Basis of Bid	2
Article 6 – Time of Completion	7
Article 7 – Attachments To This Bid	8
Article 8 – Defined Terms	12
Article 9 – Bid Submittal	12

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Park City Municipal Corporation

Bus Shelters Improvement

(Shelter Procurement)

Engineering Division

445 Marsac Ave.

P.O. Box 1480

Park City, Utah 84060

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Construction Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

- D. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- E. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- G. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- J. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Construction Agreement.

ARTICLE 4 – FURTHER REPRESENTATIONS

4.01 Bidder further represents that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation.
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents.
- 5.02 Bidder shall submit a bid for the bid Schedule No. 1. Bids lacking the required information will not be considered.

5.03 Park Avenue Bus Shelters (Shelter Procurement)

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimate Quantity</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>
Schedule No. 1 - General Requirements					
101	Mobilization	LUMP	1		
102	Shelter Installation	LUMP	2		
103	Large Shelter	LUMP	2		
TOTAL SCHEDULE No. 1					
=					

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete as described below:

- A. Bidder agrees that the Work will be substantially complete and operational on or before October 31, 2023, and will be completed and ready for final payment in accordance with Paragraph 14.07(B) of the General Conditions on or before November 30, 2023.
- B. Substantial Completion includes the construction, testing, inceptions, and written acceptance of the following major items of work.
 - All finish materials have been approved by Park City or the Resident Engineer overseeing the project.
 - All Welding has been approved.
 - Structure has been installed and in full working order for both large shelters.

Bidder accepts the provisions of the Construction Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents shall be attached to and made a condition of this Bid (Use standard forms per section C-410 M Bid Form Supplemental):
- A. Required Bid security in the form of five percent (5%) (Bid Bond)
 - B. List of Proposed Subcontractors; Complete forms provided per section C-410M: Bid Form Supplemental

C. List of Project References

D. Affidavit of Non-Collusion, provided per section C-420S: Affidavit of Non-Collusion

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions

ARTICLE 9 – BID SUBMITTAL

9.01 This Bid submitted by:

An Individual

Name (typed or printed): _____ (SEAL)

By: _____
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____
Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____
(CORPORATE SEAL)

Attest: _____
(Signature of Corporate Secretary)

Date of Qualification to do business in _____ [State Where Project is Located] is ____ \ ____ \ ____.

A Joint Venture

Name of Joint Venturer: _____

First Joint Venturer Name: _____(SEAL)

By: _____
(Signature of first joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____(SEAL)

By: _____
(Signature of second joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business address: _____

Phone: _____ Email: _____

Submitted on _____, 20____.

State Contractor License No. _____.(If applicable)

END SECTION

BID FORM
(SUPPLEMENTAL)
PARK CITY, UTAH
PARK CITY BUS SHELTER IMPROVEMENTS
(SHELTERS PROCUREMENT)

TABLE OF ARTICLES

	Page
Article 10 - Bidder Status Report.....	1
Article 11 - Subcontractor and Supplier Report.....	2

ARTICLE 10 – BIDDER STATUS REPORT

10.01 Bidder:

- A. Name: _____
- B. Signature: _____
- C. Address: _____
- D. Telephone: _____

10.02 Report:

- A. Number of employees: _____
- B. Bidder’s company is (check the following as applicable)
 - 1. _____ Independently owned and operated
 - 2. _____ An affiliate of: _____
 - 3. _____ A subsidiary of: _____
 - 4. _____ A division of: _____
 - 5. _____ A business with gross revenue in excess of: \$ _____
 - 6. _____ A business with gross revenue below: \$ _____

C. Parent Company

- 1. Name: _____
- 2. Address: _____
- 3. Telephone: _____
- 4. Facsimile: _____

D. Number of years as a contractor in construction work of this type: _____

E. List of current jobs now under construction: (add additional sheets if necessary)

	<u>Client</u>	<u>Telephone</u>	<u>Contract Amount</u>	<u>Type of Job</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____

F. List four projects of this size and complexity within the last five years:

<u>Client</u>	<u>Telephone</u>	<u>Contract Amount</u>	<u>Type of Job</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

G. Has your company ever failed to complete any work awarded you? ___YES___NO

If so, when, where, and why? _____

ARTICLE 11 – SUBCONTRACTOR AND SUPPLIER REPORT

11.01 Bidder:

A. Name: _____

B. Address: _____

C. Telephone: _____

11.02 Report

- A. Failure of the Bidder to specify a subcontractor for any portion of the work constitutes an agreement by the Bidder that the Bidder is fully qualified to perform that portion, and that Bidder shall perform that portion.
- B. Bidder will be fully responsible to the Owner for the acts and omissions of its subcontractors and suppliers.
- C. Nothing contained in the Contract Documents shall create or imply any contractual relationship between subcontractor(s) and/or supplier(s) and the Owner.
- D. The names and addresses of the subcontractors, suppliers and independent quality control consultants who will work under the terms of the Contract Documents are set forth as follows:

MAIN SUBCONTRACTORS	
Name and Address, Nature and Extent of Work to be Sublet	
1	
2	
3	
4	
MAJOR SUPPLIERS	
Name and Address, Nature and Extent of Material to be Provided	
1	
2	
3	
4	
INDEPENDENT QUALITY CONTROL	
Name and Address, Nature and Extent of Services	
1	
2	
3	
4	

11.03 Effective Date

A. Bidder executes this Subcontractor & Supplier Report and declares it to be in effect as of _____,20_____.

11.04 Bidder Subscription

A. Bidder's signature: _____

B. Bidder's printed name: _____

C. Title: _____

END OF SECTION

Page Left Intentionally Blank

AFFIDAVIT OF NON-COLLUSION

STATE OF: _____

} SS:

COUNTY OF _____

The undersigned, being duly sworn on oath says, that he is the contracting party, or that he is the representative, agent, member, or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of the contract other than that which appears upon the face of the contract.

Signature _____

Printed name _____

Title _____

Company _____

Before me, a Notary Public in and for said County and State personally appeared,
_____, who acknowledged the truth of the statements in
the foregoing affidavit on this _____ day of _____, 20____.

Signature of Notary Public _____

Printed or typed name _____

County of residence _____

Commission expiration date of Notary Public _____

Page Left Intentionally Blank

BID BOND

Any singular reference to Bidder, Surety, Owner or other party shall be considered plural where applicable.

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

Park City Municipal Corporation, Engineering Division
445 Marsac Ave.
P.O. Box 1480
Park City, Utah 84060

BID

Bid Due Date:
Description (Brief Description Including Location):

BOND

Bond Number:
Date (Not earlier than Bid due date):
Penal sum _____

(Words)

(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

_____(Seal)
Bidder's Name and Corporate Seal

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: Above addresses are to be used for giving required notice.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Surety's liability.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Construction Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Construction Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2 All Bids are rejected by Owner, or
 - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

MEASUREMENT AND PAYMENT

(SPECIAL PROVISIONS)

PARK CITY, UTAH

Park Avenue Bus Shelters (Shelter Procurement)

ARTICLE 1 – SECTION INCLUDES

1.01 Measurement and payment procedures, submission requirements, progress and/or partial payment allowances

ARTICLE 2 – COMPENSATION FOR PROGRESS

2.01 The Contractor shall accept the compensation set forth in Section C-410 Bid Form as full payment for:

- A. Furnishing all materials, labor, products, equipment, tools, transportation, services, and incidentals; erection, application or installation of items required for completion of the work;
- B. All loss or damage due to the nature of the work, action of the elements and unforeseen difficulties until final acceptance by the Owner;
- C. All costs arising from any infringement of a patent, trademark, or copyright.

2.02 No payment will be made for:

- A. Work which is in excess of that contained in the Contract;
- B. Removal and replacement of unauthorized or defective work and materials;
- C. Loss of anticipated profits.

2.03 The Engineer may withhold payment or nullify the whole or a part of any application for payment because of:

- A. Defective work not repaired or replaced;
- B. Claims filed (unless Contractor provides title insurance, a bond or other security in a manner required by Owner);
- C. Failure of the Contractor to make payments properly to subcontractors or for materials or labor;
- D. Damage to another contractor, property owner and/or private or public property and improvements;
- E. Unauthorized deviations by the Contractor from the Contract Documents;
- F. The failure of the Contractor to prevent the filing of liens or claims or to avoid the reasonable probability of the filing of liens or claims against the Owner.

- 2.04 Neither partial payment nor release of retainage will relieve the Contractor of the obligation to correct defective work or materials

ARTICLE 3 – MEASUREMENT

- 3.01 The Contractor shall furnish Engineer with all required submittals in accordance with the Contract Documents.
- 3.02 The Contractor shall furnish all labor required to assist Engineer in obtaining and handling test samples at site or sources.
- 3.03 The Contractor shall furnish all labor, equipment and operators, and all other resources necessary to assist the Engineer in field investigations, measurements of materials, and verification of the completion of the work.
- 3.04 The Engineer will verify all measurements and quantities submitted by the Contractor prior to the issuance of any payment.

ARTICLE 4 – PAYMENT

- 4.01 The Owner will make progress payments for the work completed and approved by the Engineer.
- 4.02 Partial payments will be made no more than once a month when the work is progressing.
- 4.03 The Contractor will be paid based upon the level of progress and completion of the work, and/or the number of units completed.
- 4.04 On or about the first day of each calendar month, the Contractor shall submit two copies of a certified application for payment for the total work completed. The Engineer will measure and verify the work completed in accordance with the Contract Documents during the payment period. Measurements and work will be reviewed with the Contractor and mutually agreed upon within 10 days of submission. After agreement of the application request has been made, payment will be made within 30 calendar days.
- 4.05 Payment requests shall be made in the form provided in the Contract Documents. Applications shall provide the minimum general information:
- A. Item number
 - B. Unit Price
 - C. Total cost of item during pay period
 - D. Previous applications
 - E. Authorized change orders
 - F. Percentage of completion
 - G. Balance to finish
 - H. Retainage

- 4.06 The Owner will deduct and retain five percent (5%) of all approved progress payments until the Contract has been substantially completed and accepted by the Owner.
- 4.07 The Owner reserves the right to require unconditional Lien Waivers from the Contractor and all subcontractors and materials suppliers to the project prior to approving final payment.
- 4.08 Payment for materials shall not constitute acceptance of any materials which do not conform to the Contract Documents.
- 4.09 The Owner will not make any progress payments when the total value of the work done during the period is less than One Thousand Dollars (\$1,000.00).
- 4.10 Upon satisfactory completion of the work performed under the Contract, as a condition before final payment or as a termination settlement, the Contractor shall execute and deliver to the Owner a release of all claims against the Owner arising under, or by virtue of the Contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in the Contract Documents, by State law, or otherwise expressly agreed to by the parties, final payment under the Contract or settlement upon termination of the Contract shall not constitute a waiver of the Owner's claims against the Contractor or its sureties under the Contract or applicable performance and payment bonds. The Contractor shall continue to perform warranty work as required by the Contract after final payment.
- 4.11 Prior to final payment and before issuance of the final certificate therefore, the Contractor shall deliver the following papers to the Engineer
- A. Warranties required by the Contract Documents;
 - B. The final release of all "Liens", unless Contractor provides a bond or other security acceptable to the Owner;
 - C. All submittals not previously submitted as required by the Contract Documents;
 - D. Record Drawings and Operations and Maintenance Instructions required by the Contract Documents;
 - E. All permits, licenses, approvals, certificates and authorizations required by any authority having jurisdictions;
 - F. Satisfactory proof that all claims and taxes arising from or which may arise from the work have been finally and conclusively satisfied and released; and
 - G. Such further documentation as the Engineer requires.

ARTICLE 5 – QUANTITIES

- 5.01 The general scope of work and material quantities noted on plans and within the bid proposal is estimated and not to be taken as an expressed or implied statement of the actual amount of work or material required to complete and furnish the "project". The Contractor is responsible for independently verifying the scope of work and material quantities, and determining means and methods, and order of construction.
- 5.02 The Owner reserves the right to increase, decrease, or entirely eliminate certain items from the work if found to be desirable or advantageous to the Owner. Contract price adjustments shall be effected by change order in accordance with the Contract Documents.

ARTICLE 6 – BID ITEMS

The Engineer will measure and recommend payment for each bid item as detailed herein. Payment is contingent upon acceptance by the Owner. Information provided in the descriptions below may not be all inclusive of the work and responsibilities required by the Contract Documents and Specifications.

6.01 *BID SCHEDULE No. 1* – Park City Bus Shelter Improvements (Shelter Procurement)

101 Mobilization

- a. Standard Specification Reference: UDOT Section 01501
- b. Measurement: Lump Sum
- c. Payment Covers: Lump sum price listed on the Bid Schedule form shall be full compensation for the moving in of rigs, pumps, equipment, power, labor, fuel, tools, and water conveyance structures, and incidentals to the project are necessary to do the WORK, and moving out of all such equipment, materials, tools and incidentals and final site cleanup upon completion of the WORK. For purposes of partial payment, the initial mobilization portion of the bid item shall be considered as 60 percent of the total lump sum.

102 Shelter Installation

- d. Traffic Control: Standard Specification Reference: UDOT Section 01554
- e. Measurement: Lump sum
- f. Payment Covers: Costs associated with all materials, equipment and labor required for traffic control, including but not limited to barriers, signs, flagging, permits, coordination with local and state agencies, completion of traffic control plan, and other incidentals as required to complete the work as shown on the plans, and as specified herein. Payment will be made at the unit price listed on the Bid Schedule form. No separate payment will be made for materials, labor, or equipment necessary for completing the Work.

Coordination with private and public agencies affected by construction, notification of police, fire and transit agencies, equipment, labor, and materials necessary for completing the Work.

Coordinate installation of anchorage items to be embedded in or attached to individual site foundations. Provide setting diagrams, sheet metal templates, instructions, and coordination with site civil contractor.

Promptly pack grout solidly between bearing surfaces and plates so no voids remain. Neatly finish exposed surfaces; protect grout and allow to cure. Comply with manufacturer's written installation instructions for shrinkage-resistant grouts.

103 Large Shelter

- a. Standard Specification Reference: See shelter package design drawings.
- b. Measurement: Lump Sum
- c. Payment Covers: Structure will include all labor, materials, and accessories necessary to furnish structure. Including but not limited to: fabricated structural steel columns, roof beams, brackets and edge beams, fascias, exterior rough carpentry, lighting, roof glazing and wind screens, wiring from electrical panel, electrical panel for electrical service power option A (conduit from utility provider will be installed by separate contractor), and installation of owner furnished signs.

END OF SECTION

Notice of Award

Dated _____

Project:	Owner: Park City Municipal Corporation	Owner's Contract No.:
Contract:		Engineer's Project No.:
Bidder:		
Bidder's Address:		

You are notified that your Bid dated (date) for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for (describe work)

The Contract Price of your Contract is \$(contract price)

(words) _____ Dollars (numbers) _____

Four (4) copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

Sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within fifteen (15) calendar days of the date you receive this Notice of Award.

1. Deliver to the Owner four (4) fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security and Bonds as specified in the Instructions to Bidders (Article 20), and General Conditions (Paragraph 5.01).
3. Other conditions precedent:
 - a. Insurance Certificated per General Conditions Article 5
 - b. Provide information on Independent QA/QC firm(s)
 - c. Shop drawing and supporting technical data of "or equal" items if proposed.
 - d. Other documentation as required by the general conditions.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

Owner

By: _____
Authorized Signature

Title

Copy to Engineer

CONSTRUCTION AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 20__, by and between **PARK CITY MUNICIPAL CORPORATION**, a Utah municipal corporation, P.O. Box 1480, Park City, UT 84060, , (hereinafter "City"), and _____, a _____ (Insert state of incorporation) _____ (insert either "corporation" or "limited liability company"), whose post office address is _____, (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 Construction Agreement (hereinafter "Contract" or "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 an 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, materialmen, 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 Three Million Dollars (\$3,000,000) aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; explosion, collapse and underground (XCU) if specifically requested; and employer's practices.

The Contractor 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 a combined single limit of not less than Two Million Dollars (\$2,000,000) each accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of owned, hired, and non-owned motor vehicles. This policy must not contain any exclusion or limitation with respect to loading or unloading of a covered vehicle.

- C.** Workers Compensation and Employers Liability coverage with Workers Compensation limits complying with statutory requirements, and Employer's Liability Insurance limits of at least One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) for bodily injury by accident, and One Million Dollars (\$1,000,000) each employee for injury by disease.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Park City Municipal Corporation for all work performed by the Contractor, its employees, agents and subcontractors.

- D.** Builder's Risk Insurance (Course of Construction) (at City's discretion)

Before starting the Work, Contractor shall obtain and maintain in force, at its own expense, Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Such coverage shall name Park City Municipal Corporation as an additional insured.

- E.** The general liability and auto liability insurance policies are to contain, or be endorsed to contain, the following provisions:

Park City Municipal Corporation, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations and completed operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor.

- F.** 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 City reserves the right to request certified copies of any required policies.

- G.** 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.

- H.** For any claims related to this Construction Agreement, the Contractor's insurance coverage shall be primary insurance coverage with respect to Park City Municipal Corporation, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by Park City Municipal Corporation, its officers, officials,

employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

SECTION 4. CONTRACT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS. City shall pay Contractor a total sum not to exceed **(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 one hundred five (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/her 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 (10) days of receipt of the Notice to Proceed and shall be completed by November 30, 2023. 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 (1) 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 are 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 Agreement;
- 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 case; (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(11)), 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 to 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 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 AND ATTORNEY FEES AND COSTS. 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. If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in connection with that action or proceeding.

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, 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 Agreement 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 Agreement 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 (10) 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, materialmen, 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 four feet (4') 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 PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the City Engineer or his/her 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/her 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 to review and approve a parking plan. The plan shall also include anticipated temporary parking, e.g., delivery vehicles, and 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/her 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 twelve (12) square feet in size, six (6') feet in height and shall not exceed a letter type of four inches (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 in 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 an equivalent program. The Contractor agrees to verify employment eligibility through E-Verify, or an equivalent program, for each new employee that is employed within Utah, unless exempted by Utah Code § 63G-12-302.

SECTION 24. NONDISCRIMINATION.

Any Contractor that enters into an agreement for goods or services with Park City Municipal Corporation or any of its boards, agencies, or departments shall:

- A. Implement an employment nondiscrimination policy prohibiting discrimination in hiring, discharging, promoting or demoting, matters of compensation, or any other employment- related decision or benefit against a person otherwise qualified, because of actual or perceived race; color; sex; pregnancy, childbirth, or pregnancy- related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; genetic information; or military status.
- B. In the performance of this Agreement, Contractor shall not discriminate on account of actual or perceived race; color; sex; pregnancy, childbirth, or pregnancy-related conditions; age, if the individual is 40 years of age or older; religion; national origin; disability; sexual orientation; gender identity; genetic information; or military status.
- C. Incorporate the foregoing provisions in all subcontracts or assignments hereunder and take such actions as may be required to ensure full compliance with the provisions of this policy.

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 Gabriel Shields 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 certified mail, postage pre-paid, or sent by facsimile transmission, 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 section.

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.

SECTION 29. COUNTERPARTS. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

SECTION 30. ELECTRONIC SIGNATURES. Each party agrees that the signatures of the parties included in this Agreement, whether affixed on an original document manually and later electronically transmitted or whether affixed by an electronic signature through an electronic signature system such as DocuSign, are intended to authenticate this writing and to create a legal and enforceable agreement between the parties hereto.

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

Utah

PARK CITY MUNICIPAL CORPORATION, a
municipal corporation

Matt Dias, 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

**THE CITY REQUIRES THE CONTRACTOR TO COMPLETE EITHER THE NOTARY
BLOCK OR THE UNSWORN DECLARATION, WHICH ARE BELOW.**

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 _____, a _____ corporation (or limited liability company), by authority of its Bylaws/Resolution of the Board of Directors (if as to a corporation) or Operating Agreement/Member Resolution (if as to a limited liability company), and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (title) for _____, a _____ corporation (or limited liability company).

Notary Public

I declare under criminal penalty under the law of Utah that the foregoing is true and correct. Signed on the ____ day of _____, 20____, at _____ (insert State and County here).

Printed name _____

Signature: _____

Notice to Proceed

Dated _____

Project:	Owner: Park City Municipal Corporation	Owner's Contract No.:
Contract:		Engineer's Project No.:
Contractor:		
Contractor's Address: (send Certified Mail, Return Receipt Requested)		

You are notified that the Contract Times under the above contract will commence to run on (date). On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Construction Agreement, the date of Substantial Completion is (date), and the date of readiness for final payment is (date).

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

- Need to provide the Owner the name of the independent QA/QC provider
- Need to insure that Insurance coverage will be extended the required time period.

_____	_____
	Owner
_____	Given by: _____
	Authorized Signature
_____	_____
	Title
_____	_____
	November 19, 2008
	Date

Copy to Engineer

THIS PAGE LEFT INTENTIONALLY BLANK

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Seal) _____ (Seal)

Surety's Name and Corporate Seal

Signature: _____ By: _____

Name and Title:

Signature and Title:
(Attach Power of Attorney)

Attest: _____

Signature and Title

(Space is provided below for signatures of additional parties, if required.)

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.
2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and
 - 3.3 Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract;
 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 4.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
 - 6.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 6.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
 - 12.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
 Surety Agency or Broker
 Owner's Representative (engineer or other party)

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Seal) _____ (Seal)

Surety's Name and Corporate Seal

Signature: _____ By: _____

Name and Title:

Signature and Title:
(Attach Power of Attorney)

Attest: _____

Signature and Title

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Seal) _____ (Seal)

Surety's Name and Corporate Seal

Signature: _____ By: _____

Name and Title:

Signature and Title:
(Attach Power of Attorney)

Attest: _____

Signature and Title

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2 Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1 Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2 Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions
 - 15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
 Surety Agency or Broker
 Owner's Representative (engineer or other party)

Contractor's Application for Payment No. _____

	Application Period:	Application Date:
To (Owner): Park City Municipal Corporation	From (Contractor)	Via (Engineer)
Project:	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:

Application for Payment

Change Order Summary

Approved Change Orders				
Number	Additions	Deductions		
TOTALS				
NET CHANGE BY CHANGE ORDERS				

1. ORIGINAL CONTRACT PRICE	\$	
2. Net Change by Change Orders	\$	
3. CURRENT CONTRACT PRICE (Line 1 + 2)	\$	
4. TOTAL COMPLETED AND STORED TODATE (Column F on Progress Estimate)	\$	
5. RETAINAGE:		
a. _____ % x \$ _____ Work Completed	\$	
b. _____ % x \$ _____ Stored Material	\$	
c. Total Retainage (Line 5a + Line 5b)	\$	
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c)	\$	
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application)	\$	
8. AMOUNT DUE THIS APPLICATION	\$	
9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above)	\$	

Contractor's Certification

The undersigned Contractor certifies that: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

Payment of: \$ _____
(Line 8 or other - attach explanation of other amount)

is recommended by: _____ (Date) _____
(Engineer)

Payment of: \$ _____
(Line 8 or other - attach explanation of other amount)

is approved by: _____ (Date) _____
(Owner)

Approved by: _____ (Date) _____
Funding Agency (if applicable)

By: _____ Date: _____

Progress Estimate

Contractor's Application

For (contract):	Application Number:
Application Period:	Application Date:

A Item		B	Work Completed		E	F		G
Specification Section No.	Description	Scheduled Value	C From Previous Application (C + D)	D This Period	Materials Presently Stored (not in C or D)	Total Completed and Stored to Date (C + D + E)	% (E) B	Balance to Finish (B - F)
TOTALS								

Progress Estimate

Contractor's Application

For (contract): _____ Application Number: _____

Application Period: _____ Application Date: _____

A Item		B		C		D	E	F		G
Bid Item No.	Description	Bid Quantity	Unit Price	Bid Value	Estimated Quantity Installed	Value	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (F) B	Balance to Finish (B - F)
TOTALS										

Certificate of Substantial Completion

Project:	Owner: Park City Municipal Corporation	Owner's Contract No.:
Contract:	Date of Contract:	
Contractor:		

This [tentative] [definitive] Certificate of Substantial Completion applies to:

- All Work under the Contract Documents:
 The following specified portions:

_____ Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [revised tentative] [definitive] list of items to be completed or corrected, is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

- Amended Responsibilities
 Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer Date

Accepted by Contractor Date

Accepted by Owner Date

THIS PAGE LEFT INTENTIONALLY BLANK

**GENERAL CONDITIONS
TABLE OF CONTENTS**

	Page
Article 1 – Definitions and Terminology	1
1.01 Defined Terms.....	1
1.02 Terminology.....	4
Article 2 –Preliminary Matters	5
2.01 Delivery of Bonds and Evidence of Insurance	5
2.02 Copies of Documents	5
2.03 Commencement of Contract Times; Notice to Proceed.....	5
2.04 Starting the Work	5
2.05 Before Starting Construction	6
2.06 Preconstruction Conference.....	6
2.07 Initial Acceptance of Schedules.....	6
Article 3 – Contract Documents: Intent, Amending, Reuse.....	6
3.01 Intent	6
3.02 Reference Standards	7
3.03 Reporting and Resolving Discrepancies	7
3.04 Amending and Supplementing Contract Documents	7
3.05 Reuse of Documents.....	8
3.06 Electronic Data.....	8
Article 4 – Availability of Lands; Subsurface and Physical Conditions; Hazardous Environmental Conditions; Reference Points	8
4.01 Availability of Lands	8
4.02 Subsurface and Physical Conditions	9
4.03 Differing Subsurface or Physical Conditions	9
4.04 Underground Facilities	10
4.05 Reference Points.....	11
4.06 Hazardous Environmental Condition at Site	11
Article 6 – Contractor’s Responsibilities	17
6.01 Supervision and Superintendence	17
6.02 Labor; Working Hours	17
6.03 Services, Materials, and Equipment.....	18
6.04 Progress Schedule	18
6.05 Substitutes and “Or-Equals”	18
6.06 Concerning Subcontractors, Suppliers, and Others	20
6.07 Patent Fees and Royalties	21
6.08 Permits	21
6.09 Laws and Regulations.....	22
6.10 Taxes.....	22
6.11 Use of Site and Other Areas	22
6.12 Record Documents	23
6.13 Safety and Protection	23
6.14 Safety Representative.....	23
6.15 Hazard Communication Programs	24
6.16 Emergencies.....	24
6.17 Shop Drawings and Samples.....	24
6.18 Continuing the Work.....	25
6.19 Contractor’s General Warranty and Guarantee	25
6.20 Indemnification	26

6.21	Delegation of Professional Design Services.....	26
Article 7 – Other Work at the Site.....		
7.01	Related Work at Site	27
7.02	Coordination	28
7.03	Legal Relationships.....	28
Article 8 – Owner’s Responsibilities		
8.01	Communications to Contractor	28
8.02	Replacement of Engineer	28
8.03	Furnish Data.....	28
8.04	Pay When Due	28
8.05	Lands and Easements; Reports and Tests.....	28
8.06	Insurance.....	29
8.07	Change Orders.....	29
8.08	Inspections, Tests, and Approvals.....	29
8.09	Limitations on Owner’s Responsibilities	29
8.10	Undisclosed Hazardous Environmental Condition.....	29
8.11	Evidence of Financial Arrangements	29
Article 9 – Engineer’s Status During Construction		
9.01	Owner’s Representative	29
9.02	Visits to Site.....	29
9.03	Project Representative.....	30
9.04	Authorized Variations in Work	30
9.05	Rejecting Defective Work	30
9.06	Shop Drawings, Change Orders and Payments	30
9.07	Determinations for Unit Price Work	30
9.08	Decisions on Requirements of Contract Documents and Acceptability of Work	30
9.09	Limitations on Engineer’s Authority and Responsibilities.....	31
Article 10 – Changes in the Work; Claims.....		
10.01	Authorized Changes in the Work	31
10.02	Unauthorized Changes in the Work	32
10.03	Execution of Change Orders	32
10.04	Notification to Surety.....	32
10.05	Claims	32
Article 11 – Cost of the Work; Allowances; Unit Price Work		
11.01	Cost of the Work	33
11.02	Allowances.....	35
11.03	Unit Price Work	35
Article 12 – Change of Contract Price; Change of Contract Times.....		
12.01	Change of Contract Price	36
12.02	Change of Contract Times.....	37
12.03	Delays	37
Article 13 – Tests and Inspections; Correction, Removal or Acceptance of Defective Work.....		
13.01	Notice of Defects	38
13.02	Access to Work	38
13.03	Tests and Inspections	38
13.04	Uncovering Work.....	38
13.05	Owner May Stop the Work	39

13.06	Correction or Removal of Defective Work	39
13.07	Correction Period	39
13.08	Acceptance of Defective Work	40
13.09	Owner May Correct Defective Work	40
Article 14 – Payments to Contractor and Completion		41
14.01	Schedule of Values	41
14.02	Progress Payments	41
14.03	Contractor’s Warranty of Title	43
14.04	Substantial Completion	43
14.05	Partial Utilization	44
14.06	Final Inspection	44
14.07	Final Payment	44
14.08	Final Completion Delayed	45
14.09	Waiver of Claims	45
Article 15 – Suspension of Work and Termination		46
15.01	Owner May Suspend Work	46
15.02	Owner May Terminate for Cause	46
15.03	Owner May Terminate For Convenience	47
15.04	Contractor May Stop Work or Terminate	47
Article 16 – Dispute Resolution		47
16.01	Methods and Procedures	47
Article 17 – Miscellaneous		48
17.01	Giving Notice	48
17.02	Computation of Times	48
17.03	Cumulative Remedies	48
17.04	Survival of Obligations	48
17.05	Controlling Law	48
17.06	Headings	48
Article 18 – Conflict of Documents		48
18.01	Construction Agreement	48

GENERAL CONDITIONS

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 DEFINED TERMS

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda* – Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Construction Agreement* – The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment* – The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid* – The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder* – The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents* – The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements* – The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order* – A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.
 10. *Claim* – A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract* – The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
 12. *Contract Documents* – Those items so designated in the Construction Agreement. Only printed or hard copies of the items listed in the Construction Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
 13. *Contract Price* – The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Construction Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times* – The number of days or the dates stated in the Construction Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer’s written recommendation of final payment.
15. *Contractor* – The individual or entity with whom Owner has entered into the Construction Agreement.
16. *Cost of the Work* – See Paragraph 11.01.A for definition.
17. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Construction Agreement* – The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer* – The individual or entity named as such in the Construction Agreement.
20. *Field Order* – A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *General Requirements* – Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.
22. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
23. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
24. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
25. *Liens* – Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
26. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. *Notice of Award* – The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Construction Agreement.
28. *Notice to Proceed* – A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
29. *Owner* – The individual or entity with whom Contractor has entered into the Construction Agreement and for whom the Work is to be performed.
30. *PCBs* – Polychlorinated biphenyls.
31. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil,

- petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
32. *Progress Schedule* – A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
 33. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
 34. *Project Manual* – The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
 35. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
 36. *Related Entity* – An officer, director, partner, employee, agent, consultant, or subcontractor.
 37. *Resident Project Representative* – The authorized representative of Engineer who may be assigned to the Site or any part thereof.
 38. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
 39. *Schedule of Submittals* – A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
 40. *Schedule of Values* – A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
 41. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
 42. *Site* – Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
 43. *Specifications* – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
 44. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
 45. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
 46. *Successful Bidder* – The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions* – That part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.
49. *Underground Facilities* – All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
50. *Unit Price Work* – Work to be paid for on the basis of unit prices.
51. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
52. *Work Change Directive* – A written statement to Contractor issued on or after the Effective Date of the Construction Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 TERMINOLOGY

- A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.
- B. Intent of Certain Terms or Adjectives
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.
- C. *Day*
 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*
 1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents, or

- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

- 1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 DELIVERY OF BONDS AND EVIDENCE OF INSURANCE

- A. When Contractor delivers the executed counterparts of the Construction Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 COPIES OF DOCUMENTS

- A. Owner shall furnish to Contractor up to ten (10) printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 COMMENCEMENT OF CONTRACT TIMES; NOTICE TO PROCEED

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Construction Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Construction Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Construction Agreement, whichever date is earlier.

2.04 STARTING THE WORK

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 BEFORE STARTING CONSTRUCTION

- A. *Preliminary Schedules:* Within ten (10) days after the Effective Date of the Construction Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule; indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 PRECONSTRUCTION CONFERENCE

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 INITIAL ACCEPTANCE OF SCHEDULES

- A. At least ten (10) days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional ten (10) days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 INTENT

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 REFERENCE STANDARDS

A. Standards, Specifications, Codes, Laws, and Regulations

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Construction Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 REPORTING AND RESOLVING DISCREPANCIES

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 REUSE OF DOCUMENTS

- A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or
 - 2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.
- B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 ELECTRONIC DATA

- A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the sixty (60) day acceptance period will be corrected by the transferring party.
- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 AVAILABILITY OF LANDS

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 SUBSURFACE AND PHYSICAL CONDITIONS

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
 - 2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS

- A. *Notice:* If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:
 - 1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
 - 2. is of such a nature as to require a change in the Contract Documents; or
 - 3. differs materially from that shown or indicated in the Contract Documents; or
 - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.
- C. Possible Price and Times Adjustments
1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
 3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 UNDERGROUND FACILITIES

- A. *Shown or Indicated*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data,
 - b. locating all Underground Facilities shown or indicated in the Contract Documents,
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 REFERENCE POINTS

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 HAZARDOUS ENVIRONMENTAL CONDITION AT SITE

- A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:
 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.
- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE - Refer to Construction Agreement

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 SUPERVISION AND SUPERINTENDENCE

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor’s representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.02 LABOR; WORKING HOURS

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 SERVICES, MATERIALS, AND EQUIPMENT

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 PROGRESS SCHEDULE

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a

Change Order.

6.05 SUBSTITUTES AND “OR-EQUALS”

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or-equal” item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *“Or-Equal” Items:* If in Engineer’s sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an “or-equal” item, in which case review and approval of the proposed item may, in Engineer’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

- 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,
- 3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

- 1) there will be no increase in cost to the Owner or increase in Contract Times, and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

- a) perform adequately the functions and achieve the results called for by the general design,
- b) be similar in substance to that specified, and

~~e) be suited to the same use as that specified;~~

- 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;
 - b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
- 3) will identify:
 - a) all variations of the proposed substitute item from that specified, and
 - b) available engineering, sales, maintenance, repair, and replacement services;
- 4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

- B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.
- C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.
- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 CONCERNING SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Construction Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 PATENT FEES AND ROYALTIES

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any

of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 PERMITS

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Construction Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 LAWS AND REGULATIONS

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Construction Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 TAXES

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 USE OF SITE AND OTHER AREAS

- A. Limitation on Use of Site and Other Areas
 - 1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
 - 2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
 - 3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other

dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 RECORD DOCUMENTS

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 SAFETY AND PROTECTION

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial

Completion).

6.14 SAFETY REPRESENTATIVE

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 HAZARD COMMUNICATION PROGRAMS

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 EMERGENCIES

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 SHOP DRAWINGS AND SAMPLES

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

- a. Submit number of copies specified in the General Requirements.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. Samples: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

- a. Submit number of Samples specified in the Specifications.
- b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

- a. all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

- b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;
 - c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and
 - d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 CONTINUING THE WORK

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 CONTRACTOR'S GENERAL WARRANTY AND GUARANTEE

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
 - 6. any inspection, test, or approval by others; or
 - 7. any correction of defective Work by Owner.

6.20 DELEGATION OF PROFESSIONAL DESIGN SERVICES

Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

- A. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- B. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- C. Pursuant to this Paragraph 6.200, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- D. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 RELATED WORK AT SITE

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 COORDINATION

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
 - 2. the specific matters to be covered by such authority and responsibility will be itemized; and
 - 3. the extent of such authority and responsibilities will be provided.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 LEGAL RELATIONSHIPS

- A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.
- B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.
- C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 COMMUNICATIONS TO CONTRACTOR

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 REPLACEMENT OF ENGINEER

- A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 FURNISH DATA

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 PAY WHEN DUE

- A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 LANDS AND EASEMENTS; REPORTS AND TESTS

- A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 CHANGE ORDERS

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.07 INSPECTIONS, TESTS, AND APPROVALS

- A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.08 LIMITATIONS ON OWNER'S RESPONSIBILITIES

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 UNDISCLOSED HAZARDOUS ENVIRONMENTAL CONDITION

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 EVIDENCE OF FINANCIAL ARRANGEMENTS

- A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S REPRESENTATIVE

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 VISITS TO SITE

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 PROJECT REPRESENTATIVE

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 AUTHORIZED VARIATIONS IN WORK

- A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 REJECTING DEFECTIVE WORK

- A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

- C. In connection with Engineer's authority as to Change Orders, see Articles 10, 11, and 12.
- D. In connection with Engineer's authority as to Applications for Payment, see Article 14.

9.07 DETERMINATIONS FOR UNIT PRICE WORK

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 DECISIONS ON REQUIREMENTS OF CONTRACT DOCUMENTS AND ACCEPTABILITY OF WORK

Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within thirty (30) days of the event giving rise to the question

- A. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- B. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- C. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 LIMITATIONS ON ENGINEER'S AUTHORITY AND RESPONSIBILITIES

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

~~E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident~~

Project Representative, if any, and assistants, if any.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 AUTHORIZED CHANGES IN THE WORK

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided in Paragraph 10.05.

10.02 UNAUTHORIZED CHANGES IN THE WORK

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 EXECUTION OF CHANGE ORDERS

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:
 - 1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
 - 3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 NOTIFICATION TO SURETY

- A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 CLAIMS

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit

additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

- C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:
 - 1. deny the Claim in whole or in part,
 - 2. approve the Claim, or
 - 3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.
- D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.
- E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 COST OF THE WORK

- A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 - 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 - 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by

Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

4. Costs of special consultants (including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Construction Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 ALLOWANCES

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*
1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*
1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 UNIT PRICE WORK

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Construction Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Construction Agreement; and
 - 2. there is no corresponding adjustment with respect any other item of Work; and
 - 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 CHANGE OF CONTRACT PRICE

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 CHANGE OF CONTRACT TIMES

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 DELAYS

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.
- D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 NOTICE OF DEFECTS

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 ACCESS TO WORK

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 TESTS AND INSPECTIONS

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;
 - 2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and
 - 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
- E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 UNCOVERING WORK

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.

- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.
- D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefore as provided in Paragraph 10.05.

13.05 OWNER MAY STOP THE WORK

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 CORRECTION OR REMOVAL OF DEFECTIVE WORK

- A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 CORRECTION PERIOD

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. repair such defective land or areas; or
 - 2. correct such defective Work; or
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 ACCEPTANCE OF DEFECTIVE WORK

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 OWNER MAY CORRECT DEFECTIVE WORK

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 SCHEDULE OF VALUES

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 PROGRESS PAYMENTS

A. Applications for Payments

1. At least 45 days before the date established in the Construction Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Construction Agreement.

B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations on the Site of the executed Work as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any

subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Refer to Section 6 Terms of Payment in the Construction

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or
 - d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.
3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 CONTRACTOR'S WARRANTY OF TITLE

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 SUBSTANTIAL COMPLETION

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 PARTIAL UTILIZATION

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 FINAL INSPECTION

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 FINAL PAYMENT

A. Application for Payment

- 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
- 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents.;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and

- d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and, will be paid by Owner to Contractor.

D. Refer to Section 6B for additional requirements related to Final Payment

14.08 FINAL COMPLETION DELAYED

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Construction Agreement, and if bonds have been furnished as required in the Construction Agreement, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 WAIVER OF CLAIMS

- A. The making and acceptance of final payment will constitute:
 1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
 2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 OWNER MAY SUSPEND WORK

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefore as provided in Paragraph 10.05.

ARTICLE 16 – DISPUTE RESOLUTION – Refer to Section 9 Disputes of the Construction Agreement

ARTICLE 17 – MISCELLANEOUS

17.01 GIVING NOTICE

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 COMPUTATION OF TIMES

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 CUMULATIVE REMEDIES

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 SURVIVAL OF OBLIGATIONS

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 HEADINGS

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

ARTICLE 18 – CONFLICT OF DOCUMENTS

18.01 CONSTRUCTION AGREEMENT

- A. In the event that these general conditions conflict with any of the articles of the Construction Agreement, the Construction Agreement shall take precedent over these General Conditions and followed by:
- i. These Bid Documents (excluding these General Conditions)
 - ii. Project specific plans and specifications
 - iii. Park City 2021 Supplemental Standard Plans and Specifications
 1. Available at: <https://www.parkcity.org/departments/engineering-division>
 - iv. 2017 Manual of Standard Specifications and Manual of Standard Plans published by the Utah Chapter of the American Public Works Association
 - v. UDOT Standards and Specifications
 - vi. These General Conditions

END OF SECTION

**SUPPLEMENTARY CONDITIONS
(SPECIAL PROVISIONS)
PARK CITY, UTAH
BUS SHELTER IMPROVEMENTS
(SHELTER PROCUREMENT)**

These Special Provisions amend or supplement the Technical Specification and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SP-1 LIMITATIONS OF OPERATIONS

The project is located within the historic area of Park City, Utah. The contractor shall:

- A. Limit operations to within the limits of construction as shown on the drawings.
- B. Protect all existing retaining walls, structures, and improvements not designated for reconstruction.
- C. Employ equipment and methods necessary to prevent disturbance of slopes, walls and structures.

If the Contractor does not limit his operations to these areas or employ caution when working in or adjacent to walls, structures or property and as a result damages or disturbs either historic properties, walls, structures, or private property, the Contractor shall be responsible for the repair or replacement at Contractor's expense. A mitigation plan for repair or replacement of damaged improvement will be required and approved by the Engineer in consultation with Park City Municipal Corporation and other appropriate personnel. The mitigation plan will be binding on the Contractor and will be nonnegotiable.

If the Contractor determines during the execution of work shown on the plans that continuation of construction activities on that particular item will damage existing building foundations, structures, walls, or requires special support methods beyond the intended scope of the project, the Contractor shall not proceed with construction in that area and notify the Engineer for resolution.

SP-2 PERMISSIBLE WORKING HOURS

Permissible working hours for the project will be 7:00 a.m. – 7:00 p.m. Monday – Friday. No work will be permitted on Saturdays, Sundays or legal holidays recognized by PCMC. Special work requiring construction outside of these allowable working hours, such as water main shutdowns / connections, will require special permission to be obtained in advance from the City Engineer.

SP-3 SPECIAL EVENTS

The Contractor shall be advised that certain PCMC events may be scheduled within the Park City area, which have potential to substantially increase the traffic in the project area. If such events are scheduled, Contractor will need to coordinate with City and account for possible disruption to access, parking, mobility and the ability to conduct normal construction activities during such events. Restricted work dates are found at:

<https://www.parkcity.org/home/showpublisheddocument/73264/638132707330844512>

The Contractor shall also be aware that there may be events not listed above that may increase the traffic in the project area. If the Contractor chooses to work during those events not listed above additional traffic control and compliance with the restrictions listed above shall be provided at no additional cost to the owner.

SP-4 JACKHAMMER RESTRICTIONS

The use of jackhammers for the work is restricted to between the hours of 9:00 a.m. and 2:00 p.m. Work that requires jackhammering and must be performed outside of the time restriction will require special permission to be obtained in advance from the City Engineer.

SP-5 WORK BY OTHERS ON OR ADJACENT TO THE SITE

Other Contractors, including but not limited to Building Contractors, may be performing construction work within or adjacent to the site and will require access to these sites. The Contractor shall cooperate with other contractors and

furnish access through and across the construction zone. Failure to complete the work due to the Contractor's failure to or lack of coordination with other contractors shall not be cause for an extension of time or additional compensation.

It is anticipated that the site civil contractor performing the foundation and power conduit work will be completed mid-to late summer 2023. Canopy installation shall occur after substantial completion of the site civil work adjacent to the shelter locations.

SP-6 UTILITY CONTACTS

Century Link Contact: Arlene Denney 801-974-8130 / arlene.denney@centurylink.com

Rocky Mountain Power Contact: Joel Simmons, 503-813-6993 / gisdept@pacificorp.com

Comcast: Jeff Houston, 435-224-2356 / jeff.houston@telecon.com

Snyderville Basin Water Reclamation Department: Kevin Berkley Atwood, 435-214-5236 / kberkley@sbwr.org

SP-7 CONTRACTOR STAGING AREAS

Adjacent streets and parking areas shall not be utilized as Contractor staging areas. No storage of fill or construction materials will be allowed along on adjacent streets without special permission by the City Engineer. Excess excavated material shall be loaded and removed from the construction site, not stored for extended periods on the roadway or staging areas.

Designated Staging and Storage Areas: Contact PCMC for potential staging and storage areas available for use nearby. PCMC is open to an earlier delivery of shelters for storage at a PCMC facility while awaiting sufficient completion of site civil work prior to shelter installation.

Terms of Use: Restore all staging areas to original condition to the satisfaction of Owner, and is incidental to the work, including all hard surfacing, concrete and asphalt replacement due to cracking or damage, etc. Reseed all soft areas with native seed mix, or "in kind" landscaping. Limit disturbance to only areas defined in by Owner, and/or as designated in the plans. Conduct inspection and receive acceptance conditional to final project acceptance.

SP-8 CONTRACTOR PARKING

Contractor's equipment and materials stored overnight will not be permitted on the construction site unless it is essential to the immediate construction activity.

The Contractor will be responsible to enforce the parking restriction for contractor, subcontractor, and supplier personnel.

SP-9 TRAFFIC AND PEDESTRIAN CONTROL, MAINTENANCE OF TRAFFIC AND PEDESTRIAN ACCESS

1. A Traffic Control Plan shall be prepared by the Contractor and submitted to the Engineer (for review by the City Engineer). The traffic Control Plan must be acceptable to the city Engineer before the Owner will issue a Notice to Proceed.
2. Provide traffic control for all private and construction vehicles entering or leaving the project site.
3. Provide, install and maintain signage (NO PARKING, etc.) and barriers at the site as required to preclude traffic and vehicular parking in the immediate and upcoming construction areas.
4. Provide temporary walkways to meet or exceed the following minimum requirements:
 - a. Structural adequate to support pedestrian traffic without significant deflection of the walkway;
 - b. Does not present a tripping or slipping hazard;
 - c. Does not present an obstacle to the visually impaired;
 - d. Contains handrails where appropriate;
 - e. Comply with Section 3306-Protection of pedestrians of the 2006 mc.
 - f. Provide at all times a structural barrier between walkway and edges of temporary excavation zones.
5. Maintain continuous emergency access, or the ability to provide dynamic emergency access.
6. Provide and maintain visual barrier fencing (orange high-density polyethylene knit fence 48-inches high) for pedestrian access around construction areas, and along the toe of slope (limits of disturbance) within the City's public park (See plans). Provide lighted barricades around open excavations after daylight hours.

SP-10 CONSTRUCTION SIGNS

Signs shall be provided at locations shown on the construction plans and maintained for the duration of the project. Two types of signs shall be provided; 1) Daily Construction Sign and, 2) Daily Informational Signs (Resident Access Signs).

Construction Signs

Provide signs in accordance with MUTCD requirements. Signs shall be located at intersections prior to the impacted area, to inform vehicles of restrictions and construction activities.

SP-11 LOCATION AND RELOCATION OF OTHER UTILITIES

The location and elevations of utilities have been shown on the drawings in so far as they are known. The Contractor shall be responsible to notify "Blue Stakes" to locate and mark the utilities prior to excavation. The Contractor shall notify the engineer of any potential utility conflicts or location differences that may affect the work. The Contractor shall protect existing overhead and buried utilities without any additional cost to the Owner.

SP-12 PROJECT SCHEDULE

A Project Schedule is required to be prepared by the Contractor and submitted to the Engineer (for review by the Owner). The Project Schedule shall be acceptable before the Owner will issue a Notice to Proceed. Revisions to the Project Schedule reflecting the construction progress and Contractor's schedule shall be prepared by the Contractor and submitted to the Engineer (for review by the Owner) with each pay application.

SP-13 PROTECTION OF EXISTING PAVEMENTS

Vehicles and construction equipment shall be rubber tired or rubber cleated. Vehicle weights shall not be sufficient to damage the existing pavements and surfaces. Damaged areas shall be repaired or replaced without additional cost to the Owner.

SP-14 PROJECT SIGN

A project Sign shall be provided in accordance with Section 21 of the Construction Agreement.

SP-15 QUALITY CONTROL AND ACCEPTANCE TESTING

1.01 REQUIREMENTS INCLUDED

- A. Contractor shall employ and pay for the services of an Independent Testing Laboratory /Soils Engineer and other independent professionals to perform field acceptance testing.
 - a. Testing shall include concrete strength, slump and air content; bituminous paving compaction, thickness and surface tolerance; all soil compaction, including, but not limited to, trench bedding, pipe zone backfill, trench backfill, retaining wall backfill, trench dikes, scarified material under pavement, imported trench fill, base courses under pavements, and all other testing required for the project according to the City's specifications and the project special provisions.
 - b. Testing shall include all quality control and acceptance testing for commissioning water and storm drain facilities and pipelines per PCMC standard specifications.
 - c. Employment of the consultant shall in no way relieve Contractor's obligation to perform the Work of the Contractor for compliance with requirements of the Contract Documents.
 - d. If PCMC determines that additional quality control testing performed by its agents or other professional companies retained by PCMC, this in no way eliminates the Contractor's responsibilities to provide independent quality control testing.

1.02 RELATED REQUIREMENTS

- A. Conditions of the Contract: Inspections and testing required by laws, ordinances, rules, regulations, orders, or approvals of public authorities.

1.03 OWNER'S INSPECTION CONSULTANT DUTIES

- A. Cooperate with Engineer and Contractor; provide qualified personnel upon notice.
- B. Perform specified inspections, sampling and testing of materials and methods of construction:
 - a. Comply with specified standards.
 - b. Ascertain compliance of materials with requirements of contract Documents.
- C. Promptly notify the Engineer and Contractor of observed irregularities or deficiencies of work or product.
- D. Promptly submit written report of each test and inspection – one copy each to the Engineer, Owner, Contractor, and one copy to Record Documents File.

Each report shall include:

1. Date issued
2. Project title and number
3. Testing laboratory name, address, and telephone number
4. Name and signature of inspector
5. Date and time of sampling or inspection
6. Record of temperature and weather conditions
7. Date of test
8. Identification of product and specification section
9. Location and sample or test in the Project
10. Type of inspection or test
11. Results of test and compliance with Contract Documents
12. Interpretation of test results, when requested by Engineer

- E. Perform additional test as required by Engineer or the Owner.

1.04 LIMITATION OF AUTHORITY OF INSPECTION CONSULTANT

- A. Consultant is not authorized to:
 - a. Release, revoke, alter or enlarge on requirements of Contract Documents.
 - e. Approve or accept any portion of the Work.

1.05 CONTRACTOR'S RESPONSIBILITIES

- A. Cooperate with the Owner's Inspection Consultant, provide access to work.
- B. Secure own consultant for proposed mix designs and any supplemental field testing that the Contractor may require.
- C. Secure and deliver adequate quantities to the Owner's Inspection Consultant or provide access to the Owner's Inspection Consultant for obtaining samples of materials proposed to be incorporated into the work which require testing.
- D. Provide to the Owner's Inspection Consultant proposed mix designs for concrete and asphalt, sieve gradation requirements, compaction requirements, and any other material or mixes which require control by the testing laboratory / soils engineer.
- E. Furnish copies of products test reports as required.
- F. Furnish incidental labor and facilities:
 - a. To provide access to Work to be tested.
 - b. To obtain and handle samples at the project site.
 - c. To facilitate inspections and tests.
- G. Notify Owner's Inspection Consultant sufficiently in advance of operations to allow for assignment of personnel for observation or scheduling of test.
- H. Employ and pay for the services of a consultant to perform any inspections, sampling and testing that the Contractor is required to perform.
- I. Water and Storm Drain line testing and commissioning will not be included in the scope of work performed by the Owner's Inspection Consultant, but he/she shall observe all quality control and acceptance tests. Contractor shall notify the Engineering Department, and/or the Water Department 24 hours in advance.

1.06 RETEST RESPONSIBILITY

- A. Where results of required inspections, test or similar services prove unsatisfactory and do not indicate compliance of related work with the requirements of the Contract Documents, then the Owner's Inspection Consultant costs associated with the second retest are the responsibility of the Contractor. Owner's Inspection Consultant costs associated with testing resulting from work replace or revised by the Contractor are the responsibility of the Contractor.
- B. Consultant fees resulting from the second re-testing may, at the option of the Owner, be credited to the contract Price by Change Order or the Contractor may be required establish a direct billing by the Owner's Consultant.

SP-16 PERMITS

The Contractor is responsible to obtain the following permits. Unless a pay item has been established as part of the Contract Documents, Securing such permits is considered incidental to the work, and no additional compensation shall be provided.

Note 1) Required if Contractor mobilizes a temporary office or trailer, and/or if temporary power is needed. Grading and utilities are covered under the building permit.

Permit Required	Permitting Agency	Responsible Party	Fee
Building Permit (see note 1)	Park City	Contractor	Waived
Temporary Road Closure Permit and Work in Right-of-Way Permit (partial and/or full)	Park City	Contractor	Waived

END OF SECTION

Page Left Intentionally Blank

Work Change Directive

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner: Park City Municipal Corporation	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

You are directed to proceed promptly with the following change(s):

Item No.	Description

Attachments (list documents supporting change):

Purpose for Work Change Directive:

- Authorization for Work described herein to proceed on the basis of Cost of the Work due to:
 - Nonagreement on pricing of proposed change.
 - Necessity to expedite Work described herein prior to agreeing to changes on Contract Price and Contract Time.

Estimated change in Contract Price and Contract Times:

Contract Price \$ _____ (increase/decrease) Contract Time _____ (increase/decrease)
days

If the change involves an increase, the estimated amounts are not to be exceeded without further authorization.

Recommended for Approval by Engineer:	Date
Authorized for Owner by:	Date
Accepted for Contractor by:	Date
Approved by Funding Agency (if applicable):	Date

Page Left Intentionally Blank

Change Order

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner: Park City Municipal Corporation	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Attachments (list documents supporting change):

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIMES:

Original Contract Price:

Original Contract Times: Working days Calendar days

\$ _____

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:

[Increase] [Decrease] from previously approved Change Orders No. _____ to No. _____:

\$ _____

Substantial completion (days): _____

Ready for final payment (days): _____

Contract Price prior to this Change Order:

Contract Times prior to this Change Order:

\$ _____

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order:

[Increase] [Decrease] of this Change Order:

\$ _____

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

Contract Price incorporating this Change Order:

Contract Times with all approved Change Orders:

\$ _____

Substantial completion (days or date): _____

Ready for final payment (days or date): _____

RECOMMENDED:

ACCEPTED:

ACCEPTED:

By: _____

By: _____

By: _____

Engineer (Authorized Signature)

Owner (Authorized Signature)

Contractor (Authorized Signature)

Date: _____

Date: _____

Date: _____

Approved by Funding Agency (if applicable): _____

Date: _____

Change Order Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Construction Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

This Page Left Intentionally Blank

CERTIFICATE OF FINAL COMPLETION

(Contractor)
(Address)
(City & State)

(Date)

RE: Park City Municipal Corporation, Bus Shelters (Shelter Procurement)

To Whom It May Concern:

The construction performed under the terms of the Contract Documents has been inspected by authorized representatives of the Owner, Engineer, and your Company, and the project is hereby complete and final. The final completion date of the above referenced project shall be _____.

All guarantees and warranties remain in affect according to the Contract Documents.

Respectfully,

(Owner)

The Contractor accepts this Certificate of Final Completion

By: _____

Date: _____

Page Left Intentionally Blank

SECTION 00 00 00 S
(SPECIAL PROVISION)
PROJECT SPECIFICATIONS

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Definitions of Standard Specifications and Standard Plans, Supplemental Specifications, and Special Provisions
- B. Governance of Specifications and Contract Documents.

1.2 DEFINITIONS

- A. This project shall conform to APWA Standard Plans and Specifications, Revisions 2017, together with all adopted Special Provisions and Special Plans by Park City Municipal Corporation. Refer to published documents (not included). The Contract is subject to all standard and special specifications and plans whether or not they appear in the project construction plans and documents. In the event a term of Owner's standard construction agreement conflicts with any other term in any other document, the Owner's standard construction shall control; provided that Owner may, in its sole discretion, agree to allow another provision to control.
- B. The project shall also conform to Snyderville Basin Water Conservancy District (SVBWCD) standard plans and specifications whether or not they appear in the project construction plans and documents.
- C. Project Specific Special Provisions of the above reference standards are designated by the suffix "S" in the project plans and documents, and supersede all other standard specifications and documents.
- D. Project Specific Supplemental Specifications to the above standards are designated by the suffix "M" in the project plans and documents, and supersede all other standard specifications and documents.

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

NOT USED

END SECTION

This Page Left Intentionally Blank

SECTION 01 31 30 S
(SPECIAL PROVISIONS)
ACCESS & CONTRACT INCENTIVES

PART 1 GENERAL

- 1.1 SECTION INCLUDES**
A. Requirements for Access
B. Financial incentives and penalties
- 1.2 RELATED SECTIONS**
A. C-800: Supplemental Conditions

PART 2 PRODUCTS

NOT USED

PART 3 EXECUTION

- 3.1 DISRUPTION OF ACCESS**
- A. Contractor will comply with the requirements of SP-10 of Section C-800, and provide a Traffic and Pedestrian Control Plan.
- B. Contractor shall provide an Access Control Plan, which will address the following items. The Access Control Plan will demonstrate the Contractor's intent to minimize road closures, minimize general access disruption, and minimize impacts to residents during construction. An Access Plan will be submitted and approved prior to the commencement of construction.
1. Consolidate construction activities that cause continuous disruption of access. For example, schedule the construction of water and storm drain simultaneously. Schedule gas construction with Dominion Energy and any other 3rd party utility work to coincide with Contractor's other underground construction, etc.
 2. Demonstrate means and methods of minimizing access to private driveways. For example, provide plating of concrete waterways during forming and curing.
 3. Provide a clear schedule of the major items of work and indicate access control (partial disruption, full closure, etc.).

are complete and accepted in writing by the Owner/Engineer.

3.2 OTHER ACCESS REQUIREMENTS

- A. Open and reasonable vehicle access must be provided during all non-working hours (as defined in the Contract Documents) or when the contractor is not actively working on site, and has no designated personnel to maintain access and/or manage closures.
 - 1. All equipment and materials must be clear from travel way, driveways, and private parking areas to allow for access (except for approved staging areas).
- B. Contractor shall have an agent on site at all times during working hours, or when the work is progressing to manage all access and to facilitate the transport of residents in the “motorized vehicle” during access restrictions. Agent shall be qualified to interact with and direct the public, and to answer any questions regarding access. The agent shall furnish a local mobile phone number to residents to assist in with special or emergency access needs, as well as daily access needs.
- C. Accommodate and coordinate with any and all other city-permitted construction work that may be, or is scheduled to be in progress during Contractor’s construction activities. Scheduled access must be provided and coordinated with other contractors to provide access of personnel and materials/equipment.

3.3 OTHER PENALTIES

- A. Contractor will be assessed liquidated damages as defined in the Construction Agreement for work that continues past the project completion date.

3.4 OTHER CONSIDERATIONS

- A. Contractor may (at Contractor's own discretion and sole expense, and if in the benefit of expediting the Contractor's schedule), provide third party agreements with private property owners to schedule individual access closures, offsite lodging, or other accommodations. Contractor shall document special or individual access closures and agreements with City.

3.5 ACCESS MANAGEMENT SCHEDULE

- A. Furnish a written weekly schedule (or update to the Access Plan) to Owner/Engineer defining scheduled closures (and/or disruptions to access of individual residents).
- B. Provide continuous coordination regarding access management to all residents according to Section 110 S: Public Information Services.
- C. Maintain a written daily log relating to road closures (described in Section 3.1). Incentives will be considered and paid only upon the daily receipt of an accurate and complete log. The log will be submitted weekly to the Engineer, together with a summary.

3.6 CONTRACTOR'S SUPERINTENDENT

- A. Provide a full-time superintendent, which shall be on site at all times when any and all activities are in progress.
- B. Superintendent shall have experience with public engagement and shall be responsible to coordinate both the construction work, public access, and all public information services as required by Section 01 37 10 S.

END SECTION

PAGE LEFT INTENTIONALLY BLANK