

# ***BID DOCUMENTS***

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## ***GORDO ENVIRONMENTAL CLEANUP EXCAVATION***

APRIL 2024  
PARK CITY, UTAH

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PARK CITY MUNICIPAL CORPORATION

**Gordo Environmental Cleanup Excavation**

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# NOTICE TO CONTRACTORS

## Invitation to Bid

Park City Municipal Corporation (PCMC) is accepting bids for the Gordo Environmental Cleanup Excavation. **Bids must be uploaded to the Utah Public Procurement Place (U3P) by 3:00 p.m. MST, on Tuesday, April 30, 2024. At 4:00 p.m. that same day bids will be publicly opened and read aloud in a hybrid meeting in the East Conference Meeting Room at 445 Marsac Avenue, Park City, UT 84060, and available online.** See Section 4 of Instruction to Bidders for virtual meeting information.

**In the event of difficulty submitting Bids electronically via U3P, Bids can be delivered to the office of the City Recorder, located at 445 Marsac Avenue, Third Floor – Executive Department, Park City, UT 84060. Proposals must be addressed to “Ryan Blair, Environmental Regulatory Program Manager.”**

Background: The site was acquired by PCMC in multiple phases from 1996 through 2008. Beginning in 2010 and with approval from the Utah Department of Environmental Quality (UDEQ), Division of Environmental Response and Remediation (DERR) and acknowledgment from the United States Environmental Protection Agency (EPA), PCMC utilized the site to temporarily stockpile metals-contaminated soil excavated from mining-impacted development projects throughout the Park City area. PCMC anticipated that the site would be developed as a permitted repository for metals-impacted soils with oversight from UDEQ’s Division of Waste Management and Radiation Control (DWMRC). However, PCMC has since revised its development plans for the site and intends to remediate and redevelop the site for other purposes.

In 2023 Terracon Consultants, Inc. (Terracon) collected 59 soil samples from 30 sampling locations to characterize the nature and extent of metal-impacted soils and calculate site-specific background threshold values (BTVs). The stockpile volume was estimated to be approximately 30,000 cubic yards, which is consistent with historical estimates provided by PCMC. The 2023 Terracon investigation also identified a smaller separate berm area containing metals-impacted soils. The volume of the berm was estimated to be approximately 1,200 cubic yards (see **Exhibit A**).

The Corrective Action Plan (CAP) (prepared by Terracon; February 16, 2024) developed for the site includes excavation and removal of metals-impacted soils exceeding EPA Regional Screening Levels (RSLs) and/or site-specific BTVs.

Bidding Documents will be available Wednesday, April 8, 2024, and may be obtained via the U3P Website, Event Number: PCMC 2024 26339

A Bid Bond in the amount of five percent (5%) of the total bid is required.

**All questions concerning the project must be submitted via the U3P website by 10:00 a.m. on Tuesday, April 23, 2024.**

PCMC reserves the right to reject any and/or all bids or waive any informalities, inconsistencies or technicalities in the bids when deemed in the best interest of PCMC.

**Bidders or their agents are instructed not to contact City employees, agents or contractors of PCMC, selection committee members, the Mayor's office or staff, members of the City Council, or attempt to externally manipulate or influence the procurement process in any way, other than through the instructions contained herein, from the date of release of this Invitation to Bid to the date of execution of the agreement resulting from this solicitation. PCMC, in its sole discretion, may disqualify a Bidder for violating this provision.**

## INSTRUCTIONS TO BIDDERS

1. **DEFINED TERMS**

Terms used in these instructions will have the following meanings:

- A. Bidder – the individual or entity who submits a Bid directly to Owner.
- B. Engineer – Terracon Consultants, Inc.
- C. Issuing Office – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- D. Owner – Park City Municipal Corporation
- E. Successful Bidder – the lowest responsible Bidder submitting a responsive Bid to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award.

2. **COMPLIANCE WITH LAWS**

The Successful Bidder must comply with all federal, state, and local laws and regulations in completing this project, specifically including but not limited to Park City Code Title 13, Chapter 4 – Regulation and Enforcement Of Stormwater Discharges Associated With Construction Activities.

3. **COPIES OF BIDDING DOCUMENTS**

- A. Complete sets of Bidding Documents may be obtained on the U3P Website, Event Number: PCMC 2024 26339
- B. Complete sets of Bidding Documents must 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.
- C. 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.

4. **PROPOSED SCHEDULE**

Bid Documents Available	Monday, April 8, 2024, at 9:00 a.m.
Optional Pre-Bid Meeting (see details below)	Monday, April 15, 2024, at 12:00 p.m.
Bid Question Deadline	Tuesday, April 23, 2024, at 10:00 a.m.
Bid Submittal	Tuesday, April 30, 2024, at 3:00 p.m.
Bid Opening (see details below)	Tuesday, April 30, 2024, at 4:00 p.m.
City Council Contract Award	Thursday, May 16, 2024

Meeting Information:

- **Optional Pre-Bid Meeting:**  
Topic: Optional Pre-Bid Meeting – Gordo Environmental Cleanup Excavation  
**Time: April 15, 2024, at 12:00 PM Mountain Time (US and Canada)**  
Location: Onsite at the Gordo property, located at <https://maps.app.goo.gl/CbrWXmj8RqwxesyQ6>.

- **Bid Opening:**

Topic: Bid Opening – Gordo Environmental Cleanup Excavation

**Time: April 30, 2024, at 4:00 PM Mountain Time (US and Canada)**

**Location:**

- In-Person:
  - East Conference Meeting Room at 445 Marsac Avenue, Park City, UT 84060
- Online:
  - Microsoft Teams  
[Join the meeting now](#)  
Meeting ID: 260 004 308 427  
Passcode: K6WgR9

5. **QUALIFICATIONS OF BIDDERS**

- A. To demonstrate Bidder’s qualifications to perform the Work, Bidder shall submit with its Bid (a) written evidence establishing its qualifications, such as financial data, previous experience, and present commitments and (b) the following additional information:
  - 1. Evidence of Bidder’s authority to do business in the State of Utah.
  - 2. Bidder’s state or other contractor license number.
  - 3. Evidence of three projects of similar work and cost.
- B. A Bidder’s failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the contract.
- C. No requirement to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder’s qualifications.
- D. Bidder is advised to carefully review those portions of the Bid Form requiring Bidder’s representations and certifications.
- E. Bidders are not required to be pre-qualified for the Work.
- F. **All Selected Bidder employees and/or subcontractor employees on site shall have had 40-hour HAZWOPER training and current 8-hour Refresher certification. The Contractor shall be responsible for the health and safety of their employees and any subcontractor employees.**

6. **PRE-BID MEETING**

**An optional pre-bid meeting will be held at 12:00 p.m. on Monday, April 15, 2024, onsite.** All contractors intending to submit a bid are invited to attend to obtain relevant information concerning the project. Bidders are advised that information affecting drawings, specifications, conditions, scope of the Work, etc. may be discussed. Owner assumes no obligation to disclose information discussed at the pre-bid conference to Bidders who do not attend. Absent Bidders assume all risk of failure to attend.

- Information:

Topic: Optional Pre-Bid Meeting – Gordo Environmental Cleanup Excavation  
**Time: April 15, 2024, at 12:00 PM Mountain Time (US and Canada)**  
Location: Onsite at the Gordo property, located at  
<https://maps.app.goo.gl/CbrWXmj8RqwxesyQ6>.

7. **EXAMINATION OF BIDDING DOCUMENTS AND SITE**

- A. Complete sets of contract documents (“Contract Documents”) may be examined and obtained from the U3P website:

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>

- B. To ensure that notification of addenda is received, BIDDERS must register with the U3P website: <https://solutions.scquest.com/apps/Router/SupplierLogin?CustOrg=StateOfUtah>
- C. It is the responsibility of each Bidder before submitting a Bid to (a) examine the Contract Documents thoroughly; (b) visit the site to become familiar with local conditions that may affect cost, progress, performance, or furnishing of the Work; (c) consider federal, state, and local laws and regulations that may affect cost, progress, performance, or furnishing of the Work; (d) study and carefully correlate Bidder’s observations with the Contract Documents; and (e) notify Engineer of all conflicts, errors, or discrepancies in the Contract Documents.
- D. Information and data reflected in the Contract Documents with respect to underground facilities at or contiguous to the site are based upon information and data furnished to Owner and Engineer by owners of such underground facilities or others, and Owner does not assume responsibility for the accuracy or completeness thereof. Additional information may be obtained from dry utility providers.
- E. Before submitting a Bid, each Bidder will, at Bidder’s own expense, make or obtain any additional examinations, investigations, explorations, tests, and studies and obtain any additional information and data which pertain to the existing conditions (surface, subsurface, and underground facilities) at or contiguous to the site which may affect cost, progress, performance, or furnishing of the Work and which Bidder deems necessary to determine for performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.
- F. Upon request in advance, Owner will provide each Bidder access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a Bid. Bidder shall fill all holes, clean up, and restore the site to its former condition upon completion of such explorations.
- G. The lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and other lands designated for use by Bidder in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities or storage of materials and equipment are to be provided by the Bidder. Easements for permanent structures or permanent changes in existing structures required by the construction plans are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.
- H. 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 Contract Documents, and such means, methods, techniques, sequences, or procedures of construction as may be indicated in; or sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing the Work.

8. INTERPRETATIONS AND ADDENDA

- A. **All questions about the meaning and intent of the Contract Documents shall be submitted via U3P by 10:00 a.m. on Tuesday, April 23, 2024.** Interpretations or clarifications considered necessary by PCMC/Engineer in response to such questions will be issued by Addenda and uploaded to U3P.
- B. Addenda may also be issued via U3P to modify the Bidding Documents as deemed advisable by PCMC or Engineer.

9. BID SECURITY

- A. Each Bid must be accompanied by Bid security made payable to “Park City Municipal Corporation” in an amount of five percent (5%) of the Bidder’s maximum Bid price and in the form of a cashier’s check or bid bond utilizing the American Institute of Architects Document A310 - Bid Bond (or equivalent) issued by a surety authorized to do business in Utah.
- B. The Bid security of the Successful Bidder will be retained until such Bidder has executed the Construction Agreement referenced in Article 26 and furnished the required contract security, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen days after the Notice of Award, Owner may annul the Notice and Award and the Bid security of the 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 the seventh day after the effective date of the Agreement or the forty-sixth day after the Bid opening, whereupon Bid security furnished by such Bidders will be returned. Bid security with Bids which are not competitive will be returned within seven days after the Bid opening.

10. CONTRACT TIME

**The project completion date shall be November 15, 2024.**

11. LIQUIDATED DAMAGES

**Provisions for liquidated damages are set forth in the Construction Agreement, a copy of which is attached as Exhibit “B.” Contractor agrees to \$100/day and shall provide initials on the Construction Agreement.**

12. SUBSTITUTE OR “OR-EQUAL” ITEMS

The contract, if awarded, will be on the basis of materials and equipment 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 Agreement.

13. SUBCONTRACTORS, SUPPLIERS, AND OTHERS

A list of all Subcontractors whom the Bidder will use to complete the work must accompany the Bid. The Owner reserves the right to accept or reject proposed Subcontractors. If a proposed Subcontractor is rejected, Contractor shall submit a substitute acceptable to the Owner and without an increase in Bid price.



14. **BID FORM**

- A. The Bid Form is included with the Bidding Documents.
- B. All blanks on the Bid Form must be completed and must be typed or printed in ink.
- C. Bids by corporations, partnerships, and other entities must be executed in the entity's name by someone with legal authority to Bid on behalf of the entity.
- D. All names must be typed or printed below the signature.
- E. The Bid shall contain an acknowledgment of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- F. The address and telephone number for communications regarding the Bid must be shown.
- G. Bidders must complete all schedules and all alternates included in the Bid Form. Failure to do so shall make the Bid non-responsive.

15. **SUBMISSION OF BID**

- A. **Bids must be uploaded to the U3P by 3:00 p.m. MST, Tuesday, April 30, 2024. At 4:00 p.m. that same day bids will be publicly opened and read aloud in a hybrid meeting in the East Conference Meeting Room at 445 Marsac Avenue, Park City, UT 84060, and online (see link in Section 4).**
- B. **In the event of difficulty submitting Bids electronically, Bids can be dropped off at the office of the City Recorder, located at 445 Marsac Avenue, Third Floor – Executive Department, Park City, UT 84060 and addressed to “Ryan Blair- Environmental Regulatory Program Manager.”** Bids shall be enclosed in an opaque sealed envelope, marked with the project title and name and address of the Bidder and accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation “**BID ENCLOSED**” on the face of it. The Bid Form is to be completed and submitted with Bid Security and shall remain bound in the Bidding documents.

16. **MODIFICATION AND WITHDRAWAL OF BIDS**

- A. 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.
- B. 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.

17. **OPENING OF BIDS**

Bids will be opened at the time and place indicated in the Invitation for Bids 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.

18. **BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

All Bids will remain subject to acceptance for 45 days after the day of the Bid Opening. Owner may, in its sole discretion, release any Bid and return the Bid Security prior to that date.

19. **AWARD OF CONTRACT**

- A. Owner reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder, and the right to disregard all nonconforming, non-responsive, unbalanced, or conditional Bids. Also, Owner reserves the right to reject the Bid or any Bidder if Owner believes that it would not be in the best interest of the project to make an award to that Bidder, whether because the bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by the Owner. Discrepancies in 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. Proposals lacking required information will not be considered.
- B. Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations are submitted as evidence of Contractor's project qualifications.
- C. Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
- D. **The award of the contract may be subject to approval by the Park City Council. The anticipated City Council date of approval is May 16, 2024.**
- E. The Owner intends to issue one contract for all schedules included in the Bid Form. The Owner reserves the right to award only specific schedules as included in the Bid Form.
- F. At its option, the Owner may include the Additive Alternate item(s), if any, which are listed in the Bid Form, in the Agreement.
- G. If the contract is to be awarded, Owner will give the Successful Bidder a Notice of Award within 60 days after the day of the Bid Opening.

20. **CONTRACT SECURITY AND INSURANCE**

Section 2 of the Construction Agreement, referenced in Article 26 below, sets forth Owner's requirements as to performance and payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by such Bonds.

21. **SIGNING OF AGREEMENT**

When the Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the unsigned Agreement, with all other written Contract Documents attached. Upon execution by Owner, Contractor will be provided a copy of the executed Agreement.

22. NONDISCRIMINATION IN EMPLOYMENT

The Successful Bidder agrees to not discriminate against any employee or applicant for employment because of race; ethnicity; color; 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; or military status. Additionally, the Successful Bidder shall implement an employment nondiscrimination policy, if the Successful Bidder does not already have such a policy, to effectuate the prohibition in this section. Further, the Successful Bidder must incorporate the foregoing non-discrimination provisions in all subcontracts or assignments under this project and take action as required to ensure full compliance with the provisions of this non-discrimination policy.

23. QUALITY CONTROL

PCMC's Representative, Engineer and staff, or other municipal representatives shall be allowed access to the project at all times for quality control inspections.

24. GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT

PCMC will maintain a nonpublic process for the duration of this solicitation in accordance with Government Records Access and Management Act, Title 63G, Chapter 2 of the Utah Code ("GRAMA"). Pursuant to Utah Code § 63G-2-305(6), all records related to this Invitation to Bid, including but not limited to Bids, evaluation, and selection procedures, and any records created during the evaluation and selection process will remain nonpublic records until a contract is awarded and signed. After execution of a contract, all submittals will be treated as public records in accordance with the requirements of GRAMA unless otherwise claimed by the Bidder as exempt from disclosure pursuant to Utah Code § 63G-2-309, as amended. The burden of claiming an exemption shall rest solely with each Bidder. Bidder shall submit any materials for which Bidder claims an exemption from disclosure marked as "Confidential" and accompanied by a statement from Bidder supporting the exemption claim. PCMC shall make reasonable efforts to notify Bidder of any GRAMA requests for documents submitted under an exemption claim. Bidder waives any claims against PCMC related to disclosure of any materials pursuant to GRAMA. Please note the following:

- A. Bidder must not stamp all materials confidential. Only those materials for which a claim of confidentiality can be made under GRAMA, such as trade secrets, pricing, non-public financial information, etc., should be stamped.
- B. Bidder must submit a letter stating the reasons for the claim of confidentiality for every type of information that is stamped "Confidential." Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury. Failure to timely submit a written basis for a claim of "Confidential" may result in a waiver of an exemption from disclosure under GRAMA.
- C. **For convenience, a Business Confidentiality Request Form ("BCR Form") is attached to this RFP as Attachment 1. Bidder must submit a completed BCR Form at the time of submission of a Bid.**

25. ETHICS

By submission of a Bid, Bidder represents and agrees to the following ethical standards:

**Representation Regarding Ethical Standards:** Bidder represents that it has not: (1) provided an illegal gift or payoff to a city officer or employee or former city officer or

employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees of bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in Title 3, Chapter 1 of the Park City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a city officer or employee or former city officer or employee to breach any of the ethical standards set forth in Title 3, Chapter 1 of the Park City Code.

26. PCMC STANDARD CONSTRUCTION AGREEMENT REQUIRED

- A. The successful Bidder will be required to enter into PCMC's Standard Construction Agreement. The Agreement is attached to this Invitation for Bids as **Exhibit "B."**
- B. **ANY REQUEST FOR CHANGES RELATED TO INDEMNIFICATION OR INSURANCE PROVISIONS CONTAINED IN PCMC'S STANDARD AGREEMENT MUST BE SUBMITTED NO LATER THAN THE BID DEADLINE. ANY REQUESTED CHANGES TO PCMC'S STANDARD INSURANCE AND INDEMNIFICATION PROVISIONS MAY BE APPROVED IN THE SOLE DISCRETION OF PCMC.**
- C. A Bidder must be authorized to do business in Utah at the time of contract execution. If Bidder's address is within the 84060 zip code, a valid PCMC business license is required.

27. GENERAL PROVISIONS

- A. No Representations or Warranty. It is the responsibility of each Bidder to carefully examine this Invitation to Bid and evaluate all of the instructions, circumstances and conditions which may affect any Bid. Failure to examine and review the Invitation to Bid and other relevant documents or information will not relieve Bidder from complying fully with the requirements of this Invitation to Bid. Bidder's use of the information contained in the Invitation to Bid is at Bidder's own risk and no representation or warranty is made by PCMC regarding the materials in the Invitation to Bid.
- B. Cost of Developing Proposals. All costs related to the preparation of the Bids and any related activities are the sole responsibility of the Bidder. PCMC assumes no liability for any costs incurred by Bidders throughout the entire selection process.
- C. Equal Opportunity. PCMC will make every effort to ensure that all Bidders are treated fairly and equally throughout the advertisement, review, and selection process. The procedures established herein are designed to give all parties reasonable access to the same basic information.
- D. Proposal Ownership. All Bids, including attachments, supplementary materials, addenda, etc., will become the property of PCMC and will not be returned to the Bidder.
- E. Modification of Invitation to Bid. PCMC reserves the right to cancel or modify the terms of this Invitation to Bid and/or the project at any time and for any reason preceding the contract execution. PCMC will provide written notice to Bidders of any cancellation and/or modification.
- F. Financial Responsibility. No Bid will be accepted from, or contract awarded to, any person, firm, or corporation that is in arrears to PCMC, upon debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to PCMC, or that may be deemed irresponsible or unreliable by PCMC. Bidders may be required to submit satisfactory evidence demonstrating

the necessary financial resources to perform and complete the work outlined in this Invitation to Bid.

- G. Local Businesses. PCMC's policy is to make reasonable attempts to support local businesses by purchasing goods and services through local vendors and service providers, subject to Federal, State, and local procurement laws.

28. EXHIBITS

- A. Attachment 1 – Business Confidentiality Request Form
- B. Exhibit “A” – Corrective Action Plan
- C. Exhibit “B” – Sample Construction Agreement

**BID FORM**

**PROJECT IDENTIFICATION:**

**Gordo Environmental Cleanup Excavation**

**CONTRACT IDENTIFICATION AND NUMBER:**

**U3P Number: PCMC2024 –  
26339 April 2024**

**THIS BID IS SUBMITTED TO:**

**Ryan Blair, Environmental  
Regulatory Program Manager  
Park City Municipal Corporation  
445 Marsac Ave, Park City UT 84060  
email: ryan.blair@parkcity.org**

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Owner in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 45 days after the day of Bid opening. Bidder will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of Owner’s Notice of Award.
3. In submitting this Bid, Bidder represents, as more fully set forth in the Agreement, that:
  - a. Bidder has examined copies of all the Bidding Documents and of the Following Addenda (receipt of all which is hereby acknowledged):

Date	Number
_____	_____
_____	_____
_____	_____
_____	_____

- b. Bidder has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
  - c. Bidder has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests and studies which pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress,

performance or furnishing of the Work as Bidder considers necessary for the performance of the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports or similar information or data are or will be required by Bidder for such purposes.

- d. Bidder has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports or similar information or data in respect of said Underground Facilities are or will be required by Bidder in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
  - e. Bidder has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
  - f. Bidder has given Owner and Engineer written notice of all conflicts, errors or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by Owner or Engineer is acceptable to Bidder.
  - g. The Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any person, firm or corporation to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.
4. Bidder will complete the Work for the unit and lump sum prices as shown on the Bid Schedule and Detailed Specifications. Estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids and determination of initial Contract Price. Final payment will be based upon actual quantities.
  5. The Project Completion Date shall be as stated on the Invitation to Bid and the executed Construction Agreement. **The project completion date shall be November 15, 2024.** The Successful Bidder, simultaneously with the execution of the Construction Agreement, will be required to furnish Performance and Payment Bonds in the amount equal to one hundred percent (100%) of the contract price, said bonds shall be secured from a company satisfactory to Park City Municipal Corporation. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.

6. Bidder Information

Name of Contractor \_\_\_\_\_

Contact Person \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone \_\_\_\_\_

E-mail \_\_\_\_\_

Bidder holds license number \_\_\_\_\_, issued by the Utah State

Department of Commerce, Division of Occupational and Professional Licensing. Bidder is licensed

to practice as a \_\_\_\_\_ Contractor. The license expires on \_\_\_\_\_

\_\_\_\_\_ (date).

7. If any person contemplating submitting a Bid for the proposed contract is in doubt as to the true meaning of any part of the drawings, specifications or other proposed contract documents, they may submit to the Engineer written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by Addendum duly issued and a copy of such Addendum will be delivered to each person receiving a set of documents. Neither the Owner nor the Engineer will be responsible for any other explanations or interpretations of the proposed documents.
8. The following documents are required to be submitted with the Bid Proposal:
  - a. List of Proposed Subcontractors
  - b. Contractors Qualification Sheet
  - c. Bid Bond
  - d. Contractor license
9. The Construction Agreement will prevail in all cases, followed by the Detailed Specifications.



Gordo Environmental Cleanup Excavation						
Item No.	Item Name	QTY	UNITS	UNIT PRICE	TOTAL COST	NOTES
1	Mining impacted soils removal, hauled to designated landfill located at 6550 W. Threemile Canyon Rd., Coalville, Utah. Disposal cost is \$40/ton. This must be included with your hauling/disposal cost for this line item. Do not contact the Landfill/County for your bid.	48,000	TN	Lump		32,000 cubic yards of soil
2A	Contingency- Mining impacted soils removal, hauled to designated landfill in Tooele; Wasatch Regional 8833 N Rowley Rd, Grantsville, UT 84029; Richard McMullin, rcmullin@republicservices.com, 801-253-1111	Unknown	TN			Designate Cost/Ton contingency
<b>CONSTRUCTION TOTAL</b>						

The undersigned, in compliance with your Invitation For Bids for the **Gordo Environmental Cleanup Excavation**, in Park City, Utah, having examined the Drawings and Specifications and related Documents and the site of the proposed work and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of labor, hereby offer to furnish all labor, materials and supplies as required for the work in accordance with the Contract Documents as specified and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the work required under the Contract Documents of which this Bid is a part.

SUBMITTED ON \_\_\_\_\_, 2024.

Bidder's (Entity's) Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LIST OF PROPOSED SUBCONTRACTORS**

SUBCONTRACTOR	ADDRESS	TELEPHONE	PORTION OF WORK
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____
7. _____	_____	_____	_____
8. _____	_____	_____	_____
9. _____	_____	_____	_____
10. _____	_____	_____	_____

## CONTRACTOR QUALIFICATION SHEET

(List similar projects completed by the contractor over the past three years)

Date \_\_\_\_\_

NAME OF PROJECT	DOLLAR AMT OF PROJECT	OWNER REFERENCE (NAME AND TELEPHONE NO.)	INVOLVEMENT OR ROLE IN PROJECT	COMPLETION	
				ON TIME	WITHIN BUDGET

# MEASUREMENT, PAYMENT, & DETAILED SPECIFICATIONS

## ITEM 1 (Gordo Environmental Cleanup Excavation): MOBILIZATION and EXCAVATION

- A. **Description** - This item includes all materials, equipment, and labor necessary for the preparatory, incidental, miscellaneous, and closing work operations for the project, including construction mitigation, traffic control, pedestrian control, and stormwater management.
- B. **Materials and Construction Requirements** - This item includes but is not limited to the following:
1. The moving of personnel, equipment, supplies, and incidentals to each work site before beginning the work and the removal of personnel, equipment, and supplies following completion of work.
  2. Establishment of all temporary offices, buildings or trailers, project sign, sanitary facilities, staging areas, and other facilities necessary for the work on the project.
  3. Temporary utilities and trash service.
  4. Acquisition of payment and performance bonds.
  5. Acquisition and payment of all permits.
  6. Providing construction fencing to close areas for work operations. Adjust fencing as necessary.
  7. Installation of straw wattles and/or silt fences at the toe of the slope along disturbed areas. Control runoff from the construction site and upstream areas. Divert runoff and prevent erosion of project area. Maintain sediment on site.
  8. Project cleanup and removal of all Contractor equipment and other facilities.
  9. Stability of construction excavations is the Contractor's responsibility. Take appropriate measures to protect personnel, equipment, utilities, and structures from the collapsing of excavation sidewalls. Be prepared to use shoring, sloping, or other approved measures to comply with current OSHA safety requirements at 29 CFR 1926 Subpart P.
  10. Prior to leaving the site, equipment will be decontaminated to avoid transporting impacted soils off-site. Decontamination areas will be set up and designated (Exhibit A) where visible soil will be brushed off or sprayed from the heavy equipment, especially from the tires and loading buckets, and any hand tools, other tools, or equipment that may contain residual soils from the excavation.
  11. Bidder will be responsible for the preparation of their own task-related site safety plans.
  12. The excavation contractor will implement a Storm Water Pollution Prevention Plan (SWPPP) and comply with all requirements of UDEQ's Construction General Permit (CGP) to protect nearby surface waters, prevent surface runoff, and prevent transporting mud and debris off-site. As part of the SWPPP, any temporary soil stockpiles will be placed on a 6+ mil plastic layer or other equivalent impervious surface. Berms will be used as needed around the stockpile perimeter to prevent runoff.
  13. Dust control will be implemented by the excavation contractor per the requirements of the Park City Soils Ordinance (Park City Municipal Code Section 11-15-6). The excavation contractor will determine whether a formal Fugitive Emissions Control Plan will need to be submitted to the UDEQ Division of Air Quality (DAQ). If visible dust is generated, the work site will be wetted, or work will be suspended until weather conditions permit work to continue. If temporary soil stockpiles are found to be generating fugitive dust they will be wetted and/or covered with 6+ mil plastic.
  14. All incidental work and costs associated with the project, which are not included in contract bid items including cleanup and restoration of disturbed areas.
  15. Reseed landscape after confirmation samples have been processed.

**C. Method of Measurement**

1. **Please provide a lump-sum bid to complete the Contractor's Scope described above.**
2. Provide unit costs for the following contingency items:
  - Cost per ton to excavate, load, and transport metals-impacted soils exceeding 48,000 tons and/or unexpected contamination, e.g. ash, cinders, tars, sludges, powders, containers (tanks, drums, totes, etc.).
  - Hourly rate for placement and in-place mixing of monocalcium phosphate treatment with soil at a rate of 3% by weight (if required to reduce metals leachability).

**D. Basis of Payment -** Payment for this item shall be made as follows:

1. 25% of the item to be paid after a minimum of 15% of the mine impacted soils have been removed.
2. An additional 30% of the item to be paid when 35% of the material is removed.
3. An additional 30% of the item to be paid when 35% of the material is removed.
4. Final 15% of the item to be paid when final 15% of the material is removed and the ground is reseeded.

**Attachment 1**  
**REQUEST FOR PROTECTED STATUS**

(Business Confidentiality Claims under Utah’s Government Records Access  
and Management Act (“GRAMA”), Utah Code § 63G-2-309)

I request that the described portion of the record provided to Park City Municipal Corporation be considered confidential and given protected status as defined in GRAMA.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Description of the portion of the record provided to Park City Municipal Corporation that you believe qualifies for protected status under GRAMA (identify these portions with as much specificity as possible) (attach additional sheets if necessary): \_\_\_\_\_

\_\_\_\_\_

The claim of business confidentiality is supported by (please check the box/boxes that apply):

- ( ) The described portion of the record is a trade secret as defined in Utah Code § 13-24-2.
- ( ) The described portion of the record is commercial or non-individual financial information the disclosure of which could reasonably be expected to result in unfair competitive injury to the provider of the information or would impair the ability of the governmental entity to obtain the necessary information in the future and the interest of the claimant in prohibiting access to the information is greater than the interest of the public in obtaining access.
- ( ) The described portion of the record would cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Utah Code § 11-13-103(4).

**REQUIRED:** Written statement of reasons supporting a business confidentiality claim as required by Utah Code § 63G-2-305 (1)–(2) (attach additional sheets if necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NOTE:** Claimant shall be notified if the portion of the record claimed to be protected is classified as public or if the determination is made that the portion of the record should be disclosed because the interests favoring access outweigh the interests favoring restriction of access. Records claimed to be protected under this business confidentiality claim may not be disclosed until the period in which to bring the appeal expires or the end of the appeals process, including judicial appeal, **unless the claimant, after notice, has waived the claim by not appealing the classification within thirty (30) calendar days.** Utah Code § 63G-2-309(2).

Signature of Claimant: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit “A” – Corrective Action Plan**



**Exhibit “B” – Sample Construction Agreement**

**CONSTRUCTION AGREEMENT**

This Construction Agreement (“**Agreement**”) is between PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation (“**PCMC**”), and \_\_\_\_\_, a \_\_\_\_\_ (insert state of incorporation) \_\_\_\_\_ (insert either “corporation” or “limited liability company”) (“**Contractor**”).

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

The parties therefore 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, as specifically set out in the contract specifications, which is made a part hereof by reference.

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 PCMC, 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 Engineering Department. To the extent that this Agreement conflicts in any way with a proposed form agreement which may have been submitted as part of the bid specifications, this Agreement shall control.

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

**A. Subcontractors.** No part of this Agreement shall be subcontracted by the Contractor without prior written approval by PCMC through the Project Manager/Engineer. The Contractor shall be fully responsible to PCMC 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 Agreement, 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 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 PCMC 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 PCMC 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 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 PCMC 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 PCMC 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 PCMC'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 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 PCMC.

**SECTION 2. PERFORMANCE AND PAYMENT BONDS.** Contractor shall furnish to PCMC payment and performance bonds satisfactory to PCMC guaranteeing Contractor's payment and performance, in the amount, for each separately, of 100% of the Agreement Amount.

**SECTION 3. INSURANCE.** At its own cost and expense, Contractor shall maintain the following mandatory insurance coverage to protect against claims for injuries to persons or property damage that may arise from or relate to the performance of this Agreement by Contractor, its agents, representatives, employees, or Subcontractors for the entire duration of this Agreement or for such longer period of time as set forth below. Prior to commencing any work, Contractor shall furnish a certificate of insurance as evidence of the requisite coverage. The certificate of insurance must include endorsements for additional insured, waiver of subrogation, primary and non-contributory status, and completed operations.

**A. Commercial General Liability Insurance.** Contractor shall maintain commercial general liability insurance on a primary and non-contributory basis in comparison to all other insurance, including PCMC's own policies of insurance, for all claims against PCMC. The policy must be written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$3,000,000 aggregate for personal injury and property damage. Upon request of PCMC, Contractor must increase the policy limits to at least the amount of the limitation of judgments described in Utah Code § 63G-7-604, the Governmental Immunity Act of Utah (or successor provision), as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3 (or successor provision).

**B. Automobile Liability Coverage.** Contractor shall maintain automobile liability insurance with a combined single limit of not less than \$2,000,000 per accident for bodily injury 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 Insurance and Employer's Liability.** Contractor shall maintain workers' compensation insurance with limits not less than the amount required by statute, and employer's liability insurance limits of at least \$1,000,000 each accident, \$1,000,000 for bodily injury by accident, and \$1,000,000 each employee for injury by disease. The workers' compensation policy must 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 PCMC's discretion). Contractor shall maintain 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. Contractor's Pollution Liability (at PCMC's discretion). Contractor shall maintain Contractors Pollution Liability insurance, on an occurrence basis, with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from the Contractor's operations and completed operations. This coverage must include an Over the Road Pollution enhancement. The insurance shall be maintained for no less than three years after final completion.

F. The general liability, auto liability, builder's risk (if applicable), and contractor's pollution 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 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.

G. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. PCMC reserves the right to request certified copies of any required policies.

H. 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.

I. For any claims related to this Construction Agreement, the Contractor's insurance coverage shall be primary insurance coverage with respect to PCMC, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by PCMC, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**SECTION 4. AGREEMENT AMOUNT, ACCEPTANCE OF WHOLE, ADDITIONS.** PCMC shall pay Contractor a total sum not to exceed (**\$ numerically**) ("**Agreement 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 Agreement Amount includes the price of all normally applicable fees and permits. PCMC may, at its discretion, arrange for the waiver of certain fees, permits and expenses.

**SECTION 6. TERMS OF PAYMENT.** PCMC shall pay for services provided hereunder according to and in an aggregate amount not to exceed the Agreement 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. PCMC shall make payment within 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 Agreement 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. PCMC 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.** PCMC may, in its sole discretion (1) retain 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 5% of the total Project amount. As work nears completion and solely at PCMC's discretion, PCMC may reduce the retainage to an amount more in line with the work remaining. PCMC 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 PCMC that all payrolls, material bills, subcontracts and all outstanding indebtedness in connection with the Project have been paid for.

PCMC 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 10% of such indebtedness as PCMC's cost of administering such claims until Contractor supplies a release satisfactory to PCMC, signed by all persons who have supplied labor or materials to the Project or, at PCMC's option if no claim is made, until 105 days after the date on which any person performed the last of the labor or supplied the last of the material for the Project and upon written request from the Contractor.

The Contractor shall supply to the Project Manager/Engineer within a reasonable time after his/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 PCMC shall release PCMC 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 10 days of receipt of the Notice to Proceed and shall be completed by **[DATE]**. Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by PCMC by change order, no damages shall become due to Contractor for PCMC-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 Agreement or delay attributed to direct, active or willful interference by PCMC. 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 PCMC **\$100.00 ( \_\_\_\_\_ - Contractor Initials)** which the parties believe, due to the difficulty of actually assessing the damages PCMC will suffer in the event of such a delay, is a fair estimate of the loss PCMC 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.** PCMC may enlarge or reduce the work to be performed by Contractor hereunder by written notification to Contractor, including changes to the plans and specifications. PCMC 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 PCMC 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 Agreement Amount shall be determined by one or more of the following methods in order of precedence listed below:

- A.** An agreed lump sum; or in the event the parties cannot agree; then
- B.** The unit rate for the work bid by the Contractor, if applicable, or in the event there was no such rate bid; then
- C.** The actual cost for: (1) labor; (2) materials; (3) supplies; (4) equipment; (5) direct overhead (not to exceed 5% of the sum total of items 1–4, unless approved by PCMC);

and (6) other services necessary and approved by PCMC to complete the work. In the event of a net increase in the Agreement Amount for a change order as a whole, PCMC shall allow a payment to the Contractor of an additional 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 PCMC for actual cost of the net increase in bond costs as a result of the overall change to the Agreement Amount. PCMC 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 PCMC. The decision of PCMC shall be final and conclusive unless, within 30 days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish PCMC 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 this Agreement and in accordance with PCMC's decision. The decision of PCMC shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Agreement has been drafted by PCMC, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of PCMC.

**SECTION 10. DEFAULT, REMEDY AND TERMINATION.** PCMC 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 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 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 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 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 undismitted for a period of 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 10 days written notice on the Contractor and its surety of its intention to terminate the services of Contractor, and if within 10 days after serving such notice, the violation is not corrected to PCMC's reasonable satisfaction, PCMC 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 PCMC for any reasonable cost occasioned by PCMC in excess of the amount agreed to for the service herein.

The Contractor shall be entitled to a hearing before a PCMC hearing officer upon the issue of termination if it submits a written request therefore within seven days of the service of the notice of PCMC'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 PCMC, its officers, agents or employees arising out of or relating to the termination of this Agreement before the decision is issued by PCMC'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 PCMC'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 PCMC 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. INDEMNIFICATION.**

A. Definitions. In this Agreement, the following definitions apply:

(1) **"Indemnifiable Losses"** means the aggregate of Losses and Litigation Expenses.



- (2) **“Litigation Expense”** means any reasonable out-of-pocket expense incurred in defending a Proceeding or in any related investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.
- (3) **“Loss”** means any amount awarded in, or paid in settlement of, any Proceeding, including any interest but excluding any Litigation Expenses.
- (4) **“Proceeding”** means any investigation, claim, judicial, administrative, or arbitration action or lawsuit, or other cause of action of every kind or character, brought by third parties against PCMC, its agents, employees, or officers, that arises out of this Agreement or the performance of this Agreement by Contractor or its Subcontractors or subconsultants of any tier, or anyone acting under Contractor’s direction or control, including after the expiration or termination of this Agreement.

B. Indemnification. Contractor shall indemnify PCMC and its agents, employees, and officers against all Indemnifiable Losses arising out of a Proceeding, except to the extent the Indemnifiable Losses were caused by the negligence or willful misconduct of PCMC.

C. Obligation to Defend. Contractor shall, at its sole cost and expense, defend PCMC and its agents, employees, and officers from and against all Proceedings, provided that Contractor is not required to defend PCMC from any Proceeding arising from the sole negligence of PCMC or its agents, employees, or officers.

D. Tender. Contractor’s obligation to defend will arise upon PCMC’s tender of defense to Contractor in writing. If PCMC fails to timely notify Contractor of a Proceeding, Contractor will be relieved of its indemnification obligations to the extent that Contractor was prejudiced by that failure. Upon receipt of PCMC’s tender of defense, if Contractor does not promptly notify PCMC of its acceptance of the defense and thereafter duly and diligently defend PCMC and its agents, employees, and officers, then Contractor shall pay and be liable for the reasonable costs, expenses, and attorneys’ fees incurred in defending the Proceeding and enforcing this provision.

E. Legal Counsel. To assume the defense, Contractor must notify PCMC of their intent to do so. Promptly thereafter, Contractor shall retain independent legal counsel that is reasonably acceptable to PCMC.

F. Settlement. After Contractor assumes the defense of a Proceeding, Contractor may contest, pay, or settle the Proceeding without the consent of PCMC only if that settlement (1) does not entail any admission on the part of PCMC that it violated any law or infringed the rights of any person, (2) provides as the claimant’s sole relief monetary damages that are paid in full by Contractor, and (3) requires that the claimant

release PCMC and its agents, employees, and officers from all liability alleged in the Proceeding.

G. Waiver. Contractor expressly agrees that the indemnification provision herein constitutes the Contractor's waiver of immunity under Utah Code § 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 PCMC by reason of entering into this Agreement except as expressly provided herein.

H. No Limitation. The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.

I. Interpretation. The parties intend that the indemnity and defense provisions in this Article shall be interpreted so as to be enforceable to the fullest extent permitted by law, but nothing herein shall be interpreted to violate public policy.

J. Environmental Indemnity. Contractor shall indemnify PCMC, its agents, employees, and officers for any Indemnifiable Losses from a Proceeding arising out of Contractor's violation of federal, state, or local environmental laws or regulations, and shall include but not be limited to all cleanup and remedial costs, diminution in value of property, and any fines or fees imposed as a result.

**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 PCMC, provided however, that claims for compensation due or to become due the Contractor from PCMC 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 PCMC.

**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 PCMC 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 PCMC 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 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. PCMC 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 PCMC 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. PCMC 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 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.
- F. 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.
- G. 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 Park 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 Park 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 12 square feet in size, six feet in height and shall not exceed a letter type of four inches. 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 PCMC 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 PCMC 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 PCMC 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 Philip Adams, 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, to the parties at the following addresses:

Contractor: \_\_\_\_\_, or such other person designated in writing by the Contractor's chief administrative officer, at [address].

PCMC: Project Manager/Engineer, at P.O. Box 1480, Park City, UT 84060, 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.



Each party is signing this Agreement on the date stated opposite that party's signature.

**PARK CITY MUNICIPAL CORPORATION**, a Utah  
municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Matt Dias  
City Manager

Attest:

\_\_\_\_\_  
City Recorder's Office

Approved as to form:

\_\_\_\_\_  
City Attorney's Office

**[CONTRACTOR]**

Utah Contractor License # \_\_\_\_\_

Tax ID # \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

[insert name of individual signing]  
[insert title of individual signing]  
An authorized signer