



NOTICE  
REQUEST FOR PROPOSALS  
*Park City Transit Solar PV Array*

PROPOSALS DUE: Friday, June 1, 2012 at 4:00 PM MST. Proposals should be submitted in PDF format to [tyler.poulson@parkcity.org](mailto:tyler.poulson@parkcity.org) and one hard copy must be delivered to the below address:

Park City Municipal Corporation  
c/o Office of Sustainability  
445 Marsac Ave.  
Park City, UT 84060

PROJECT NAME: Park City Transit Solar PV Array

RFP AVAILABLE: Thursday, April 26, 2012  
[Email Tyler Poulson to Receive Complete RFP Details](#)

PROPOSALS DUE: Friday, Jun 1, 2012 at 4:00 PM MST

PROJECT LOCATION: 1053 Iron Horse Drive; Park City, UT 84060

PROJECT DESCRIPTION: This project contains two major components which must be addressed by RFP respondents. Respondents must include both aspects in their proposal: 1) Provide structural engineering assessment and complete a roof reinforcement to allow for a solar array to be installed; 2) Design and install a 54 kilowatt (kW) solar PV array at the Transit and Public Works facility on Iron Horse Drive in Park City.

PROJECT DEADLINE: Friday, October 5, 2012

OWNER: Park City Municipal Corporation (PCMC)

CONTACT: Tyler Poulson, Environmental Sustainability Program Mgr.  
Email: [tyler.poulson@parkcity.org](mailto:tyler.poulson@parkcity.org)

A mandatory site visit for potential RFP respondents will occur on Monday, May 14, 2012. All questions must be submitted via email no later than Friday May 18, 2012

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

**PARK CITY MUNICIPAL CORPORATION (PCMC) Request for Proposals (RFP)**



**Park City Transit Solar PV Array**

**Proposals due by Friday, June 1, 2012 at 4 PM MST**

**I. Background**

PCMC requests proposals from qualified firms for roof reinforcement and installation of roughly a 54 kilowatt (kW) solar photovoltaic (PV) array on the Transit and Public Works facility (1053 Iron Horse Drive) in Park City, UT. PCMC is funding this project through a federal grant administered by the Utah Department of Transportation (UDOT). The federal grant originates from the Federal Transit Administration (FTA) via 49 USC 5311. As such, all terms of submitted proposals should align with federal requirements detailed in Attachment I of this RFP.

**II. Scope of Project**

This project includes the design, engineering, and installation, including the supply of all labor, equipment, and materials, for roughly a 54 kW solar PV array on the Transit and Public Works building in Park City, UT. The exact size of the solar array will vary depending on system design and respondents are encouraged to propose a larger system size, if feasible. The scope also includes strengthening of existing roof purlins to ensure that a solar array can be supported and that local Building Codes are met. More details on the minimum anticipated services required for roof strengthening are included in the Scope of Services Required section. All terms of submitted proposals should align with all federal requirements listed in Attachment I.

**III. Scope of Services Required:**

**1. Roof Reinforcement**

This site was previously assessed as part of a broader solar feasibility study completed for PCMC in 2011. That study revealed a need for structural reinforcement at the Transit and Public Works building in order to support the weight of traditional solar PV panels. The feasibility study included stamped engineering documents which recommended a method for strengthening existing roof purlins using plates and bolts. Information on this engineering assessment, and one method for roof strengthening, is included as Attachment II in this RFP.

Based on the recommendations included in Attachment II, here are the activities required prior to initiating any solar installation. RFP respondents are required to partner with a qualified structural reinforcement firm, and include information on this partnership in the response, in order to submit a proposal for this project. Roof reinforcement must be completed in accordance with PCMC Building Codes (information at ParkCity.org) and will include the following activities as detailed in Attachment II:

- a. Structural Engineering: Complete onsite analysis, detailed load calculations (starting from scratch w/o existing manufacturer's calculations), stamped packet and construction-ready drawings.

- b. Materials: Buy America-qualified and AISC-certified steel plates, with mill certificates, that include pre-drilled holes, splices, bolts, etc. Respondents will also need to cover shipping costs for all materials.
- c. Fabrication and Erection: Drill new holes through purlins, attach steel plates to existing purlins, bolt splices to purlins, weld splices (if applicable), etc.

*NOTE: The materials and activities listed in b & c above may vary depending on the exact reinforcement proposal presented by RFP respondents. Background info on previous structural analysis is included in Attachment II.*

## **2. Design and Construction**

- a. RFP respondents are expected to provide solar array design prior to any construction.
- b. The design shall include engineered designs which show all details of construction and are stamped and signed by a professional engineer licensed in Utah.
- c. All equipment proposed shall be new, not used or demonstrators.
- d. The chosen firm will be expected to provide periodic updates at 30%, 60%, and 90% completion intervals during the project. These updates must include details on products and materials ordered/received, approvals pending/received (e.g., PCMC Building permit), onsite work completed to-date, outstanding issues affecting project timeline, and other relevant details as directed by PCMC.
- e. RFP respondents must have all necessary professional licenses required for the work and the ability to comply with all federal regulations and clauses provided in Attachment I.

## **3. Design Criteria and Minimum Requirements**

The following list is included to provide PCMC requirements and preferences for the project. This list should be considered minimum standards when proposing services and specific components for the solar array. Alternatives may be considered where it is believed such alternatives exceed function, durability, and overall system performance of the specified materials. Responsibility will be on the RFP respondent to demonstrate superiority of alternative designs, materials, and methods presented.

- a. General Requirements:
  - i. Specific system design should be an integrated process which obeys structural load limitations and any reinforcement activities (see Scope of Services item #1 above) completed in conjunction with this project.
  - ii. The total PV system size should be roughly 54 kW as determined by manufacturer nameplate capacity of the PV panels. This has been provided as a recommended system size; however, RFP respondents can tailor their response to an ideal size based on system design and available roof space. There is, conservatively, 4,070 square feet of available roof space available for solar PV. More information is available in Attachment II of this RFP.
  - iii. The system must be net metered and conform to all requirements imposed by Rocky Mountain Power for a grid-tied PV array.
  - iv. The system must incorporate online energy production monitoring and a contract to continue these services for a minimum of 60 months.
- b. Design Documents Requested in RFP Response:
  - i. Schematic and Preliminary Drawings
  - ii. System Description
  - iii. Final Designs
  - iv. Bill of Materials

- v. PV Module Type and Inverter Specification (PV modules must comply with Buy America requirement)
  - vi. Layout of Installation Site Including Module Fastening Details
  - vii. Single Line Electrical Diagrams
  - viii. Electrical Grid Interconnection Requirements
  - ix. Design Calculations
  - x. Detailed Drawings
  - xi. Installation, Start-up, Acceptance (Commissioning), and Monitoring Plans
  - xii. Quality Assurance Plans and Inspection Records
- c. PV System Components
- i. The system must be installed in accordance with all applicable requirements of the National Electric Code (NEC)
  - ii. System must be designed and installed using UL-listed components
  - iii. System must have a minimum 25-year design life and be designed for normal unattended operation
  - iv. In order to provide enhanced monitoring and higher overall system efficiency, micro-inverter technology would be preferred. Micro-inverters will be treated as a sub-component from a Buy America perspective and do not need Buy America documentation.
  - v. Online energy production monitoring with 60-month service contract must be included
- d. Manufacturing and Installation
- i. RFP respondent shall supply all equipment, materials, and labor necessary to install the PV system and all associated components. RFP respondent will be responsible for deploying a crane, or any other equipment necessary, to assist in moving related materials onsite.
  - ii. All required modifications or additions to the facility shall follow strict code compliance, paying particular attention to safety.
  - iii. Any conduits or other building alterations must be approved by PCMC before being implemented.
  - iv. Installation of the solar array must not damage the roof nor void any existing roof warranty.
- e. Electrical Interconnection
- i. Design and supply all required materials and equipment and perform all work necessary to facilitate the interconnection of the PV system to the Rocky Mountain Power electricity grid.
  - ii. Wiring required for grid interconnection must be designed to run through the interior of the building in order to mitigate visual impacts.
- f. Start-up and Acceptance Test
- i. Starting up and operating the PV system until it achieves expected performance.
  - ii. Testing to verify that the performance of the system and its components meet design parameters.
  - iii. A PCMC staff member shall be involved in the start-up and testing to validate system performance.

- g. Operation and Maintenance (O&M) Manual
  - i. Provide 2 sets of site-specific operation, maintenance, and parts manuals for the PV system.
  - ii. Include trouble-shooting and safety precautions specific to the supplied equipment.
  - iii. Supply O&M information in three-ring binders with tabs for each specific piece of equipment.
- h. As-Built Drawings
  - i. Provide 2 sets of as-built drawings before the installed equipment will be accepted.
- i. On-Site Training
  - i. Within 10 days of the start-up and acceptance test, provide a minimum of two hours of training to PCMC personnel on all aspects of routine operation, maintenance, monitoring, and safety of the PV system.
- j. System Warranty
  - i. 4-year complete system warranty
    - o Warrants the complete installed and operational system including all equipment, labor, and materials for a period of 4 years from completion of final start-up and acceptance test.
  - ii. 25-year PV module warranty
    - o PV modules shall carry a performance warranty for a minimum of 25 years after successful start-up and acceptance tests.
  - iii. 15-year inverter warranty
    - o Inverter components shall carry a performance warranty for a minimum of 15 years after successful start-up and acceptance tests.
  - iv. In order to promote use of a quality and durable material, American Institute of Steel Construction (AISC)-certified steel products must be used in the reinforcement activities. Steel products must also comply with Buy America requirements and include mill certificates.
- k. Maintenance During System Warranty
  - i. During the 4-year complete system warranty, RFP respondent shall provide all necessary maintenance as frequent as necessary including routine monitoring, maintenance, and replacements.
- l. All RFP respondents must agree to comply with the federal requirements listed in Attachment I. These federal requirements will flow to sub-contractors and must be complied with by all firms assisting with completion of the contract. These requirements include the following and additional details, plus required signature pages, for each of these items is included in Attachment I:
  - i. Buy America
  - ii. Disadvantaged Business Enterprise (DBE) requirement
  - iii. Certificate Regarding Debarment/Suspension
  - iv. Certificate of Restrictions on Lobbying
  - v. Non-Collusion Affidavit
  - vi. Fly America and Cargo Preference
  - vii. Conformance with National ITS Architecture and Seismic Safety
  - viii. Access Requirement for Person with Disabilities

- ix. Additional Federal Contract Clauses
- x. Dispute Resolution
- xi. Davis-Bacon & Copeland Anti-Kickback Acts
  - o See Attachment I, Exhibit 1-K.1 for information on Davis-Bacon wage rates which are the minimum that must be paid on this project.

**4. Schedule for Project Implementation and Completion**

The selected RFP respondent will be expected to complete design, roof reinforcement, installation, and system start-up of the PV array within 98 days of the notice to proceed. The notice to proceed will be issued after the RFP selection process and contract award by PCMC City Council. The project should be complete before Friday, October 5, 2012. A timeline for the project (all dates are for 2012) is listed below. PCMC reserves the right to change any dates or deadlines:

1. Monday, May 14, 2012	Mandatory Site Visit for Respondents
2. Friday, May 18, 2012	Questions on RFP Must be Submitted by this Date
3. Friday, June 1, 2012	RFP Response Deadline
4. Thursday, June 14, 2012	RFP Selection Committee Announces Decision
5. Thursday, June 28, 2012	City Council Awards Contract
6. Friday, June 29, 2012	Notice to Proceed Provided
7. Friday, October 5, 2012	Solar Array Installed and Operational By This Date

**IV. Proposal Requirements:**

Interested firms shall provide one hard copy *and* a PDF electronic version of their proposal. **Proposals should be 12 pages or less of text** (not including the cover page and appendix items) and include the following information:

1. Cover Page:
  - a. Name, address, email, and website (if available) of the company
2. Narrative of the Firm’s Qualifications and Relevant Experience:
  - a. Experience of overall firm and key personnel
  - b. Licensing information
  - c. Recent work history for similar PV projects. Specifically, those projects which required structural reinforcement.
  - d. Contact information for at least three clients listed in the work history
  - e. Identification of subcontractors and their qualifications. In particular, provide detailed information on who will be completing the structural engineering analysis and required reinforcement work. Identify similar projects, preferably related to solar PV installations, which these firms have completed.
  - f. A description of any arbitration and/or litigation in which your company, or any subcontractor, is currently engaged or which was resolved within the five years preceding the date on which you submit your proposal.
  - g. A statement of whether your company, or any of your proposed sub-contractors, ever filed for reorganization or bankruptcy. If so, please provide dates and resolution.
3. System Proposal:
  - a. Identify proposed system including detailed information from the RFP respondent on all system components (Note: proposal must comply with the Buy America requirements). System component details must, at a minimum, be provided for the following items:

- i. PV Panels
      - a. 54 kW has been provided as a recommended size; however RFP respondents can tailor their response to an ideal size based on system design and available roof space. There is, conservatively, 4,070 square feet of available roof space available for solar PV. More information is available in Attachment II of this RFP.
    - ii. Inverter
      - a. Micro-inverters will be treated as a sub-component from a Buy America perspective and do not need Buy America documentation. Firms can submit a proposal with string inverters if they believe this to be a preferable option. Additionally, firms can submit proposals which include both a string inverter and a micro-inverter option for consideration.
    - iii. AC Disconnects
    - iv. DC Disconnects
    - v. Racking system
    - vi. Online performance monitoring system
  - b. Structural Analysis & Reinforcement - roof reinforcement will include the following activities as detailed in Attachment II:
    - i. Structural Engineering: Complete onsite analysis, detailed load calculations (starting from scratch w/o existing manufacturer's calculations), stamped packet and construction-ready drawings.
    - ii. Materials: Buy America-qualified and AISC-certified steel plates, with mill certificates, that include pre-drilled holes, splices, bolts, etc. Respondents will also need to cover shipping costs for all materials.
    - iii. Fabrication and Erection: Drill new holes through purlins, attach steel plates to existing purlins, bolt splices to purlins, weld splices (if applicable), etc.  
*NOTE: The materials and activities listed in ii & iii above may vary depending on the exact reinforcement proposal presented by RFP respondents. Background info on previous structural analysis is included in Attachment II.*
  - c. Provide performance data and warranty information on system components
4. Project Work Schedule:
- a. Include statement saying that firm will be able to meet the Schedule for Project Implementation and Completion requirements, including project completion by Friday, October 5, 2012. The selected firm will be required to submit a detailed work schedule prior to final contract being signed.
5. A statement indicating that the firm will provide the required bonding and insurance. Per FTA requirements, ALL RFP respondents must provide a bid bond equal to 5% in value of the total bid amount as part of their proposal. The chosen firm will be expected to provide PCMC with a Performance Bond and Labor and Materials Bond for 100% of the total contract amount. A Certificate of Insurance must be provided as well. General Liability coverage shall be a minimum of \$4,000,000 with PCMC listed as an additional insured. Workers' Compensation Insurance is also required per statutory requirements. See the Construction Agreement, included as Attachment III, for all relevant insurance requirements.
6. A brief statement indicating how the firm will comply with all federal clauses included in Attachment I. The RFP response must also include completed and signed copies of all forms

included in Attachment I. Firms should pay particular attention to the Disadvantaged Business Enterprise requirement and goal listed in Exhibit 1-B of Attachment I.

7. Cost Proposal

- a. Cost proposal shall include all costs incurred by the RFP respondent during the bonding, design, engineering, product procurement, roof reinforcement, installation, start-up, and warranty periods.
- b. Cost proposal must be itemized and include, at a minimum, the above mentioned categories.
- c. If there is a conflict between the written and numerical cost amounts, the written amount shall supersede.
- d. The cost proposal should be presented as a firm-fixed “not to exceed” price.

PCMC may request additional information on the proposal if insufficient or unclear details are provided. The selected firm is expected to enter into the standard Construction Agreement (Attachment III) with PCMC in its current form. Proposals should either agree to the standard contract “as is” or request changes to the form as part of the proposal; however, RFP responders should understand that PCMC is not required to make adjustments to the standard contract. The nature and extent of any requested changes to the standard PCMC contract will be considered as part of the evaluation process. All proposals shall be good for up to 180 days after receipt.

**V. Evaluation Criteria and Selection Process**

PCMC will evaluate proposals based on completeness, qualifications & experience, cost effectiveness, ability to comply with requirements mentioned herein, and overall quality of the RFP response. The specific criteria used to select a firm will include the below. The criteria are listed in order of relative importance, top-to-bottom, to the selection committee with the more important criteria listed at the top:

1. Thoroughness and quality of firm’s overall RFP response
2. Experience with PV system design and installation as determined by narrative of firm’s qualifications, experience of key personnel, and recent work history. Experience with providing structural engineering services, and roof reinforcement, in conjunction with past PV projects will be a significant part of this evaluation category. Respondents should highlight work history which included roof reinforcement as part of the installation process.
3. Cost effectiveness in providing all services and materials related to this RFP
4. Demonstrated ability to comply with the federal requirements included in Attachment I of this RFP. Please highlight previous experience working with these requirements.
5. Ability to be responsive and available to PCMC staff, including working with the Building Department to ensure a safe project installed in compliance with all relevant codes and requirements

The selection committee will be comprised of PCMC employees who will review the proposals based on the information provided. Following a review of the written proposals the selection committee will make a final selection and award a contract subject to final approval by City Council. PCMC reserves the right to enter into discussions with the offeror(s) determined to be reasonably susceptible of being selected for award, or to enter into exclusive discussions with the offeror whose proposal is deemed most advantageous, whichever is in the PCMC’s best interest, for the purpose of negotiation. In the event that exclusive negotiations are conducted and an agreement is not reached, PCMC reserves the right to enter into negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process. PCMC reserves the right to reject any or all proposals received for any reason. Proposals lacking required information will not be considered. Furthermore, PCMC shall have the right to waive any informality or technical defect in proposals received when in the best interest of PCMC.



**Offerors should review the required insurance coverage and notice of policy cancellation requirements that will be part of the resulting contract. Such insurance information is provided in the Sample Agreement (Attachment III). Future proposed pricing must include associated insurance costs. The selected offeror will be required to provide insurance certificates meeting all requirements at the time of contract execution.**

All responses, inquiries, and correspondence relating to this RFP and all reports, charts, displays, schedules, attachments, exhibits, and other documentation produced by the offeror that are submitted to PCMC, as part of the proposal or otherwise, shall become the property of PCMC when received by PCMC and may be considered public information under applicable law. PCMC is subject to the disclosure requirements of the Government Records Access and Management Act, Title 63, Chapter 2, Utah Code Annotated ('GRAMA'). All submittals shall be public records in accordance with government records regulations ("GRAMA") unless otherwise designated by the applicant pursuant to UCA § 63G-2-309, as amended. **Any material considered by the offeror to be proprietary must be accompanied by a written claim of confidentiality and a concise written statement of reasons supporting the claim. Blanket claims that the entire RFP is confidential will be denied.** PCMC cannot guarantee that any information will be held confidential. Under Section 63-2-304 of GRAMA, if the offeror makes a claim of confidentiality, PCMC, upon receipt of a request for disclosure, will determine whether the material should be classified as public or protected, and will notify the offeror of such determination. The offeror is entitled under GRAMA to appeal an adverse determination. **PCMC is not obligated to notify the offeror of a request, and will not consider a claim of confidentiality, unless the offeror's claim of confidentiality is made in a timely basis and in accordance with the GRAMA.**

Park City Municipal Corporation reserves the right to cancel or modify the terms of this RFP and/or the project at any time and for any reason preceding contract award and reserves the right to accept or reject any or all proposals submitted pursuant to this request for proposals. PCMC will provide respondents written notice of any cancellation and/or modification. Furthermore, PCMC shall have the right to waive any informality or technicality in proposals received when in the best interest of PCMC.

#### **Appeals Procedure**

Any supplier, vendor, or contractor who determines that a decision has been made adversely to them, by PCMC, in violation of procurement regulations, may appeal that decision to the City Council. The complainant shall promptly file a written appeal letter with the project manager, within five working days from the time the alleged incident occurred. The letter of appeal shall state all relevant facts of the matter and the remedy sought. Upon receipt of the notice of appeal, the project manager shall forward the appeal notice, their investigation of the matter, and any other relevant information to the City Council. The City Council shall conduct a hearing on the matter and provide the complainant an opportunity to be heard. A written decision shall be sent to the complainant.

**VI. Deadline, Site Visit, and Questions:**

**Firms interested in responding to the RFP must email PCMC's Environmental Sustainability Program Manager, Tyler Poulson, of intent to respond by 4 PM MST on Friday, May 18, 2012.**

The deadline for the receipt of proposal submittals is Friday, June 1, 2012 at 4 PM MST. Proposals are to be submitted to the below address in a sealed envelope with the company name clear marked. Interested firms shall provide one hard copy of their proposal *and* an electronic PDF version.

Tyler Poulson  
c/o Park City Municipal Corporation  
P.O. Box 1480 (physical address: 445 Marsac Ave)  
Park City, UT 84060  
[tyler.poulson@parkcity.org](mailto:tyler.poulson@parkcity.org)

A mandatory site visit for interested firms has been scheduled for 9 AM MST on Monday, May 14, 2012. All interested parties should plan on attending this site visit which will occur at the project location (1053 Iron Horse Drive; Park City, UT 84060).

All questions must be emailed in written form to [tyler.poulson@parkcity.org](mailto:tyler.poulson@parkcity.org) by 4 PM MST on Friday, May 18, 2012. Answers to submitted questions will be shared with all potential RFP respondents. **If Tyler Poulson did not directly email you this complete RFP, please reach out to him via email on or before Friday, May 18, 2012 so he can add you to a contact list for questions and potential RFP updates.**

## Attachment I

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### Federal Clauses for RFP

The procurement of this solar array will be funded in part by the Federal Transit Administration. Therefore applicable Federal regulations will apply. Proposer must review and certify that they have read and understand all contract clauses, attachments and certifications, which include:

- (1) Exhibit 1-A: Buy America Certificate
- (2) Exhibit 1-B: DBE Requirement and Commitment
- (3) Exhibit 1-C: Certificate Regarding Debarment/Suspension
- (4) Exhibit 1-D: Certificate of Restrictions on Lobbying
- (5) Exhibit 1-E: Non-Collusion Affidavit
- (6) Exhibit 1-F: Fly America and Cargo Preference
- (7) Exhibit 1-G: Conformance with National ITS Architecture and Seismic Safety
- (8) Exhibit 1-H: Access Requirement for Person with Disabilities
- (9) Exhibit 1-I: Additional Federal Contract Clauses
- (10) Exhibit 1-J: Dispute Resolution
- (11) Exhibit 1-K: Davis-Bacon & Copeland Anti-Kickback Acts
- (12) Exhibit 1-L: Prompt Payment

It is expected that the vendor will work closely with PARK CITY MUNICIPAL CORPORATION (PCMC) to develop a plan to comply with requirements. Within one week following the submittal of the detailed work plan, the contractor's representative will meet with PCMC's Project Manager to review the components of the work plan and to finalize and approve the plan before work may proceed. Note that all federal clauses listed in this contract must flow to sub-contractors, where applicable.

#### Proposal Requirements

All documents and reports provided as deliverables, as outlined in this RFP (12 page limit; not including title page, appendix items, and signed federal clause documents), must be delivered to PCMC's Project Manager on the established deadlines and must include the following:

- DBE firms to be involved in the project and DBE commitment.
- Statement of compliance with PCMC terms & conditions and FTA and State Regulations.
- Statement of compliance with FTA National and Utah's Regional Intelligent Transportation System (ITS) Architectures and/or recommended revisions to the architecture.
- Executed "Buy America," "Lobbying," and "Debarment, Suspension and other responsibility matters" certificates.

**Exhibit 1-A**  
**BUY AMERICA CERTIFICATE**

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

A bidder or offer or must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This certification requirement does not apply to lower tier subcontractors.

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

- 1. The proposer or offer hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the regulations at 49 CFR Part 661.5.
  
- 2. The proposer hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception pursuant to 49 U.S.C.5323(j)(2), as amended, and the regulations in 49 CFR 661.7.

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

\_\_\_\_\_  
(Company name)

By: \_\_\_\_\_  
(Signature)

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

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

## **Exhibit 1-B**

### **XII. Bid Conditions DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

The Utah Department of Transportation (UDOT) is hereinafter referred to as “Department”.

#### **POLICY**

##### **“Policy Statement”**

It is the policy of the DEPARTMENT to take all necessary and reasonable actions to ensure that DBEs as defined herein shall have equal opportunity to participate in the performance of contracts financed in whole or in part with US Department of Transportation (DOT) funds under this agreement as modified herein.

##### **“Objectives”**

The objectives of this policy are to:

1. Ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet *49 CFR 26* eligibility standards are permitted to participate as DBEs;
5. Remove barriers to the participation of DBEs in Federal aid contracts;
6. Assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
7. Provide appropriate flexibility in establishing and providing opportunities for DBEs.

##### **“Responsibilities”**

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the DEPARTMENT in financial assistance agreements with DOT.

1. The DEPARTMENT Civil Rights Manager shall be the DBE liaison officer, who shall have direct, independent access to the Executive Director concerning DBE program matters. Park City Municipal Corporation (PCMC) is responsible for implementing all aspects of the DBE program and for supervising DBE participation. Adequate staff will be assigned to administer the DBE program.
2. The DEPARTMENT is responsible for oversight of the DBE participation covered by the Contract.

## **DBE BID AND PERFORMANCE CONDITIONS**

### **“Obligations”**

The contractor, subcontractor, service provider, or supplier at any lower tier shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PCMC deems appropriate.

### **“Assurances”**

Each contract between the PCMC and the Contractor and each subcontract at any lower tier must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the PCMC deems appropriate.

### **A. CONTRACT GOAL**

1. The DEPARTMENT has determined that one or more can reasonably be expected to compete for the work contained in the proposal for this project. It is, therefore, the goal of the DEPARTMENT that DBE firms shall have an affirmative action opportunity to contract for the following percentage of work under this contract:
  - a. Complete Exhibit 1-B.1 of this RFP. Refer to Bidding Requirements, Section D, Subsection 1,a, of this Special Provision. (The commitment dollar amount up to the amount of the assigned goal is Race Conscious DBE participation. Any commitment dollar amount in excess of the assigned goal is Race Neutral Participation.)

**CONTRACT DBE GOAL: 3.0% Percent**

2. GOALS

a. GOAL FOR BID EVALUATION

The above entered DBE percentage is a goal for bid evaluation to determine responsiveness of the proposal as it relates to this specification. Percentages for bidding purposes shall be calculated using dollar values and quantities as shown in proposals received for this project. Bidders shall compute the percentage of their DBE commitment by dividing the dollar amount of subcontract work that is being committed to certified DBE firms by the total dollar amount of the proposal. This will be the percentage of their DBE commitment.

b. RACE CONSCIOUS GOAL

DBE participation on projects that are assigned a Goal for Bid Evaluation that is greater than 0.0 percent is *race conscious* and the DBE commitment becomes a contract specification upon award. The Bidder must submit with its Bid Proposal a *DBE Commitment*, included in Exhibit 1-B.1, that indicates:

- (1) Name of DBE firm
- (2) Work items to be performed
- (3) Total dollar amount of commitment

If the DBE commitment does not meet or exceed the assigned goal, the Bidder must submit with the Bid Proposal documentation of good faith efforts.

c. GOAL FOR CONTRACT PERFORMANCE

The Bidder's *DBE Commitment* becomes an attachment to the Bid Proposal and is a condition of award, and thereby becomes a contract specification. Upon award, this Race Conscious DBE Commitment also becomes the minimum goal for contract performance.

Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

It is the intent of this Special Provision that the DBE Firm(s) listed for *race conscious* participation, as a minimum level of participation, will

perform to the extent indicated in the Bidder's DBE Commitment. The minimum level of DBE participation includes:

- (1) Indicated DBE firm(s),
- (2) Indicated work item(s) (bid items),
- (3) Indicated total dollar amounts.

Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment. If the DBE will perform only a part of the bid item, i.e., haul only, the Bidder must indicate what part the DBE will perform (Partial Performance). If the DBE will perform only a part of the quantity of the bid item, the Bidder must indicate the estimated quantity of the work to be performed by the DBE (Partial Quantity).

*Substitutions of DBE subcontractor(s), work item(s), or decreases of total dollar amount(s) as indicated in the Bidder's DBE Commitment will not be allowed without prior submission of written justification to PCMC and approval of PCMC and the DEPARTMENT Civil Rights Manager.*

After award of a contract, substitutions will not be allowed without prior submission of a written "hold harmless" statement from the DBE.

Any change by the Contractor in the DBE Commitment requires that the change is approved by PCMC and the DEPARTMENT Civil Rights Manager and documented in the project files.

Substitution of race neutral participation in excess of the Goal for Bid Evaluation requires equal opportunity efforts to substitute with other DBE participation.

*PCMC generated decreases due to quantity changes in individual bid items do not require prior approval of the DEPARTMENT Civil Rights Manager—but must be fully justified by PCMC at the conclusion of the project. PCMC's justification shall show the total estimated quantity, the final pay quantity as shown on the final estimate invoice, the quantity of the under-run, and the percent of under-run of the individual item. The explanation for the under-run shall include the reasons for the under-run and shall include as much detail as possible.*

d. GOAL FOR FINAL COMPLIANCE

Percentages for final compliance shall be based on actual payments to DBEs. Over-runs and under-runs in individual contract items may require



adjustments in the predetermined DBE percentage for a project if those items were not related to DBE performance. “The predetermined percentage for a project” refers to the percentage of the Contractor's DBE Commitment that becomes a contract specification upon award.

B. DEFINITIONS

For the purpose of this Special Provision, the following terms are defined:

1. Contract means a legally binding relationship obligating a seller to furnish supplies or services including but not limited to, construction and professional services) and the buyer to pay for them.
2. Contractor means one who participates, through a contract or subcontract (at any tier).
3. Disadvantaged Business Enterprise or DBE means a for profit small business concern.
  - a. That has been certified to DBE status by the UUCP.
  - b. That is at least 51 per cent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 per cent of the stock of which is owned by one or more such individuals; and
  - c. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
  - d. Whose size is limited to average annual gross receipts of \$17,425,000 over the previous three fiscal years. The Secretary of Transportation may adjust this amount from time to time for inflation.

OR

Whose size is limited to the current SBA Business size standard(s) found in 23 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

4. DBE Goals mean:
  - a. The DEPARTMENT’S annual overall goal on DOT-assisted projects for Federal fiscal year
5. DBE Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties

combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture to a degree commensurate with its ownership interest.

The DEPARTMENT's Civil Rights Office prior to bid opening must approve a DBE joint venture in order to be utilized for the satisfaction of contract DBE goals. A DBE Joint Venture application must be submitted allowing ample lead-time for the Civil Rights Office to review, evaluate, and verify information provided for in the application. An interview of the applicant may be necessary at the discretion of the DEPARTMENT prior to approval of the application. If an interview is deemed necessary it will be scheduled at the convenience of all parties.

6. Equal Opportunity Action requires individuals to be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

If a bidder requests or accepts bids for subcontract work, the bidder will request and accept bids from DBEs in the work classifications that potentially will be subcontracted.

7. Good Faith Efforts means efforts to achieve a DBE goal or other requirements of this part that by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.

8. Lack of Financial Fitness is a performance-based definition based solely on failure to pay promptly. There is no reference to financial status or financial capability.

9. Prompt Payment means payment made no later than thirty (30) calendar days after receipt of payment by the Contractor or Subcontractor, Service Provider or Supplier at any lower tier.

10. Race Conscious measure or program is focused specifically on assisting only DBEs, including women-owned DBEs. The DEPARTMENT must establish contract goals to meet any portion of its overall DBE goal that it does not project being able to meet using race neutral means. To ensure that the DBE program continues to be narrowly tailored to overcome the effects of discrimination, the DEPARTMENT must adjust the use of contract goals as follows:

- a. If during the course of any year it is determined that the overall goal will be exceeded, the DEPARTMENT will reduce or eliminate the use contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal.

- b. If it is determined that the DEPARTMENT will fall short of its overall goal, then appropriate modifications in the use of race neutral and/or race conscious measures will be made to allow the DEPARTMENT to meet the overall goal.
  
- 11. Race Neutral measure or program is one that is, or can be, used to assist all small businesses. The DEPARTMENT must meet the maximum feasible portion if its overall DBE goal by using race -neutral means of facilitating DBE participation. Race neutral DBE participation includes:
  - a. Any time a DBE wins a prime contract through customary competitive procurement procedures,
  - b. Is awarded a subcontract on a prime contract that does not carry a DBE goal,
  - c. Is awarded a subcontract from a prime contractor that did not consider its DBE status in making the award even if there is a DBE goal.  
For the purposes of this part, race-neutral includes gender-neutrality.
  
- 12. Regular Employee is a person who:
  - a. Would be working for the DBE firm on any other subcontract with any other contractor.
  - b. Is a permanent employee of the DBE firm

Or

Has been recruited through the traditional recruitment and/or employment centers

  - c. Has not recently been employed by the prime contractor on the present project, another subcontractor on the present project, or the renter-lessor of equipment being used on the present project.
  - d. Is not a member of a construction crew that regularly works for a non-DBE.
  - e. Is not a licensed contractor who is at the time “unemployed” or “between jobs.”
  
- 13. Regular Equipment is owned or leased and operated on a long term agreement and not on an *ad hoc* or contract by contract agreement.

- a. The equipment would be used by the DBE firm on any other subcontract with any other contractor.
- b. The equipment would be owned by the DBE firm.

Or

The equipment would be leased/rented from traditional equipment lease/rental sources.

- c. The DBE firm would have a rental/lease agreement for any rented or leased equipment.
- d. The equipment cannot belong to:
  - (1.) Prime Contractor
  - (2.) Another subcontractor on the present project.
  - (3.) Supplier of materials being installed by the DBE firm.
- e. The equipment cannot come from another contractor fully operated.

14. Reasonable Bid

This is a bid the PCMC would accept if it were the only bid submitted.

15. Responsible Bidder

A responsible bidder has the apparent ability and capacity to perform the contract requirements.

In addition to normal prequalification, a responsible bidder is defined as one who has signed (manually or electronically) and submitted with the bid the DBE Commitment of good faith effort certifying the intention to meet the DBE goal of a proposed contract or to continue good faith effort to do so. These goals may be met by subcontracting or leasing contracts with a DBE or purchasing material from a DBE insofar as the work or material becomes a part of a proposed contract.

16. Responsive Bidder

- a. A responsive bidder is a bidder who unequivocally offers to provide services or supplies in conformity with the material terms of the solicitation. In addition to normal prequalification and other bidding requirements, a responsive bidder in relationship to this Special Provision is defined as one who submits evidence of proposed subcontract performance with certified DBE firms to achieve the required dollar amount necessary to achieve the percentage goal.

- b. Bidders may be considered as presumptively responsive if they have failed to satisfy the advertised DBE goal set for the proposed contract but have certified in their bid that good faith efforts have been expended to meet the goal and that they will continue during the performance of the contract to locate, solicit, and involve DBE firms in contract performance. Documentation of the bidder's good faith efforts must be included with the bid package of the PCMC's and the DEPARTMENT'S review and assessment. Failure to do so shall render the bid non-responsive. The PCMC and the DEPARTMENT will reject the bid.

17. Satisfactory Completion of a subcontract occurs when:

- a. The subcontractor has satisfactorily completed in all respects the work under the Contract.
- b. The Contractor and the subcontractor have notified the PCMC in writing that the work of the subcontractor has been completed.
- c. The PCMC will be given a reasonable length of time to check quantities if necessary. Checking quantities does not guarantee the absolute correctness of quantities.
- d. The Contractor and the subcontractor have satisfactorily executed and delivered to the PCMC all documents, certificates and proofs of compliance required by the Contract. The satisfactory execution and delivery of these documents, certificates and proofs of compliance to the PCMC is a material requirement of the contract.
- e. The PCMC accepts in writing the work of the subcontract.
- f. Satisfactory Completion refers only to payment of retainage and accrued interest. A determination of Satisfactory Completion and payment in full for work performed does not relieve the contractor nor the subcontractor from any contractual obligation.

18. Satisfactory Performance means work performed and materials furnished in conformity with the plans and specifications.

19. Service Provider means a broker or a middle man. A business person who buys, sells or performs a service for another in exchange for a mark up or commission.

20. Socially and Economically Disadvantaged Individuals means any individual who is a citizen (or lawful admitted permanent resident) of the United States and who is:

- a. Any individual who the DEPARTMENT finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (1) “Black Americans,” which includes persons having origins in any of the black racial groups of Africa;
  - (2) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
  - (3) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (4) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands, (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (5) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
  - (6) Women.
  - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

21. Subcontractor

A subcontracting arrangement is generally considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present.

- a. The person or firm performing the work is particularly experienced and equipped for such work.
- b. Compensation is related to the amount of work accomplished rather than being on an hourly basis.

- c. Choice of work methods, except as restricted by the specifications, and the furnishing and controlling of labor and equipment are exercised by the subcontractor with only general supervision being executed by the prime contractor.
- d. Personnel involved in the operation are under the direct supervision of the subcontractor and are included on the subcontractor's payroll.

All conditions involved shall be considered and no one condition alone will normally determine whether a subcontract actually exists. In all cases, a DBE subcontractor must be an independent organization, and the ownership and control by the socially and economically disadvantaged individual(s) must be real and continuing. The prime contractor, a subcontractor, or a supplier shall not be responsible for the various operating and management activities of a DBE firm.

22. Supplier

Provides or furnishes materials, goods or services that may be incorporated into the project. The supply transaction is to be documented by an appropriate purchase agreement that includes the required provisions for Federal-aid construction projects.

23. UUCP The Utah Unified Certification Program (UUCP) provides “one-stop shopping” to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that is honored by all recipients of Federal-aid Funds in the State of Utah.

C. DETERMINATION OF DBE CONTRACTOR’S ELIGIBILITY BY UUCP

- 1. Any Contractor may apply to the UUCP for status as a DBE. Applications shall be made on forms provided by the UUCP, entitled “UNIFORM CERTIFICATION APPLICATION” or “Information for Determining DBE Joint Venture Eligibility,” Form No. R-817. Application need not be made in connection with a particular bid. Only work contracted to certified DBE prime contractors or subcontractor to firms that have applied for and have been granted status as a DBE by the UUCP shall be considered toward contract goals as established in Subsection A.
- 2. It shall be the Contractor’s responsibility to submit a DBE application so that the UUCP has time to review it. The UUCP will review applications in a timely manner but is not committed to approve DBE status within any given period of time. The UUCP must have ample lead time to review, evaluate, and verify information provided with a application.

3. The DEPARTMENT shall maintain a UUCP Unified DBE Directory of DBE Contractors, vendors, service providers and suppliers that is updated as changes occur for the purpose of providing a reference source to assist any bidder in meeting the requirements of this bid condition. Bidders must use the most current DBE information available on the web site when submitting bids. A current UUCP DBE directory representing certified DBE Contractors is available through the UDOT Civil Rights Office, and also on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>

4. In meeting the requirements of this bid condition, bidders are in no way limited to the DBE Directory referred to in 3 above in seeking out and negotiating with the DBE Contractors and determining which items of work shall be subcontracted to DBE Contractors. Bidders shall exercise their own judgments in selecting any subcontractor to perform any portion of the work.

The UUCP prior to bid opening must grant DBE status to any DBE Contractor or DBE Joint Ventures. DBE credit will not be allowed toward *race conscious* goals for a firm or joint venture that has not been DBE certified by the UUCP.

D. BIDDING REQUIREMENTS

All bidders must satisfy the bidding requirements of this part. A DBE prime contractor's performance does not count toward fulfilling the DBE goal. A prime bidder who is a DBE contractor shall meet the DBE goal by using DBE subcontractors or by using good faith efforts.

1. DBE Bid Assurance
  - a. Race Conscious Goal  
For a bid with a DBE goal greater than 0.0 percent to be considered responsive, *Exhibit 1-B.1* of this RFP must be completed and included in the BID PROPOSAL, certifying that they will meet or exceed the Goal for Bid Evaluation established in Subsection A, or that they fail to meet the goal but have and will put forth good faith effort to meet or exceed the goal of the DBE program. In either event, the Contractor shall continue efforts to consider and utilize DBE firms during the performance of the contract.

2. DBE Commitment

For a bid to be considered responsive, Bidders shall submit the following information regarding DBE compliance with the prepared Bid Proposal:



Submit a DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in the UUCP's Directory or DBE firms that have been approved by the UUCP prior to bid opening.

- a. The names of DBE firms that will participate in the contract;
- b. A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Bidders designate otherwise in their DBE Commitment.
  - (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
  - (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
  - (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;
- c. The dollar amount of participation by each named DBE firm;
- d. If the contract goal is not met, evidence of good faith efforts.

The DBE Commitment is to be included in the bid prepared within, and said information will be kept confidential and will not be reviewed unless the Contractor is otherwise determined to be the low Bidder or the PCMC elects to review said information in making its determination as to award of the contract.

### 3. Race Neutral Commitment

For a bid to be considered responsive, Bidders shall submit the following information regarding equal opportunity compliance with their prepared Bid Proposal:

Submit a Race Neutral DBE Commitment of work that will be subcontracted to certified DBE firm(s) as listed in UUCP DBE\_Directory or DBE firms that have been approved by the DEPARTMENT prior to bid opening. The DBE Commitment will include:

- a. The bid item(s) or work classification(s) that will be subcontracted;
- b. The DBE firms that have been contacted. A reasonable number of DBEs available to perform the anticipated subcontract work must be contacted. The DBE firms must be given a reasonable amount of time to develop subcontract quotes.

- c. The results of the contacts with the DBE firms
- d. Name(s) of anticipated DBE subcontractor(s)
- e. Anticipated work items to be performed by DBE(s)
- f. Anticipated dollar amount of subcontract(s).

A specific description of the work each named DBE firm will perform (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.

- (1.) If mobilization is a bid item that is partially committed to a DBE, indicate the dollar amount of the DBE mobilization.
- (2.) If a partial quantity is committed to a DBE, indicate the quantity committed to the DBE.
- (3.) If a partial performance of an item is committed to a DBE, explain what part of the item the DBE will perform;

The *Race Neutral Documentation* submitted in the prepared bid, will be kept confidential and not reviewed unless the Contractor is otherwise determined to be the low Bidder or the PCMC elects to review said information in making their determination as to award of the contract.

#### 4. DBE Written Confirmation

Low Bidder shall submit to the PCMC within three (3) work days after the bid opening written confirmation from each DBE that it is participating in the contract as provided in the Prime Contractor's DBE Commitment or Race Neutral Documentation. The written confirmation shall include the following information:

- a. A description of the work that will be performed (list specific bid items). Listed bid items shall be considered to be committed in their entirety unless Contractors designate otherwise in their DBE commitment.
  - (1) If mobilization is a bid item that is partially committed, please confirm the dollar amount of the mobilization to be performed.
  - (2) If a partial quantity is committed, confirm the quantity to be performed.

- (3) If a partial performance of an item is committed, confirm what part of the item will be performed.
- (4) Unit bid prices for each bid item that is committed to a DBE.
- (5) Total dollar amounts (mathematical extensions) for each bid item that is committed to a DBE

b. The dollar amount of participation by each named DBE firm.

5. Good Faith Efforts

Bidders who fail to meet the DBE goal for bid evaluation must demonstrate with documentary evidence that they made good faith efforts to do so. Bidders are required to include the Good Faith Efforts Documentation with the prepared Bid Proposal. The said information will be kept confidential and not reviewed unless the Bidder is otherwise determined to be the low Bidder or the PCMC and authorized representatives elect to review said information in making their determination as to award of the contract. For the bid to be considered responsive, Bidders shall include with the BID PROPOSAL specific documentary evidence that good faith efforts have been made to meet the goal.

Attached hereto and marked Exhibit A, and by this reference made a part hereof, is a list of actions that may be used to prove the kinds of efforts prospective Bidders should consider in their attempts to demonstrate good faith efforts. The list of actions, as contained in Exhibit A, is not intended to be an exclusive list of efforts that a prospective Bidder may wish to consider in demonstrating good faith efforts to satisfy DBE participation requirements. The determination of good faith efforts shall be based upon the information and documentation of the actions supplied by the Bidder with the bid proposal. The PCMC reserves the right to investigate and verify such information or to request the low dollar Bidder to clarify information submitted at the time of bid.

6. Award of the Contract

The award of the contract, if awarded, will be made to the apparent successful responsive, responsible Bidder who submitted a reasonable bid for the contract and has complied with this Subsection D.

7. Administrative Reconsideration

Good faith efforts as used herein shall be determined on a case by case basis. If it is determined that the apparent low Bidder has failed to meet the requirements of Exhibit A, the bidder will be provided an opportunity for administrative reconsideration.

- a. Official(s) who did not take part in the original determination will perform the administrative reconsideration.
- b. The Bidder will have the opportunity to provide to written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- c. The Bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- d. The Bidder will be notified in writing of the decision and the basis for the decision.
- e. The reconsideration decision is administratively final and is not appealable to FTA nor to the DOT.

E. COUNTING DBE PARTICIPATION TOWARD GOALS FOR BID EVALUATION

1. The PCMC and the DEPARTMENT will recognize and grant DBE credit toward the goal for bid evaluation (*race conscious* goals) for work committed to DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary that all bidders refer to the UUCP DBE Directory for direction and guidance. A current copy of the DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):

<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>

2. The PCMC and the DEPARTMENT will grant DBE credit toward *race neutral* goals for work performed by firms who are not DBE certified prior to bid opening or who bid types of work for which DBE certification has not been granted by the DEPARTMENT prior to bid opening but subsequently are granted DBE certification.
3. Commitments to DBEs that exceed the Goal for Bid Evaluation will be considered as both race conscious and race neutral. The dollar amount of the Goal for Bid Evaluation will be considered to be race conscious participation. Any dollar amounts in excess of the Goal for Bid Evaluation will be considered as race neutral participation.

F. COUNTING DBE PARTICIPATION TOWARD GOALS FOR PERFORMANCE

Subcontracts to DBEs that exceed the *Goal For Bid Evaluation* will be considered in part as race conscious participation and in part as race neutral participation. Any dollar

amounts in excess of the *Goal For Bid Evaluation* will be considered as race neutral participation.

It is intended that the Contractor shall utilize the subcontractors designated in the DBE Commitment in the performance of the contract. Any changes in the Contractor's DBE Commitment, such as substitution of a DBE subcontractor, substitution of contract items, or decrease in total dollar amount must be approved by the PCMC and the DEPARTMENT Civil Rights Manager and must be documented in the project files by PCMC. Unauthorized substitutions or eliminations may result in the imposition of sanctions. Failure to meet the Goal for Performance, that is established at the time of award by the Contractor's DBE Commitment, without adequate justification, including concurrence of the PCMC and the DEPARTMENT Civil Rights Manager, shall result in the imposition of sanctions as provided in Part I of this Special Provision.

1. Only the value of the work actually performed by the DBE will count toward DBE goals.
2. Contractors may count toward their contract goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this bid condition equal to the percentage of the ownership and controls of the DBE partner in the joint venture.
3. The PCMC and the DEPARTMENT will recognize and grant DBE credit for work subcontracted and performed by DBE subcontractors ONLY in the types of work for which DBE certification has been granted by the UUCP prior to bid opening. It is necessary that all Bidders refer to the UUCP DBE Directory for direction and guidance. A current copy of the UUCP DBE directory is available through the Civil Rights Office and on the Internet at (click on this link):  
  
<http://www.udot.utah.gov/main/f?p=100:pg:::::V,T:,198>
4. Contractors may count toward their goals only the value of the work actually performed by the DBE toward the DBE goals.
  - a. Work performed by the DBE's own forces using "regular employees" and "regular equipment."
  - b. The cost of supplies and materials obtained and purchased by the DBE and equipment leased for the work of the contract.
  - c. Work that a DBE subcontracts to a lower tier DBE firm.
5. Contractors may not count toward the DBE goals:

- a. Supplies and material purchased and equipment leased by the DBE from the prime Contractor or its affiliates or another subcontractor on the project.
  - b. Work that a DBE subcontracts to a lower tier non-DBE firm.
6. Contractors may count toward their goals only expenditures to a DBE that performs a commercially useful function in the work of the contract.
  - a. A DBE performs a “commercially useful function” when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
  - b. The PCMC and the DEPARTMENT shall evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
  - c. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the PCMC and the DEPARTMENT must examine similar transactions, particularly those in which DBEs do not participate.
  - d. A DBE does not perform a commercially useful function if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
7. The PCMC and the DEPARTMENT shall use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
  - a. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - b. The DBE must be responsible for the management and supervision of the entire trucking arrangement for the purpose of meeting DBE goals.

- c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs.
- d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- e. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit *for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.*

***Example:*** *Leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.*

- f. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

8. Contractors may count expenditures with DBEs for materials or supplies as provided in the following:

- a. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies counts toward DBE goals.

For purposes of this paragraph, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

- b. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies counts toward DBE goals.

For purposes of this paragraph, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- (1) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (2) A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.
- (3) Packagers, brokers, manufacturers representatives, or other persons or firms who arrange, or expedite, transactions are not regular dealers.
- (4) A DBE trucking company that picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor performs a delivery service. Credit will not be given based on a percentage of the cost of the product; credit will be allowed only for the cost of the transportation service.

- 9. If the materials or supplies are purchased from a service provider, the fees or commission charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies, count toward the DBE goals.

A Service Provider is a business that is neither a manufacturer nor a regular dealer but simply transfers title of a product from manufacturer to ultimate purchaser or a firm that puts a product into a container for delivery. A service provider charges a fee or a commission for assistance in the procurement of the materials and supplies, or fees or transportation for the delivery of materials or supplies required on a job site.

- a. Only the fees, commissions, or transportation performed by the DBE service provider count toward the DBE goals. The PCMC and the



DEPARTMENT must determine that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

- b. No portion of the cost of the materials and supplies count toward the DBE goals. Documentary evidence of the supply agreements, i.e., sales contract, purchase order, etc., shall be submitted to the PCMC prior to construction. The agreement shall set forth the estimated quantities, unit prices, total dollar amounts, material guarantees, delivery, and payment requirements including the requirements listed part E, 4, e, of this DBE Special Provision.

- 10. Prompt payment for the work accomplished is an integral part of the concept of commercially useful function.

See Section F, Subsection 6,a for a definition of “commercially useful function.”
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G. CONTRACTOR’S RESPONSIBILITY

- 1. It is the Contractor’s responsibility to determine the level of professional competence and financial responsibility of any proposed DBE subcontractor. The Contractor shall ascertain that the proposed DBE subcontractor is particularly experienced and equipped for the work of the subcontract.
- 2. It is the Contractor’s responsibilities to monitor and assure that DBE’s listed to fulfill DBE goals perform a commercially useful function.

H. DBE SUBCONTRACTOR’S FAILURE TO PERFORM SUCCESSFULLY

If, during the performance of the contract, the Prime Contractor determines that a DBE subcontractor is unable to perform successfully, the Contractor shall make good faith efforts to replace the DBE subcontractor with another DBE to fulfill the Goal for Bid Evaluation. For Race Conscious DBE participation, the Contractor shall consider the uncompleted DBE committed work items as well as other work items as a part of the good faith efforts. All substitutions of DBE subcontractors shall receive prior approval by the PCMC and the DEPARTMENT Civil Rights Manager.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment without prior submission of written justification to the PCMC and without prior approval of the PCMC and the DEPARTMENT Civil Rights Manager.

The Contractor shall not substitute DBE subcontractor(s), work item(s), nor decrease dollar amount(s) as indicated in the Contractor's DBE Commitment Substitutions without prior submission of a written statement from the DBE consenting to the substitution or decrease and holding the PCMC and the DEPARTMENT harmless for approving the substitution.

Unauthorized substitutions of the DBE(s), underruns of work item(s), or decreases in dollar amount(s) may result in the imposition of sanctions as allowed under Section I.

The PCMC reserves the right to authorize completion of the work that was subcontracted to a DBE who is unable to perform successfully by either of the following methods:

1. Approve, at no additional cost to the PCMC, a replacement DBE subcontractor and, when appropriate, modify the contract to provide for reasonable extra time necessary to obtain a DBE replacement at no additional cost to the PCMC.
2. Direct the Contractor to perform at unit bid prices. In the event this option is selected, the percentage DBE goal will be adjusted as may be appropriate.

## I. SANCTIONS

1. The Contractor's DBE Commitment becomes a 3-part commitment comprised of the DBE Contractor(s), work item(s) and dollar amount(s). The Commitment becomes a contract specification upon award of the contract and becomes the minimum goal for contract performance.

If the Contractor fails to achieve the minimum goal, established in the contract at the time of the award of the contract or later modified, the contract payments shall be reduced as a liquidated damage and not as a penalty by an amount equal to the dollar amount of work not performed by the DBE. The dollar amount of any sanction will be computed using the unit prices indicated in the DBE subcontract

Exceptions:

- a. Any authorized adjustment in the DBE Commitment that has been approved by the PCMC and the DEPARTMENT Civil Rights Manager.
- b. Race neutral participation.

J. RECORD KEEPING

1. The DEPARTMENT must create and maintain a Bidders list consisting of all firms bidding on prime contracts and bidding or quoting subcontractors on DOT-assisted projects. For every firm, the following information must be submitted annually:
  - a. Firm name
  - b. Firm address
  - c. Firm's status as a DBE or non-DBE
  - d. Age of firm
  - e. Annual gross receipts of the firm.

Every firm bidding or quoting as a prime or subcontractor at any level on DOT-assisted projects must register annually with the DEPARTMENT.

2. With the bid or no later than 10 work days after bid opening date, each and every prime bidder must submit to The DEPARTMENT a list of all firms bidding and/or quoting as subcontractors, service providers or suppliers.\* The Prime Bidder must also submit for each and every firm sub-quoting the following information:
  - a. Firm Name
  - b. Firm address
  - c. Work classification(s) bid by subcontractor, service provider or supplier:
    - (1) Building
    - (2) Concrete: Curb & gutter, Flatwork, Inlet Boxes, etc.
    - (3) Concrete: Structural
    - (4) Consulting firms
    - (5) Demolition
    - (6) Electrical: Hwy lighting, signals & fiber optics
    - (7) Equipment rentals and sales
    - (8) Excavation
    - (9) Fencing
    - (10) Grading
    - (11) Guardrail
    - (12) Landscaping & erosion control
    - (13) Miscellaneous
    - (14) Painting: Highway structures

- (15) Painting: Highway striping & painted messages
- (16) Paving: Asphalt highway & runway, etc.
- (17) Paving: Concrete
- (18) Paving: Miscellaneous
- (19) Pipe Culverts, drainage, sewer & water
- (20) Reconstruction : Manholes, etc.
- (21) Rotomilling
- (22) Sawing & sealing
- (23) Signs permanent
- (24) Steel reinforcing
- (25) Steel structural
- (26) Surveying
- (27) Traffic Control: Flagging
- (28) Traffic Control: Temp. Signs and Devices
- (29) Trucking
- (30) Supplier: Manufacturer
- (31) Supplier: Regular Dealer
- (32) Supplier: Service Provider

## Exhibit A

### Suggested Actions and Required Documentation to Demonstrate **Good Faith Efforts to Comply With DBE Requirements**

A Bidder must show that it took necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness, can reasonably be expected to fulfill the program requirement. The efforts employed should be those that would be taken if a Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract. Goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements.

Documentary evidence of each action taken must be submitted with the Bid Proposal.
--

The following is taken, with some modification, from CFR 49 Part 26, Appendix A. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.

## GUIDANCE CONCERNING GOOD FAITH EFFORTS

- I. When the DEPARTMENT establishes a contract goal on a Federal aid contract, a Bidder must, in order to be responsive, make good faith efforts to meet the goal. The Bidder can meet this requirement in either of two ways:
  - A. The Bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose.
  - B. If it doesn't meet the goal, the Bidder can document adequate good faith efforts. This means that the Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which the DEPARTMENT has established a contract goal, CFR 49, Part 26 requires the DEPARTMENT to use the good faith efforts mechanism of this part. It is up to the DEPARTMENT to make a fair and reasonable judgment whether a Bidder that did not meet the goal made adequate good faith efforts. It is important for the DEPARTMENT to consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder has made. The efforts employed by the Bidder should be those that one could reasonably expect a Bidder to take if the Bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. The DEPARTMENT emphasizes, however, that its determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The U. S. Department of Transportation also strongly cautions the DEPARTMENT against requiring that a Bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the Bidder makes an adequate good faith efforts showing. This rule specifically prohibits the DEPARTMENT from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions that the DEPARTMENT should consider as part of the Bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime Contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. Negotiating in good faith with interested DBEs.
  - (1) It is the Bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
  - (2) A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
    - (a) The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable.
    - (b) No specific price differential has been established by 49 CFR 26. This approach allows flexibility.
    - (c) Along with the reasonableness of the cost necessarily comes the fact that prime Contractors are not expected to bear unreasonable costs.
    - (d) Any burden that a non-DBE subcontractor might face is also limited by the reasonableness of competing bids.
  - (3) The ability or desire of a prime Contractor to perform the work of a contract with its own organization does not relieve the Bidder of the responsibility to make good faith efforts. Prime Contractors are not,

however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- (4) The ability or desire of a prime Contractor to bundle the work of a subcontractor who wishes to perform all the work of the subcontract with its own organization does not relieve the Bidder of the responsibility to require a subcontractor to make good faith efforts. Subcontractors are not required to accept higher quotes from lower tier DBEs if the price difference is excessive or unreasonable.
  
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.
  
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
  
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
  
- H. Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

NOTE: The DBE 'Contact Log' can be used to document the following efforts:

- IV. A.
- IV. C.
- IV. D. (1)

The 'Quote Comparison' can be used to document the following efforts:

- IV. B.
- IV. D. (3)



- V. In determining whether a Bidder has made good faith efforts, the DEPARTMENT may take into account the performance of other Bidders in meeting the contract. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, the DEPARTMENT may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful Bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other Bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.

Submit with the Bid Proposal documentary evidence to prove that good faith efforts were accomplished:

1. Submit copies of all solicitations: correspondence, faxes, advertisements, telephone logs with dates, times, names of persons contacted, nature of conversation, DBEs' responses, and etc.
2. If DBEs submitted quotes that were not used because the range of additional costs was determined to be excessive or unreasonable, submit the range that has been determined by the Bidder to be a reasonable range of additional costs and explain how that range was determined.
3. As a part of demonstrating a reasonable range of additional costs, submit copies of all subcontractor quotes, copies of spread sheet(s) which compare all DBE quotes with non-DBE quotes and which include bid item(s) quoted, work classifications, quantities, prices, and dollar amounts.
4. Submit a narrative of specific names and types of information, assistance, considerations given, and efforts to assist DBEs under Item IV, subparts C through F.

**Exhibit 1-B.1**  
**DBE BID ASSURANCE AND COMMITMENT**

Submit *DBE Commitment*, and if applicable, *Documentation of Good Faith Efforts*. By signing the BID PROPOSAL (either manually or electronically), it is understood that those individuals who sign as owners or authorized representatives of the Bidder, have read and are familiar with EXHIBIT 1-B, BID CONDITIONS, DISADVANTAGED BUSINESS ENTERPRISE and hereby certify that good faith efforts have been utilized to meet or exceed the goal of the DBE Program as established by the DBE Special Provision.

Indicate intended DBE commitment.

\_\_\_\_\_ We intend to meet or exceed the contract goals as per the DBE Commitment which is submitted with the Bid Proposal.

RACE CONSCIOUS AND RACE NEUTRAL COMMITMENT \_\_\_\_\_ PERCENT

\_\_\_\_\_ We fail to meet the advertised goal. This firm commits to DBE participation as per the DBE Commitment that is submitted with the Bid Proposal and to continue Good Faith Efforts throughout the performance of the project. Documentation of Good Faith Efforts is submitted with the Bid Proposal, including:

1. DBE Contact Log Report
2. Quote Comparison Report

**Exhibit 1-B.1**  
**DBE BID ASSURANCE AND COMMITMENT**

Please complete the following form detailing DBE participation with this Bid Proposal. Please complete one form for each DBE subcontractor.

**Name and address of DBE firm:**

**Specific description of work to be performed, including quantities. Include bid items, if applicable. Note whether partial or complete performance is included. If partial performance is included, list specific work items the DBE firm is to perform:**

**Dollar amount of the work the DBE is to perform:**

**Bidder's Commitment**

Bidder's Name & Title:

Signature:

Date:

**Participating DBE Commitment Confirmation**

DBE's Name & Title:

Signature:

Date:

**Exhibit 1-C**  
**Certificate Regarding Debarment and Suspension**

**Suspension and Debarment**

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

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

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

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

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

Signature: \_\_\_\_\_

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

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

**Exhibit 1-D**  
**CERTIFICATION OF**  
**RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_, hereby certify on  
(name and title of contractor official)

behalf of \_\_\_\_\_ that:  
(Contractor firm name)

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
(signature of authorized official)

\_\_\_\_\_  
(title of authorized official)

**Exhibit 1-E**  
**NON-COLLUSION AFFIDAVIT**

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

I state that:

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

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

\_\_\_\_\_  
Name of Person

\_\_\_\_\_  
Position

**Exhibit 1-F**  
**FLY AMERICA REQUIREMENTS**

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

**Cargo Preference**

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

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

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

\_\_\_\_\_  
(Company name)

By: \_\_\_\_\_  
(Signature)

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

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

**Exhibit 1 – G**  
**CONFORMANCE WITH NATIONAL ITS**  
**ARCHITECTURE AND SEISMIC SAFETY**

To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by 23 U.S.C. § 5307© and, comply with FTA Notice, “FTA National ITS Architecture Policy on Transit Projects” 66 Fed. Reg. 1455 et. seq., January 8, 2001, and the subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

**Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

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

\_\_\_\_\_  
(Company name)

By: \_\_\_\_\_  
(Signature)

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

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



**Exhibit 1 – H**  
**ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES (ADA)**

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

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

Company name: \_\_\_\_\_

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

Name: \_\_\_\_\_  
(Signature)

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

## **Exhibit 1- I**

### **Additional - Federal Contract Clauses**

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

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

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

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

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

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

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

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 18.36(i), the SERVICE PROVIDER agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the SERVICE PROVIDER which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. SERVICE PROVIDER also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to SERVICE Provider's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which

is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. The SERVICE PROVIDER agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

3. The SERVICE PROVIDER agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case SERVICE PROVIDER agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

4. FTA does not require the inclusion of these requirements in subcontracts.

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

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

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

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

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

**No Obligation by the Federal Government.**

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

to the Purchaser, SERVICE PROVIDER, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

**Program Fraud and False or Fraudulent Statements or Related Acts.**

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

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

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

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

(1) Nondiscrimination Notice - In accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and the Title 49, Code of Federal Regulations. All of the text except the final section, entitled "Incorporation of Provisions," should be included in any contracts entered into by any contractor.

During the performance of this contract, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

(a) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

1. Compliance with Regulations: The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as regulations), which are herein incorporated by reference and made a part of this contract.
2. Nondiscrimination: The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex, age, disability, income status, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, age, disability, income status, or national origin.
4. Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by PCMC, the DEPARTMENT or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to PCMC, the DEPARTMENT, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, PCMC or the DEPARTMENT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

- b. Cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor procurement as PCMC, the DEPARTMENT, or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the contractor may request PCMC or the DEPARTMENT to enter into such litigation to protect the interests of PCMC or the DEPARTMENT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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

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

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the contractor agrees that it will comply with the requirements of

U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

(d) Equal Opportunity Clause: The contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and

accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(e) Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

The OFCCP goals for minority representation in each trade are shown below. The goal for female utilization (6.9 percent) applies to all contracts and subcontracts irrespective of their geographical location.



COUNTY	GOAL	COUNTY	GOAL	COUNTY	GOAL
Beaver	12.6	Box Elder	5.1	Cache	5.1
Carbon	5.1	Daggett	5.1	Davis	6.0
Duchesne	5.1	Emery	5.1	Garfield	12.6
Grand	10.2	Iron	12.6	Juab	5.1
Kane	12.6	Millard	5.1	Morgan	5.1
Piute	5.1	Rich	5.1	Salt Lake	6.0
San Juan	10.2	Sanpete	5.1	Sevier	5.1
Summit	5.1	Tooele	6.0	Uintah	5.1
Utah	2.4	Wasatch	5.1	Washington	12.6
Wayne	5.1	Weber	6.0		

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

(f) Standard Federal Equal Employment Opportunity Construction Contract Specifications  
(Executive Order 11246)

1. As used in these specifications:

- a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;
  - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. “Minority” includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
  3. If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or

through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
  - q. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:
    - (i) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
    - (ii) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
    - (iii) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
    - (iv) Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
    - (v) The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
    - (vi) The contractor will submit meeting rosters to the PCMC for meetings where EEO was discussed. PCMC will provide a meeting roster form.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of

minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee

identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

### **Contract Work Hours and Safety Standards Act**

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages** - PCMC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this



section.

(4) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

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

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

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

**Exhibit 1-J**  
**DISPUTE RESOLUTION**

**Dispute Clauses for FTA assisted contracts**

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by Park City Municipal Corporation's Transit Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Transit Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by PCMC, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten (10) days after the first observance of such injury of damage.

**Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Utah.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Park City Municipal Corporation, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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

Signature: \_\_\_\_\_

## **Exhibit 1-K**

### **Davis-Bacon and Copeland Anti-Kickback Acts**

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the SERVICE PROVIDER and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the SERVICE PROVIDER and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the SERVICE PROVIDER and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the SERVICE PROVIDER, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the SERVICE PROVIDER shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the SERVICE PROVIDER does not make payments to a trustee or other third person, the SERVICE PROVIDER may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the SERVICE PROVIDER, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the SERVICE PROVIDER to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an

additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the SERVICE PROVIDER and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the SERVICE PROVIDER, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative

will issue a determination with 30 days of receipt and so advise the contracting officer; or, will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the SERVICE PROVIDER under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the SERVICE PROVIDER or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United

States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City may, after written notice to the SERVICE PROVIDER, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the SERVICE PROVIDER during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the SERVICE PROVIDER shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. SERVICE Provider's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The SERVICE PROVIDER shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible to ensure certified payrolls from all subcontractors are entered into the Electronic Certified Payroll Program.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(E) PCMC and the Utah Department of Transportation (UDOT) require weekly certified payrolls to be submitted through the Electronic Certified Payroll Program available in the UDOT's Department Project Development Business System (PDBS). The Contractor can access the Contractor Module in PDBS and enter the certified payroll information and submit to PCMC and UDOT project office. Access to PDBS and the Electronic Certified Payroll Module requires the contractor and subcontractors to be registered with the UDOT. Contact PCMC for instructions on contractor and subcontractor registration with UDOT. Training arrangements for the Electronic Certified Payroll Module can be made by contacting PCMC who will coordinate with the UDOT. Personal addresses and full social security numbers may no longer be used after the first payroll submission. Contractors and subcontractors must use an individually identifying number for each employee (e.g. the last four digits of the employee's social security number). Contractors and subcontractors must maintain a list of complete social security numbers and home addresses for employees. Government agencies are entitled to request or review all relevant payroll information, including social security numbers and addresses of employees. Contractors and subcontractors are required to provide such information upon request. Where this paragraph conflicts with others in this specification, this paragraph takes precedence.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the SERVICE Provider's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the SERVICE PROVIDER will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour



Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the SERVICE PROVIDER will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The SERVICE PROVIDER shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the SERVICE PROVIDER (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the SERVICE PROVIDER certifies that neither it (nor he or she) nor any person or firm who has an interest in the SERVICE Provider's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(Print)

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



(7) Roller (Dirt and Grade Compaction).....	\$ 21.30	14.41
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----- IRON0027-014 01/01/2011

	Rates	Fringes
IRONWORKER, STRUCTURAL AND ORNAMENTAL.....	\$ 25.11	11.85

----- IRON0847-001 01/01/2010

	Rates	Fringes
IRONWORKER, REINFORCING.....	\$ 26.61	11.60

----- LABO0295-007 07/01/2010

	Rates	Fringes
Laborer: Mason Tender (Brick, Cement/Concrete).....	\$ 15.65	5.75

\* PLUM0140-010 09/12/2011

	Rates	Fringes
PIPEFITTER, Excluding HVAC Pipe Installation.....	\$ 30.77	11.21

\* PLUM0140-011 09/12/2011

	Rates	Fringes
PLUMBER, Including HVAC Pipe and System Installation.....	\$ 30.77	11.21

SFUT0669-001  
04/01/2011

	Rates	Fringes
SPRINKLER FITTER.....	\$ 28.80	16.25

----- SUUT2008-006 07/14/2008

	Rates	Fringes
CARPENTER, Includes Acoustical Ceiling Installation, Drywall Hanging, and Metal Stud Installation (Excludes Form Work).....	\$ 16.47	1.96

CEMENT MASON/CONCRETE FINISHER...\$ 17.19	3.44
ELECTRICIAN.....\$ 19.80	1.17
FLOOR LAYER: Vinyl Flooring.....\$ 14.50	0.96
LABORER: Common or General.....\$ 13.20	2.36
LABORER: Landscape.....\$ 10.52	0.00
LABORER: Plaster Tender.....\$ 11.21	0.00
LABORER: Power Tool Operator (Hand Drill, Jackhammer and Power Saw Only).....\$ 11.70	0.00
OPERATOR: Backhoe/Excavator.....\$ 15.56	3.53
PAINTER: Brush, Roller and Spray.....\$ 13.86	0.00
PLASTERER.....\$ 14.06	0.00
ROOFER.....\$ 13.70	1.17
SHEET METAL WORKER.....\$ 14.43	0.00

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TEAM0222-011  
07/01/2008

	Rates	Fringes
TRUCK DRIVER (Articulated).....\$ 20.73		8.43
TRUCK DRIVER (Flat Rack, Bulk Cement, Semi-trailers, Mud/Banding and Paint)		
Less than 10 tons.....\$ 18.06		8.43
10 tons to less than 15 tons.....\$ 18.21		8.43
15 tons and less than 20 tons.....\$ 18.31		8.43
20 tons and over.....\$ 18.46		8.43
Pickup Truck.....\$ 17.99		8.43
TRUCK DRIVER (Oil Spreader).....\$ 18.86		8.43
TRUCK DRIVER (Transit Mix)		
0 cu. yds. to 8 cu. yds.....\$ 18.39		8.43
Over 8 cu. yds. to 14 cu. yds.....\$ 18.49		8.43
TRUCK DRIVER (Water, Fuel & Oil Tank)		
0 to less than 1,200 gal.....\$ 18.04		8.43
1,200 gal. to less than		

2,500 gal.....	\$ 18.16	8.43
2,500 gal. to less than		
4,000 gal.....	\$ 18.31	8.43
4,000 gal. to less than		
6,000 gal.....	\$ 18.61	8.43
6,000 gal. to less than		
10,000 gal.....	\$ 18.86	8.43
10,000 gal. to less than		
15,000 gal.....	\$ 19.11	8.43
15,000 gal. to less than		
20,000 gal.....	\$ 18.36	8.43
20,000 gal. to less than		
25,000 gal.....	\$ 19.71	8.43
Over 25,000 gal.....	\$ 19.86	8.43
TRUCK DRIVER: Dump Truck		
(Includes Bottom-end or side)		
Less than 8 cu. yds.....	\$ 18.16	8.43
8 cu. yds. and less than		
14 cu. yds.....	\$ 18.31	8.43
14 cu. yds. and less than		
35 cu. yds.....	\$ 18.46	8.43
35 cu. yds. and less than		
55 cu. yds.....	\$ 18.66	8.43
55 cu. yds. and less than		
75 cu. yds.....	\$ 18.86	8.43
75 cu. yds. and less than		
95 cu. yds.....	\$ 19.06	8.43
95 cu. yds. and less than		
105 cu. yds.....	\$ 19.26	8.43
105 cu. yds. and less than		
130 cu. yds.....	\$ 19.38	8.43
TRUCK DRIVER: Lowboy Truck.....	\$ 21.238	8.43

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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----- The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the

cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

#### Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification.

Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rate.

#### Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data.

Example: SULA2004-007  
5/13/2010. SU indicates the rates are not union rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter?

This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:  
to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution  
Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board).

Write to:



Administrative Review Board  
U.S. Department of Labor  
200 Constitution  
Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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===== END OF GENERAL DECISION

## **Exhibit 1-L PROMPT PAYMENT**

### **1. SUBCONTRACTS**

- A. Include in the subcontract language a clause agreeing to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 calendar days after receiving payment from PCMC.
  - 1. A subcontractor's work is considered satisfactorily complete when all work included in the subcontract is completed according to the requirements of the contract and documented as required by PCMC. Refer to this Section, article 3, paragraph B.
    - a. Partial work is considered to be satisfactorily completed when the Department accepts that portion of the work.

### **2. PROGRESS PAYMENTS**

- A. Pay subcontractors for satisfactory performance of subcontracted work no later than 30 calendar days after receiving payment from PCMC.
  - 1. Enter the dates that payments are sent to the subcontractor into the UDOT PDDBS Subcontractor Payment Screen within 30 calendar days of receiving payment from PCMC.
  - 2. The PCMC considers the entry of payment dates into PDDBS as an affidavit certifying prompt payment by the prime Contractor.
    - a. The entry date is tied to the date the pay estimate is processed by PCMC.
    - b. The entry will be flagged red, indicating failure to make prompt payment, if the entry date is more than 30 calendar days after the processing date.

### **3. RETAINED MONEY**

- A. Pay retained money owed to the subcontractor for satisfactory completion of the subcontracted work, as documented by PCMC's written acceptance, within 30 calendar days after receiving payment from PCMC.
- B. Require notification from the subcontractor when all subcontracted work is complete.
  - 1. Notify PCMC in writing within two working days after notification from the subcontractor.
  - 2. PCMC schedules and coordinates an inspection for acceptance of the work within

three working days.

3. PCMC issues written notification when the work is considered to be satisfactorily complete and accepted.
    - a. Acceptance of the work includes all requirements of the contract, agreement on pay quantities, and all documentation required by PCMC.
  4. PCMC releases an amount equal to the subcontractor's retention upon acceptance of the work.
- C. A determination of satisfactory completion and payment of retained money does not relieve any contractual obligation.

#### 4. PAYMENT DELAY

- A. Delay payment only for cause and document the reason in the comments area of the UDOT PDBS Subcontractor Payment Screen. This will serve as notification to PCMC.
  1. Send written notification to the subcontractor.
  2. The prime contractor is considered non-compliant if no payment is made to the subcontractor and there are no comments in PDBS explaining why the subcontractor's payment is being withheld for cause.
    - a. The prime contractor is subject to the provisions in this Section, article. 5
  3. PCMC may withhold the dollar amount of delayed payment, including retention, from future estimates.
- B. Provide subcontractor 15 calendar days from the date of written notification to correct all deficiencies.
  1. Release payment upon receipt of documentation demonstrating correction of deficiencies within 15 calendar days.
- C. Include language in the subcontract that provides for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.
  1. PCMC may hold disputed funds in escrow until the dispute is resolved.

#### 5. FAILURE TO MAKE PROMPT PAYMENT

- A. PCMC will provide written notification to the Contractor upon determination of failure to make prompt payment.

1. Make prompt payment within three working days of receiving written notification.
  - B. PCMC considers failure to make prompt payment a contract violation for which the Contractor is subject to the following measures:
    1. Forfeit the privilege of bidding on PCMC projects until payment covered by this Section is made.
    2. Forfeit the privilege of having a subcontract to perform work or supply materials on PCMC projects until payment is made according to this Section.
  - C. PCMC may consider additional measures up to and including debarment for repeated failure to make prompt payment.
  - D. PCMC may employ other mechanisms consistent with this Section and applicable state and local law so payment is fully and promptly made.
7. UDOT PDBS SUBCONTRACTOR PAYMENT SCREEN
- A. Register with the UDOT annually through the UDOT website.
  - B. Request access to PDBS through the UDOT website.
    - C. Coordinate access and payment entry assistance with PCMC.

## Attachment II

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### PRELIMINARY ENGINEERING ASSESSMENT, ROOF DETAILS AND OTHER PROJECT BACKGROUND INFO

Attachment II is available on the web via the below weblinks. The information has been split into two separate files due to the large amount of data contained. If either of these files is updated, Tyler Poulson ([tyler.poulson@parkcity.org](mailto:tyler.poulson@parkcity.org)) will email a notice to potential respondents who have provided their email.

- Attachment II – Part 1; Structural Analysis (*slow download – 4 MB file*)
  - [http://www.parkcitygreen.org/Files/Transit-Solar---Attachment-II-\(RFP\)-Part1.aspx](http://www.parkcitygreen.org/Files/Transit-Solar---Attachment-II-(RFP)-Part1.aspx)
- Attachment II – Part 2; Roof Illustrations and Original Construction Documents from 1996/97 (*slow download – 6.4 MB file*)
  - [http://www.parkcitygreen.org/Files/Transit-Solar---Attachment-II-\(RFP\)-Part2.aspx](http://www.parkcitygreen.org/Files/Transit-Solar---Attachment-II-(RFP)-Part2.aspx)

## Attachment III

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### CONSTRUCTION AGREEMENT

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

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

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

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

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

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

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

If written approval is granted to subcontract a part of this contract the Contractor shall require each subcontractor that physically performs services within Utah to

submit an affidavit to the Contractor stating that the subcontractor has used E-Verify, or equivalent program, to verify the employment status of each new employee.

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

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

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

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

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

**D. WARRANTY.** Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in

writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least four (4) years 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.

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

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

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

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

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

- B.** Automobile Liability insurance with limits no less than two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage.
- C.** Workers Compensation insurance limits written as follows:
  - Bodily Injury by Accident \$500,000 each accident;
  - Bodily Injury by Disease \$500,000 each employee, \$500,000 policy limit

Park City Municipal Corporation shall be named as an additional insured on the insurance policies and a copy of the endorsement naming the City as an



additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request certified copies of any required policies. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

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

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

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

**SECTION 6. TERMS OF PAYMENT.** The City shall pay for services provided hereunder according to and in an amount not to exceed a payment schedule, negotiated prior to contract signing, 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. Refer to Exhibit 1-L in the RFP for prompt payment requirements.

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

pursuant to this section shall be placed in an interest bearing account and the interest shall also be payable to the Contractor upon final payment.

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

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

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

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

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

In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City **One Hundred**

**Dollars (\$100.00),** (NOTE: liquidated damages clause must be agreed to by Contractor, if no mutual agreement, then no liquidated damages) which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

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

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

- A.** An agreed lump sum; or in the event the parties cannot agree; then
- B.** The unit rate for the work bid by the Contractor, if applicable, or in the event there was no such rate bid; then
- C.** The actual cost for: (1) labor; (2) materials; (3) supplies; (4) equipment; (5) direct overhead (not to exceed 5% of the sum total of items 1-4, unless approved by the City); and (6) other services necessary and approved by the City to complete the work. In the event of a net increase in the Contract Amount for a change order as a whole, the City shall allow a payment to the Contractor of an additional ten percent (10%) of the actual cost of the work, not including direct overhead or bond costs, to cover the cost of general overhead and profit. The Contractor may also charge the City for actual cost of the net increase in bond costs as a result of the overall change to the Contract Amount. The City specifically reserves the right to request documentation, including but not limited to payroll stubs, bond bills, and invoices, to validate the Contractor's calculations.

**SECTION 9. DISPUTES.** Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within ten (10) days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish the City a written signed appeal addressed to

the Project Manager/Engineer. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the contract and in accordance with the City's decision. The decision of the City shall be final and conclusive, but shall not be arbitrary or unreasonable. Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

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

- A.** If Contractor or any Subcontractor should substantially violate any of the provisions of this contract;
- B.** If Contractor substantially fails to perform any part of this Agreement;
- C.** If Contractor repeatedly fails or becomes unable to perform the services under this Agreement as required herein, or substantially fails to provide services under this Agreement for a period of seventy-two (72) hours;
- D.** If Contractor (1) shall become insolvent in a bankruptcy sense; (2) shall be generally not paying its debts as they become due, or within a reasonable time thereafter; (3) shall suffer, voluntarily or involuntarily, the entry of an order by any court or governmental authority authorizing the appointment of or appointing of a custodian (as that term is defined in 11 U.S.C. '101[10]), receiver, trustee, or other officer with similar powers with respect to it or any portion of its property which remains undismissed for a period of ninety (90) days; (4) shall suffer, voluntarily or involuntarily, with or without judicial or governmental authorization, any such custodian, receiver, trustee, or other officer with similar powers to take possession of any part of its property which third party remains in possession for an excess of ninety (90) days; (5) shall suffer, voluntarily or involuntarily, the filing of a petition respecting an assignment for the benefit of creditors which is not dismissed for a period of ninety (90) days; (6) shall be dissolved; (7) shall become the subject of any proceeding, suit, or action at law or in equity under or relating to any bankruptcy, reorganization or arrangement of debt, insolvency, readjustment of debt, receivership, liquidation, or dissolution law or statute or amendments thereto to be commenced by or against it or against any of its property which remains undismissed for a period of ninety (90) days; (8) shall voluntarily suspend substantially all of its business operations; (9) shall be merged with, acquired by, or otherwise absorbed by any individual, corporation, or other business entity or organization of any kind except for any individual corporation or other business entity or organization which is controlled by,

controlling, or under common control with the Contractor; or (10) shall take action for the purpose of any of the foregoing,

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

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

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

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

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

**SECTION 11. HOLD HARMLESS INDEMNIFICATION.** The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, employees, and officers, harmless from and shall process and to defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or others; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of

the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

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

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

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

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

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

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

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

**SECTION 17. ENTIRE AGREEMENT.** This contract represents the entire integrated agreement between City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written modification signed by both parties.

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

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

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

**SECTION 20. HOURS AND DAYS OF WORK.** All work performed by the Contractor, its subcontractors, material men, agents and employees shall be performed during work hours of 7:00 a.m. to 7:00 p.m. Monday through Saturday unless otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction

Mitigation Plans, the Building Official may further reduce the hours or days of work for Special Events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction:

- A. Interior work on individual single-family home construction or addition projects not involving materials or supply deliveries
- B. Construction of decks, patios, landscape walls less than 4 feet in height, and fences on individual single-family lots
- C. Non-mechanized exterior painting on individual single-family residences
- D. Non-mechanized landscaping on individual single-family residences
- E. Survey work not involving grading or use of power equipment to cut vegetation.

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

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

**SECTION 21. CONSTRUCTION MANAGEMENT PLANS.** Contractor shall submit a Construction Mitigation Plan to be approved by the Community Development Department, 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 Community Development Department.

- A. **Hours and Days of Operation.** The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City



Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.

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

**C. Deliveries.** The Construction Mitigation Plan shall identify proposed delivery locations and routes. Deliveries of construction materials and supplies including concrete may be regulated as to time and routing if such deliveries will cause unreasonable noise, parking, or access issues. In order to reduce the number of delivery trips to construction sites, the stockpiling of materials on or near the site may be required. In the case of multiple construction sites in close proximity, a common materials storage and staging site may be required.

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

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

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

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

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

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

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

No additional fee is required for this sign.

## **SECTION 22. TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.**

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

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

## **SECTION 23. OBEY LAWS.**

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

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

**SECTION 24. NONDISCRIMINATION.**

**A.** The City is an equal opportunity employer.

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

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

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

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

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

**SECTION 27. PARTIES' REPRESENTATIVES.** For purposes of notice required or desired by the parties, or communication involving the services under this Agreement,

such notice or communication shall be deemed to have been given when personally delivered or mailed, or sent by facsimile transmission certified mail, postage pre-paid, to the parties at the following addresses:

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

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

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

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

**PARK CITY MUNICIPAL CORPORATION**

\_\_\_\_\_  
Thomas B. Bakaly, City Manager

ATTEST:

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

APPROVED AS TO FORM:

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

**CONTRACTOR**

Address

Address

Address

\_\_\_\_\_  
Signator, Title

\_\_\_\_\_  
Utah Contract License No.

**BL- N/A to Construction Contracts**

Park City Business License No.

**Corporate Acknowledgment**

STATE OF UTAH            )  
  ) ss.  
COUNTY OF SUMMIT    )

On this \_\_\_\_ day of \_\_\_\_\_, 2012, personally appeared before me | (signator), 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 (Contractor business name) by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged to me that said Corporation executed the same.

\_\_\_\_\_  
Notary Public