

**BDO 2ND STREET IMPROVEMENTS PROJECT
CONSTRUCTION MANAGEMENT/GENERAL CONTRACTOR (CM/GC)
Pre-Construction Services**

PROJECT TITLE: BDO 2nd Street Improvements Project

THIS AGREEMENT, made and entered by and between Ogden City Corporation, a municipal corporation of the State of Utah, hereinafter designated “CITY” and _____, hereinafter designated the "Construction Manager / General Contractor" or “CM/GC.”

RECITALS

WHEREAS, CITY intends to design and install a culinary water pipeline and related facilities to be known as the BDO 2nd Street Improvements Project to be located in Ogden City, inside Weber County; and

WHEREAS, the Project will be performed in two phases. Phase I will include the pre-construction services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase II will include the construction of the BDO 2nd Street Improvements Project; and

WHEREAS, this is a CM/GC contract for Phase I of the Project, which requires that the CM/GC be selected on the basis of demonstrated competence and qualifications for the type of professional services to be rendered without regard to fees and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm and at the end of Phase I, at the CITY’s discretion, the CITY may enter into a separate Construction Agreement with the CM/GC for construction phase services; and

WHEREAS the CITY has published a Request for Qualifications seeking the submission of Statements of Qualification to act as CM/GC to furnish professional pre-construction services during Phase I of the Project identified and described in that Request for Qualifications; and

WHEREAS, the undersigned CM/GC submitted a Statement of Qualification that was evaluated by the CITY; and

WHEREAS, the CITY, through its awarding authority, has made an award of the work to the undersigned CM/GC, and pursuant to the terms of the Request for Qualifications this form is to be executed to form and memorialize the contractual relationship between the parties; and

WHEREAS, CM/GC has represented to the CITY that CM/GC (i) is experienced in providing pre-construction services for projects of similar size and complexity to the Project; (ii) is authorized and licensed per the State of Utah to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is

located; (iii) is qualified, willing and able to perform pre-construction services for the Project; and (iv) has the expertise and ability to provide pre-construction services which will meet the CITY's objectives and requirements and which will comply with the requirements of all governmental, public, and quasi-public authorities and agencies having or asserting jurisdiction over the Project; and

WHEREAS, the Mayor of Ogden City is authorized and empowered by the provisions of the CITY Ordinance and state law to execute Agreements for Professional Services; and

WHEREAS, to undertake the design of said Project the CITY has entered into a contract with a Project Designer as defined in Article 1.

NOW THEREFORE, for and in consideration of the mutual covenants, considerations, and conditions hereinafter contained, it is agreed by and between the CITY and CM/GC, as follows:

ARTICLE 1- TERMS AND DEFINITIONS

“Addenda” means written or graphic instruments issued prior to the submittal of the GMP Proposal(s), which clarify, correct, or change the GMP Proposal(s) requirements.

“Agreement” or **“Contract”** is this written document signed by the CITY and CM/GC covering the pre-construction phase of the Project, and including other documents itemized and referenced in or attached to and made part of this Agreement.

“Change Order” means a written order signed by an authorized representative of the CITY and which approves changes in the total compensation or time allowed for completion of services consistent with the authorization provided by the Mayor and CITY Ordinance

“City”, “Owner” or **“OWNER”** means Ogden City Corporation, a municipal corporation of the State of Utah.

“CITY’S Contingency” means the fund to cover cost growth during the project used at the discretion of the CITY usually for costs that result from the CITY’S direct changes or unforeseeable site conditions. The amount of the CITY’S Contingency may be set solely by the CITY and will be in addition to the project costs included in the CM/GC’s GMP packages. Use and management of the CITY’S Contingency is described in Section 3.9. The CITY’S Contingency is an amount to cover changes initiated by the CITY, which may be incorporated into the GMP as an allowance at the CITY’S discretion.

“CM/GC Contingency” means an agreed upon amount, either lump sum or a percentage of the Cost of the Work, that is included in the GMP and to be used by the CM/GC in accordance with the General Provisions in the construction contract, exclusive of CITY initiated changes and unknown site conditions. Generally, Contractor’s Contingency recognizes that the Drawings and the Specifications may still be less than 100% complete

after the CITY's final acceptance of the GMP. The amount of the CM/GC's Contingency will be negotiated as a separate line item in each GMP package. Use and management of CM/GC's Contingency is described in Section 3.9.

"CM/GC's Representative" means the person, firm, corporation, or other approved legal entity with which the CITY has entered into this Agreement and designated as such in this Contract.

"Construction Documents" are the plans, specifications, and drawings prepared by the Project Designer after correcting for permit review requirements and incorporating addenda and approved change orders.

"Construction Fee" means the CM/GC's administrative costs, home office overhead, and profit, whether at the CM/GC's principal or branch offices. This includes the administrative costs and home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

"Construction Work" means the entire completed construction services or the various separately identifiable parts thereof, required to be furnished during the construction phase. Construction Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials, resources and equipment into the construction, and performing or furnishing services and documents as required by the Contract Documents for the construction phase.

"Contract Administrator" means the CITY's representative with authority to approve the Project Budget and Project Schedule, and render decisions for the CITY on the project. For this project the Contract Administrator is the CITY's Deputy Director of Public Services Department.

"Contract Amount" means the final approved not-to-exceed budget for this Agreement as identified in Article 6.

"Contract Documents" means the following items and documents in descending order of precedence executed by the CITY and the CM/GC: (i) all written modifications, addenda and Change Orders; (ii) this Pre-construction Agreement, including all exhibits and attachments; (iii) the CM/GC Construction Agreement; (iv) written Supplementary Conditions; (v) Construction Documents; (vi) GMP Plans and Specifications.

"Contract Time(s)" means the number of days or the dates related to the contract time for the Pre-Construction Phase Services Contract.

"Cost of the Work" means the direct costs necessarily incurred by the CM/GC in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, building permit

fees, materials testing, and related items. The Cost of the Work shall not include the CM/GC's construction fee, general conditions fee, taxes, bonds, or insurance costs.

“Data Sheet” means the sheet listing Project information contained in the RFQ.

“Day” means calendar day(s) unless otherwise specifically noted in the Contract Documents.

“Deliverables” means the work products prepared by the CM/GC in performing the scope of work described in Exhibit A of this Agreement. Major deliverables to be prepared and provided by the CM/GC during the pre-construction phase may include but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, GMP Proposals, Subcontractor procurement plan, Subcontractor agreements, Subcontractor bid packages, Supplier agreements, and others as indicated in this Agreement or required by the Project Team.

“Drawings (Plans)” are documents, which visually represent the scope, extent and character of the Work to be furnished and performed by the CM/GC during the construction phase and which have been prepared or approved by the Project Designer and the CITY. Drawings include such documents that have reached a sufficient stage of completion and released by the Project Designer solely for the purposes of review and/or use in performing constructability or biddability reviews and in preparing cost estimates (e.g. conceptual design Drawings, preliminary design Drawings, detailed design Drawings at 30%, 60%, 90% or 100%), but “not for construction”. Drawings do not include shop drawings.

“Effective Date of this Agreement” is the date specified in this Agreement on which the Agreement becomes effective, but if no such date is so specified, the date on which the CITY executes this Agreement.

“General Conditions Costs” means the costs incurred by the CM/GC during the construction phase includes, but is not limited to the following types of costs; payroll costs for contract administrator or construction manager but not both for Construction Work conducted at the site, payroll costs for the superintendent and full-time general foremen, payroll costs for management personnel resident and working on the site, workers not included as direct labor costs engaged in support (e.g. loading/unloading, clean-up, etc.), administrative office personnel, costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the site, costs of liability insurance premiums not included in labor burdens for direct labor costs, costs of bond premiums, costs of consultants not in the direct employ of the CM/GC or Subcontractors, fees for permits and licenses.

“GMP Plans and Specifications” means the plans and specifications provided pursuant to Section 3.9 upon which the Guaranteed Maximum Price Proposal is based.

“Guaranteed Maximum Price” or **“GMP”** means the sum of the maximum cost for the construction of this Project, including but not limited to, the CM/GC’s construction fee, general conditions fee, taxes, bonds, insurance costs, and any contingency as proposed and approved pursuant to Section 3.9.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-governmental entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Notice to Proceed” is a written notice given by the CITY to the CM/GC fixing the date on which the CM/GC will start to perform the CM/GC’s obligations under the Pre-Construction Services Agreement.

“Payment Request” means the form that is accepted by the CITY and used by the CM/GC in requesting progress payments or final payment and which will include such supporting documentation as is required by the Contract Documents and or the CITY.

“Pre-Construction Services” means advice given during the design phase. Pre-construction services shall be contracted for between the CITY and the CM/GC, as per CITY ordinance and the State of Utah. Services may include the following: design review, project scheduling, constructability reviews, alternate systems evaluation, cost estimates, GMP preparation, and subcontractor bid phase services.

“Product Data” means illustrations, schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM/GC to illustrate materials or equipment for some portion of the work.

“Project Designer” means the Architect or Engineer of record responsible for the design and design service for a particular project. For this Contract, the Project Designer is Sunrise Engineering, Inc.

“Project Team” means the pre-construction phase services team consisting of the Project Designer, CM/GC, Contract Administrator, CITY’s representatives and other stakeholders who are responsible for making decisions regarding the Project.

“Schedule of Values (SOV)” means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

“Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by the CM/GC or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

“Specifications” means the section(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

“Subcontractor” means any person or entity retained by CM/GC as an independent contractor to perform a portion of the Work and shall include material, men and suppliers. All subcontractors shall be selected in accordance with the Subcontractor selection plan set forth in Section 2.9 of this Agreement.

“Subconsultant” is the person, firm or corporation having an Agreement with the CM/GC to furnish services required as its independent professional associate or consultant with respect to the Project.

“Substantial Completion” means a point in time when, in the opinion of the Project Designer as evidenced by Project Designer’s written notice, the work (or a specified part thereof) has progressed to where it is sufficiently complete, and only occasional construction personnel and equipment are required for correcting unfinished or defective work. The remaining work will not interfere with the work area’s intended use or occupancy. The terms “substantially complete” and “substantially completed” as applied to any work refer to substantial completion thereof.

“Supplier” means a manufacturer, fabricator, supplier, distributor, materialmen or vendor having a direct contract with CM/GC or with any Subcontractor to furnish materials or equipment to be incorporated in the construction phase Work by CM/GC or any Subcontractor.

“Total Float” Number of Days by which the pre-construction phase services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent schedule milestone in the Project Schedule.

“Work” for this contract means the entire completed pre-construction construction services.

ARTICLE 2 - PROJECT TEAM - CM/GC KEY PERSONNEL

The CM/GC will be an integral member of the Project Team, as defined herein, consisting of CM/GC, representatives from the CITY, the Project Designer, and other consultants, as required.

2.1 Key Personnel

Prior to the start of these Contract Services, the CM/GC shall submit to the CITY for approval detailed résumés of key personnel, including any Sub consultants, that will be involved in performing the services described in this Agreement to be provided by

CM/GC. Unless otherwise informed, the CITY hereby acknowledges its acceptance of personnel to perform such services under this Agreement.

2.2 Prior Approval for Change

At any time hereafter that the CM/GC desires to change key personnel while performing under this Contract, the CM/GC shall submit the qualifications of the proposed substituted personnel to the CITY for prior approval.

2.3 Key Personnel Listed

Key personnel shall include, but are not limited to, principal-in-charge, pre-construction manager, project manager (CM/GC's Representative), superintendent, contract administrator, and those persons specifically identified to perform services of cost estimating, scheduling, value engineering, procurement planning and administration of the Work. The CITY shall approve all key personnel.

The CM/GC will maintain an adequate number of competent and qualified persons, as determined by the CITY, to ensure acceptable and timely completion of the scope of services described in this Agreement throughout the period of those services. If the CITY objects, with reasonable cause, to any of the CM/GC's staff, the CM/GC will take prompt corrective action acceptable to the CITY and, if required, remove such personnel from the Project and replace and or add with new personnel acceptable to the CITY.

2.4 CM/GC's Representative

CM/GC's Representative/project manager shall be reasonably available to CITY and shall have the necessary expertise and experience required to supervise the contract services. CM/GC's Representative shall communicate regularly with CITY and shall be vested with the authority to act on behalf of CM/GC.

2.5 Independent Contractor

The CM/GC is and will be an independent contractor and not an employee or agent of the CITY and whatever measure of control the CITY exercises over the work or Deliverable pursuant to the Agreement will be as to the results of the work only. No provision in this Agreement will give or be construed to give the CITY the right to direct the CM/GC as to the details of accomplishing the work or Deliverable. These results will comply with all applicable laws and ordinances.

2.6 Competent Staff

The CM/GC will maintain an adequate and competent staff of qualified persons, as may be determined by the CITY, throughout the performance of this Contract to ensure acceptable and timely completion of the scope of services. If the CITY objects, with reasonable cause, to any of the CM/GC's staff, the CM/GC shall take prompt corrective action acceptable to the CITY and, if required, remove such personnel from the Project and replace with new personnel agreed to by the CITY.

2.7 Equal Employment Opportunity and Affirmative Action

The CM/GC shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs. The CM/GC shall comply with State of Utah Antidiscrimination Act Utah Code Ann. §34A-5-101 et seq. which relates to nondiscrimination against any employee because of race, religion, national origin, color, sex, age (40 and over), disability, sexual orientation, gender identity, pregnancy, childbirth or pregnancy-related conditions. or national origin and further agrees to comply with the Immigration Reform and Control Act (I.R.C.A.) of 1986, in performing under this Agreement and to permit CITY inspection of his/her personnel records to verify such compliance.

2.8 Employer Sanction Statutes

The CM/GC and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements per the State of Utah. The CM/GC's or subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by CITY. The CM/GC agrees to insert language similar to this paragraph in all contracts in which they engage with subcontractors on this project to ensure that those subcontractors are meeting the requirements of the above-mentioned statutes. CITY retains the legal right to randomly inspect the papers and records of the CM/GC and its subcontractors who work on the Agreement to ensure that the CM/GC and its subcontractors are complying with the above-mentioned warranty. The CM/GC and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by CITY. The CM/GC and its subcontractors shall cooperate with CITY's random inspections including granting CITY entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

2.9 Subcontractor and Major Supplier Selections

A. CM/GC will select major Subcontractors and major Suppliers, subject to CITY's prior approval. This may occur prior to or after submission of a GMP Proposal. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors shall not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of the CM/GC. In any case, the CM/GC is solely responsible for the performance of the selected Subcontractors/Suppliers.

B. The CM/GC will prepare a Subcontractor/Supplier selection plan and submit the plan to the CITY for approval. This subcontractor selection plan shall identify those subcontractor trades anticipated to be selected by qualifications only per this Section and those subcontractor trades anticipated to be selected by qualifications and competitive bid in accordance with this Section. This plan will also identify those subcontractors that will not be selected through a formalized qualifications-based selection process. The subcontractor selection plan must be consistent with the selection requirements included in this Contract.

C. Selection by qualifications only - The CITY may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the CM/GC can demonstrate it is in the best interest of the Project.

D. The CM/GC shall apply the approved subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the CITY with its review and recommendation.

E. The CM/GC will negotiate costs for services/supplies from each Subcontractor/Supplier selected under this method.

F. Selection by qualifications and competitive bid - The CM/GC shall apply the subcontractor selection plan in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the CITY with its process to prequalify prospective subcontractors and suppliers. All Work for major subcontractors and major suppliers shall then be competitively bid to the prequalified subcontractors unless a Subcontractor or Supplier was selected pursuant to preceding paragraph.

G. The CM/GC will develop Subcontractor and Supplier interest, submit the names of a minimum of three qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not three qualified Subcontractors/Suppliers available for a specific trade or there are extenuating circumstances warranting such, the CM/GC may request approval by the CITY to submit less than three names. Without prior written notice to the CITY, no change in the recommended Subcontractors/Suppliers will be allowed.

H. If the CITY objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM/GC will nominate a substitute Subcontractor/Supplier that is acceptable to the CITY.

I. The CM/GC will distribute Drawings and Specifications, and when appropriate, conduct a pre-bid conference with prospective Subcontractors and Suppliers.

J. If the CM/GC desires to self-perform certain portions of the Work, it will request to be one of the approved Subcontractor bidders for those specific bid packages. The CM/GC's bid will be evaluated in accordance with the process identified below. If events warrant and the CITY concurs that in order to ensure compliance with the Project Schedule and/or cost, the CM/GC may self-perform Work without bidding or re-bidding the Work. (For horizontal construction the CM/GC must self-perform not less than fifty one (51%) percent of the work as required by the CITY.)

K. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the CITY objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, the CM/GC will nominate a substitute Subcontractor or Supplier, preferably if such option is still available, from those who submitted Subcontractor bids for the Work affected. Once such substitute Subcontractors and Suppliers are consented to by the

CITY, the CM/GC's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

L. Any Subcontractors submitted and approved as pre-qualified by CITY and any Early Selected Subcontractors shall not be replaced without the CITY's prior written approval.

ARTICLE 3 – SCOPE OF WORK CM/GC'S SERVICES AND RESPONSIBILITIES

Generally, it will be the responsibility of the CM/GC to integrate the pre-construction and construction phases, utilizing its skills and knowledge of general contracting, to develop schedules; prepare detailed project construction estimates; study labor conditions; and, in any other way deemed necessary, to contribute to the development of the project during the pre-construction phase as more particularly described herein.

3.1 Relationship of CITY and CM/GC

A. For the fee set forth in Article 6, the CM/GC undertakes to act as the CITY'S fiduciary and to furnish professional pre-construction and construction management services during the design of the Project.

B. The CM/GC accepts a relationship of trust and confidence between itself and the CITY and undertakes to act as the CITY'S fiduciary in all matters related to the Project. The CM/GC agrees to furnish its best skills and best judgment to cooperate with the CITY and Project Designer during the pre-construction project, and in all ways to further the interests of the CITY and the Project. The CM/GC shall furnish value engineering, constructability reviews and comments, estimates, and supporting comment to the Designer and CITY to provide a quality and complete project, consistent with the available budget, all as more particularly described herein.

C. Because of the CM/GC's fiduciary duties to the CITY, the Project will be an "open book" job whereby the CITY may attend any and all meetings of the CM/GC firm relating to the Project, and the CITY or its designated auditors or accountants shall have access to any and all records of the CM/GC or maintained by the CM/GC relating to the Project. Open book shall include the unit cost of labor and material provided by Subcontractors and shall be provided to the CITY.

3.2 Pre-Construction Services

A. The CM/GC agrees to perform the CM/GC pre-construction phase services and to perform its obligations and to comply with the other terms and conditions applicable to CM/GC under the CM/GC Pre-Construction Phase Services Contract Documents. The CITY agrees to perform its obligations and to comply with the other terms and conditions applicable to CITY under the CM/GC Pre-Construction Services Contract Documents.

B. This is a contract for CM/GC pre-construction phase services only. CM/GC agrees to perform all CM/GC pre-construction phase services specified in this Agreement, to be performed during the pre-construction phase (consisting of the traditional Program

Development sub-phase, Schematic Design sub-phase, Design Development sub-phase and Construction Documents sub-phase of design development).

C. If and when CITY and CM/GC agree to a Guaranteed Maximum Price and certain other matters concerning the Construction Phase and execute the CM/GC Construction Contract, then and only then will there be a contract for construction services and for the CM/GC to do the Construction Work. Until then, CITY has no obligation to obtain the Construction Work from the CM/GC, and the CM/GC has no obligation to perform the Construction Work. The CITY reserves the right to issue a new RFQ for pre-construction phase services, to bid the Construction Work, or select a contractor for Construction work in any manner allowed by CITY ordinance.

D. The CM/GC, to further the interests of the CITY, will perform the services required by, and in accordance with this Agreement, to the satisfaction of the Contract Administrator, exercising the degree of care, skill and judgment a professional construction manager performing similar services in Ogden City, Utah would exercise at such time, under similar conditions. The services being provided under this Agreement will not alter any real property owned by the CITY. The CITY agrees to perform its obligations and to comply with the other terms and conditions applicable to CITY under this Agreement.

3.2.1 Project Review

A. The CM/GC shall meet with the CITY REPRESENTATIVE and other CITY team members, the Project Designer and other Project Team members to fully understand the Program, the design documents, the Project scope and all other pertinent aspects of the Project.

B. The CM/GC shall become an integral part of the Project Team that will coordinate the development and progress of the design and pre-construction processes.

C. The CM/GC shall visit the Site, become familiar with local conditions under which the work is to be performed and correlate personal observations with the requirements of the Contract Documents.

D. The CM/GC shall develop written project procedures, in cooperation with the CITY REPRESENTATIVE, that will be used as a guide for the management and coordination of this Project through the life of the Project.

3.2.2 Consultation During Project Development

A. The CM/GC shall attend regularly scheduled meetings with the Project Designer and consultants during the design phases established by the contract between the CITY and the Project Designer, to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing and sequencing. The CM/GC shall provide written recommendations on construction feasibility, actions

designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction, sequence of construction, construction duration, the means and methods of construction, construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies of scale. The estimates of construction costs shall not include sums due the Project Designer, the costs of land, rights of way, financing or other costs that are the responsibility of the CITY, unless otherwise directed by the CITY.

B. The CITY and Project Designer will assist and cooperate with the CM/GC in the preparation of the necessary bidding information, bidding forms, and pre-qualification criteria for bidders, development of subcontractor interest, establishment of bidding schedules, advertisement for bids, distribution of plans and specifications, review of prior approval requests by subcontractors or material suppliers, or conducting pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods.

C. The City reserves the right to hire an independent cost estimator to review cost estimates prepared by CM/GC and/or prepare additional independent cost estimates.

3.2.3 Value Analysis

A. The CM/GC shall, after a complete review of the Project, evaluate the designs available at the time of the CM/GC's commencement of pre-construction services, and obtain an understanding of the intent of the CITY and the Project Designer, provide value analysis services and offer cost savings suggestions and best value recommendations as to the consistency and appropriateness of the project and the project's budget to the CITY. All recommendations must be fully reviewed with the Project Designer and CITY, and approved by the CITY prior to implementation. CITY and CM/GC shall identify acceptable time frame by which CM/GC shall provide initial program evaluation.

B. Value analysis efforts shall result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value analysis studies shall include life cycle cost analysis as may be required to assist the Project Designer to achieve an appropriate balance between costs, aesthetics and/or function.

C. Value analysis efforts shall also take into consideration applicable constructability issues.

D. The CM/GC shall promptly notify the CITY and Project Designer in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

E. All value analysis studies must be provided on a timely basis within the design schedule.

F. Value analysis studies shall be continuous as the design is being developed.

G. The CM/GC shall conduct value analysis throughout the project and provide the CITY estimates as appropriate and shall conduct major value analysis at completion of the schematic design phase and at the design development phase (utilizing the Design Development documents), which analysis shall include, but not be limited to, the items noted below:

1. Develop value analysis concepts for consideration at the session noted in #2 below (it is anticipated that the Project Designer will be concurrently conducting a similar activity).
2. Brainstorming session(s) with the Project Team.
3. Written cost studies shall be produced and submitted to the CITY within two (2) weeks of the brainstorming session.
4. Written pro/con evaluation of the cost studies shall be provided with the cost studies.
5. Formal presentation of the written study to the Project Team shall be conducted by the CM/GC firm.
6. A final written value analysis study document including a summary of value analysis items, applicable cost adjustments, selected items and their corresponding cost adjustments shall be presented to the Project Team.

H. In between the milestones for major value analysis studies, the CM/GC shall periodically provide a tracking report which identifies the increases or decreases in costs due to value engineering or scope changes. It shall be the responsibility of the CM/GC to keep the CITY and Project Designer informed as to the major trend changes in costs relative to the CITY's budget.

3.2.4 Project Schedule

A. Within ten (10) days from the Notice to Proceed on this contract, the CM/GC shall establish a detailed Critical Path Method ("CPM") schedule of the pre-construction/design phase of the Project. Within thirty (30) days from the Notice to Proceed on this contract, the CM/GC shall establish a detailed CPM schedule of the construction phase of the Project. Both schedules shall be established with concurrence of the CITY and the Project Designer. The CM/GC shall monitor this schedule during the pre-construction/design phase, insure that this schedule is updated, and advise the CITY of any deficiencies in adhering to this schedule by any party.

B. The CM/GC will include and integrate in the Project Schedule the services and activities required of the CITY, Project Designer and CM/GC including all construction phase activities based on the input received from the CITY and the Project Designer. The Project Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design and various design phase documents, (b) separate long-lead procurements, if any, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and Suppliers, (f) major stages of construction, (g) start-up and commissioning, and (h) CITY's acceptance of the completed Work. The Project Schedule will include by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project Team, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement (if any), milestone dates for various construction phases, total float for all activities, relationships between the activities, CITY's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

C. The Project Schedule will be updated and maintained by the CM/GC throughout this agreement such that the schedule will not require major changes at the start of the construction phase to incorporate the CM/GC's plan for the performance of the construction phase Work. The CM/GC will provide updates and/or revisions to the Project Schedule for use by the Project Team, whenever required, but no less often than at the monthly Project Team meetings. The CM/GC will include with such submittals a narrative describing its analysis of the progress achieved to-date vs. that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

D. The CM/GC shall utilize standard software to prepare, provide, and maintain appropriately detailed design phase CPM schedules.

E. Scheduling software shall allow for integration of all aspects of the design processes and provide for coordination of all work to be performed. The scheduling software shall be capable of producing and coordinating logic developed network diagrams, and tabular reports.

F. The Project schedule shall be sufficiently detailed to allow for a realistic projection of design activity sequences and durations. Updated schedules will be required at the end of each design phase established by the contract between the CITY and the Project Designer, and after major value engineering decisions.

G. CM/GC shall complete all services specified herein in accordance with the CPM Progress Schedule and progress milestones included in such CPM Schedule.

In the event delays are experienced beyond the control of CM/GC, the completion date may be extended as mutually agreed upon by CITY and CM/GC.

H. CM/GC will perform pre-construction services in this Agreement in accordance with the most current update/revised Project Schedule. Failure on the part of the CM/GC to adhere to the Project Schedule requirements for activities for which it is responsible will be sufficient grounds for termination of this Agreement by the CITY.

I. If the date of performance of any obligation or the last day of any time period provided for herein should fall on a Saturday, Sunday, or holiday for the CITY, then said obligation will be due and owing, and said time period will expire, on the first day thereafter which is not a Saturday, Sunday or legal CITY holiday. Except as may otherwise be set forth herein, any performance provided for herein will be timely made if completed no later than 5:00 p.m. (Local time) on the day of performance.

3.2.5 Constructability Review

CM/GC shall review the design throughout the pre-construction phase as to constructability, including without limitation, all issues identified in the CM/GC's proposal. With respect to each such issue, the CM/GC shall submit a written report to both the CITY and the Project Designer. At a minimum, each such written report shall contain: (1) a description of the constructability issue with background information; (2) a summary of the CM/GC's in-depth study/research; and (3) written recommendations for addressing the issue.

3.2.6 Construction Cost Model/Estimates

A. The CM/GC shall develop a project budget/cost model (independent from any similar cost estimate required of the Project Designer such as the Statement of Probable Construction Costs) which shall be updated as needed but at a minimum at the end of each design phase (concepts, schematic, design development, 30%, 60% , 90% and final construction documents) during which the CM/GC is performing pre-construction services (hereinafter "CM/GC Cost Model Update"). Due to variability in economic conditions, all cost models are to be construction based not data based; that is, the CM/GC is to obtain pricing of trade work directly from the market place.

B. Each CM/GC Cost Model Update must contain a statement of the total amount determined under that construction cost model to be the total construction costs for the facility (including alternates, CM/GC General Conditions, CM/GC fees, and CM/GC contingency) in accordance with the Project Designer's Program.

C. The Amount Available for Construction is the sum set out on the Data Sheet and excludes designer fees and other reserves retained by the CITY.

D. In the event that the CM/GC's Statement of Probable Construction Costs exceed the Amount Available for Construction, the CITY may direct the CM/GC to (and the CM/GC shall without additional compensation to the CM/GC) work in conjunction with the Project Designer to redesign the facility as necessary to maintain the Project within the Amount Available for Construction.

E. Each CM/GC Cost Model Update and the Designer's Probable Construction Costs will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Amount Available for Construction. Meetings and negotiations between CITY, Project Designer and the CM/GC will be held to resolve questions and differences that may occur between the Designer's Probable Construction Costs and the CM/GC Cost Model Update. The CM/GC shall work with the CITY and the Project Designer to reach a mutually acceptable joint Probable Construction Cost.

F. If requested by the CITY, the CM/GC shall prepare a preliminary "cash flow" projection based upon historical records of similar type projects to assist the CITY in the financing process.

3.2.7 Design Document Reviews

A. The CM/GC will evaluate periodically the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design; and other factors that may impact the cost estimate, GMP Proposals and/or the Project Schedule.

B. The CM/GC will recommend, with CITY approval, those additional surface and subsurface investigations that, in its professional opinion, are required to provide the necessary information for the CM/GC to construct the Project.

C. The CM/GC will routinely conduct constructability and biddability reviews of the Drawings and Specifications as necessary to satisfy the needs of the Project Team. The reviews will identify all discrepancies and inconsistencies in the Construction Documents especially those related to clarity, consistency, and coordination of Work of Subcontractors and Suppliers.

3.2.8 Biddability Reviews

A. The CM/GC will check cross-references and complementary Drawings and sections within the Specifications, and in general evaluate whether (a) the Drawings and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) specifications include alternatives in the event a requirement cannot be met in the field, and (d) in its professional opinion, the Project is likely to be subject to differing site conditions.

B. The results of the reviews will be provided to the CITY in formal, written reports clearly identifying all discovered discrepancies and inconsistencies in the Drawings and Specifications with notations and recommendations made on the Drawings, Specifications and other documents. If requested by the CITY, the CM/GC will meet with the CITY and Project Designer to discuss any findings and review reports.

C. The CM/GC's reviews will be from a contractor's perspective, and though it will serve to reduce the number of Requests for Information (RFIs) and changes during the construction phase, responsibility for the Drawings and Specifications will remain with the Project Designer and not the CM/GC.

3.2.9 Notification of Variance or Deficiency

It is the CM/GC's responsibility to assist the Project Designer in ascertaining that, in the CM/GC's professional opinion, the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the CM/GC recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, it will promptly notify the Project Designer and CITY in writing, describing the apparent variance or deficiency. However, the Project Designer is ultimately responsible for the compliance with those laws, statutes, ordinances, building codes, rules and regulations.

3.3 Intellectual Property

A. The CM/GC shall pay all royalties and license fees associated with its performance of services herewith.

B. The CM/GC shall defend any action or proceeding brought against the CITY based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. The CITY shall give prompt written notice to the CM/GC of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. The CM/GC shall indemnify and hold harmless the CITY from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the CITY or the CM/GC in any such action or proceeding. The CM/GC agrees to keep the CITY informed of all developments in the defense of such actions. The CITY may be represented by, and actively participate through its own counsel in any such suit or proceedings if it so desires.

C. If the CITY is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, the CM/GC shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If the CM/GC cannot so procure such right within a reasonable time, the CM/GC shall promptly, at the CM/GC's option and at the CM/GC's expense, (i) modify the Work so as

to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

D. Sections B and C above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by the CITY and not offered or recommended by the CM/GC to the CITY or (ii) arising from modifications to the Work by the CITY or its agents after acceptance of the Work.

E. The obligations set forth in this Section shall constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

3.4 License to City for Reasonable Use

The CM/GC hereby grants, and will require its Subcontractors to grant, a license to the CITY, its agents, employees, and representatives for an indefinite period of time to reasonably use, make copies, and distribute as appropriate the Project Documents, works or Deliverables developed or created for the Project and this Agreement. This license will also include the making of derivative works. In the event that the derivative works require the CITY to alter or modify the Project Documents, then paragraph 3.3 subsection (D) applies.

3.5 Documents to Bear Seal

When applicable and required by state law, the CM/GC and its Subcontractors will endorse, by a Utah professional seal, all plans, works, and Deliverables prepared by them for this Agreement.

3.6 Data Confidentiality

A. As used in the Agreement, data means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the CM/GC in the performance of this Agreement.

B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the CM/GC in connection with the CM/GC's performance of this Agreement are confidential and proprietary information belonging to the CITY.

C. The CM/GC will not divulge data to any third party without the prior written consent of the CITY. The CM/GC will not use the data for any purposes except to perform the services required under this Agreement. These prohibitions will not apply to the following data:

1. Data which was known to the CM/GC prior to its performance under this Agreement unless such data was acquired in connection with work performed for the CITY;

2. Data which was acquired by the CM/GC in its performance under this Agreement and which was disclosed to the CM/GC by a third party, who to the best of the CM/GC's knowledge and belief, had the legal right to make such disclosure and the CM/GC is not otherwise required to hold such data in confidence; or

3. Data, which is required to be disclosed by the CM/GC by virtue of law, regulation, or court.

D. In the event the CM/GC is required or requested to disclose data to a third party, or any other information to which the CM/GC became privy as a result of any other Agreement with the CITY, the CM/GC will first notify the CITY as set forth in this Article of the request or demand for the data. The CM/GC will timely give the CITY sufficient facts, such that the CITY can have a meaningful opportunity to either first give its consent or take such action that the CITY may deem appropriate to protect such data or other information from disclosure.

E. The CM/GC, unless prohibited by law, will promptly deliver, as set forth in this section, a copy of all data to the CITY within ten (10) calendar days after completion of services for a third party on real or personal property owned or leased by the CITY. All data will continue to be subject to the confidentiality agreements of this Agreement.

F. The CM/GC assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the CITY if any of the provisions of this section are violated by the CM/GC, its employees, agents or subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this section will be deemed to cause irreparable harm that justifies injunctive relief in court.

3.7 Record Keeping and Financial Controls

A. With respect to all pre-construction phase services performed by CM/GC and subcontractors, CM/GC and subcontractors shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems approved by the CITY. During performance of the pre-construction phase services and for five (5) years after final payment for the pre-construction phase services, the CM/GC shall retain and shall also require all subcontractors to retain for review and/or audit by the CITY all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs and all other matter related to the pre-construction phase services. Upon request by the CITY, a legible copy or the original of any or all such records shall be produced by the CM/GC at any time during or after the pre-construction phase services as the CITY may request. The CM/GC shall submit to the CITY upon request all payrolls, reports, estimates, records and any other data concerning pre-construction phase services performed or to be performed. The requirements of this Section shall be included in all contracts between the CM/GC and its subcontractors.

B. CM/GC represents that it has the necessary financial resources to fulfill its obligations under the CM/GC Pre-Construction Contract Documents and, if CITY agrees to execute and deliver the CM/GC Construction Contract, under the CM/GC Construction Contract Documents (including, without limitation, the financial capacity to obtain and delivery the required Payment Bond and Performance Bond) and has the necessary corporate approvals to execute the CM/GC Pre-Construction Services Contract Documents and perform the CM/GC Pre-Construction Phase Services.

3.8 Coordination of Contract Documents

A. The CM/GC shall review the drawings and specifications as they are being prepared, recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The CM/GC shall notify the Project Designer and the CITY in writing, as appropriate, upon observing any features in the plans or specifications, which appear to be ambiguous, confusing, conflicting or erroneous.

B. The CM/GC shall review the final documents to see that all comments have been incorporated.

C. All ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM/GC during the review process shall be deemed to be corrected, and any associated costs shall be included in the CM/GC's Guaranteed Maximum Price (GMP).

3.9 Construction Guaranteed Maximum Price (GMP)

A. Within 30 days after final review of the construction documents by the CITY, or at any sooner time requested by the CITY, the CM/GC shall develop and provide to CITY a GMP proposal based on the documents as completed at that time. Such GMP proposal will include all construction costs, and all other projected costs, including, without limitation, any CM/GC contingency and General Conditions allowance but not including any CITY Construction Contingency. The GMP proposal shall include a schedule of values which shall specify all of the following: (a) unit or lump sum prices for work to be performed by CM/GC (may be by CSI code, total costs, and cost per square feet of building); (b) each anticipated subcontract amount; (c) a separately identified CM/GC's fixed fee as a fixed percentage of the GMP including home office overhead and profit; (d) General Conditions, and (e) all project related costs, i.e., taxes, bonds, personnel payroll benefits, etc. The final GMP shall state all qualifications and assumptions used to prepare the final GMP.

B. The GMP must not exceed the Amount Available for Construction as set forth on the Data Sheet.

C. In the event that the GMP exceeds the Project Construction Budget, the CITY reserves the right to direct the CM/GC to (and the CM/GC shall) work in conjunction with the Project Designer to redesign the Facility as necessary to maintain the Project Program and meet the Project Construction Budget as follows:

1. After consultation with the CITY, the CM/GC shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost.

2. The CM/GC shall develop and provide to CITY a GMP in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.

3. The CM/GC shall analyze the Project Designer's originally submitted and redrafted Construction Documents and make recommendations to the CITY as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the Project Construction Budget.

D. Notwithstanding anything in the RFP to the contrary, the CM/GC shall perform the work set forth in this Sub Section 3.9 without additional compensation.

E. CITY has the right to reject any GMP as originally submitted, or as adjusted. In that event, this Contract will terminate according to its terms.

F. The CM/GC's detailed construction cost estimates and GMP will be reviewed by the Project Designer and the CITY for reasonableness and compatibility with the Project Construction Budget. Meetings and negotiations between CITY, Project Designer and the CM/GC will be held to resolve questions and differences that may occur between the Project Construction Budget and the CM/GC's construction cost estimate and corresponding GMP. If indicated by the Project Construction budget limitations or other circumstances, the CM/GC shall work with the CITY and Project Designer to reach a mutually acceptable GMP.

G. Upon acceptance by the CITY of a GMP, the CITY may elect to prepare and the CM/GC may elect to execute a Construction Contract reflecting the GMP and requiring CM/GC to perform construction in accordance with the approved plans and specifications for that price. If the parties agree to execute the Construction Contract as provided herein, CM/GC shall provide the CITY with a Performance Bond and a Labor and Material Payment Bond each for 100% of the GMP in conformity with state law prior to execution.

H. Following receipt of a "Notice to Proceed" with the construction services, CM/GC shall complete all pre-construction services and submit the final GMP to CITY within a maximum of (180) calendar days of the date indicated on the Notice to Proceed.

I. The CM/GC guarantees to bring the completion of the design and construction of the project within the GMP or CM/GC alone will be required to pay the difference between the actual cost and the GMP.

3.9.1 Phased GMPs

The CM/GC may be requested to provide individual GMP proposals for specific construction phases of the Project. These individual phase GMP proposals shall be based on the specific phase construction documents and will be prepared in accordance with the procedures identified in this Section.

3.9.2 Guaranteed Maximum Price (GMP) Review and Approval

A. The CM/GC will meet with the CITY and Project Designer to review any GMP Proposal(s) and review the written statement of its basis. In the event the CITY or Project Designer discovers inconsistencies or inaccuracies in the information presented, the CM/GC will make adjustments as necessary to the GMP Proposal, its basis, or both.

B. Upon receipt of any GMP proposal from the CM/GC, the CITY may submit the same documents that were used by the CM/GC in developing its GMP to an independent third party or to the Project Designer for review and verification. The third party or Project Designer will develop an independent estimate of the Cost of the Work and review the Project Schedule for the associated scope of the GMP Proposals. If the CM/GC GMP Proposal is greater than that of the independent third party or Project Designer's estimate, the CITY may require the CM/GC to reconfirm its GMP Proposal. The CM/GC will accept the independent third party's or Project Designer's estimate for the Cost of Work as part of its GMP Proposal or present a report identifying, explaining and substantiating the differences within seven days of the CITY's request.

C. If design changes are required during the review and negotiation of GMP Proposals, the CITY will authorize and cause the Project Designer to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the CM/GC. The CM/GC will promptly notify the Project Designer and CITY in writing if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

D. The CM/GC guarantees to complete the Project at a Cost that shall not exceed the final approved GMP Proposal amount, and the CM/GC assumes the responsibility for paying any difference between the actual Cost of the Work and that amount.

E. The CM/GC may then be requested to, or at its own discretion, submit a revised GMP Proposal for consideration by the CITY. At that time the CITY may do one of the following:

1. Accept the CM/GC original or revised GMP Proposal, if within the CITY's budget, without comment.

2. Accept the CM/GC original or revised GMP Proposal that exceeds the CITY's budget, and indicate in writing to the CM/GC that the Project Budget has been increased to fund the differences.
3. Reject the CM/GC's original or revised GMP Proposal in which event, the CITY may terminate this Agreement and/or elect to not enter into a separate Agreement with the CM/GC for the construction phase associated with the scope of Work reflected in the GMP Proposal.

3.9.3 Non-Acceptance of the GMP and Termination of CITY-CM/GC Contract

The CITY, at its sole discretion, may decline to accept the CM/GC's GMP for the construction or for any Construction Phase and thereupon without penalty; this Contract shall terminate according to its terms at the end of the Pre-Construction Phase of the Project.

ARTICLE 4-- PHASED CONSTRUCTION LONG LEAD TIME PROCUREMENT

4.1 Recommendations for Phasing

If phased construction is appropriate and the CITY and Project Designer approve, the CM/GC shall review the design and make recommendations regarding the phased issuance of Construction Documents to facilitate phased construction of the Construction Work. The CM/GC shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, and any other factors pertinent to saving time and cost.

4.2 Recommendation for long-lead time items

The CM/GC shall recommend to the CITY and the Project Designer a list and a schedule for the procurement of long-lead time items required to meet the Project Schedule.

4.3 Bid for Procurement

If the CITY determines that it is in its own best interest to have the CM/GC procure such long-lead time items, the CITY may, at its sole discretion, direct the CM/GC to solicit bids.

4.4 Purchase by CM/GC

Upon approval by the CITY of the funding and of the terms and conditions of the purchase of said long-lead material, the CITY will authorize the CM/GC to issue purchase orders for the material. If necessary the Contract Price will be adjusted.

4.5 City Procurement

If the CITY determines that it is in its own best interest to procure such long-lead time items, items may be procured by the CITY on terms and conditions acceptable to the

CM/GC. Upon the CITY's acceptance of the CM/GC's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the CITY to the CM/GC, who shall accept responsibility for such items as if procured by the CM/GC.

4.6 Option not to Procure

If the CITY chooses not to procure long lead-time items prior to acceptance of a GMP, the Project Designer shall list the items and a delivery schedule in the construction documents and such required delivery schedules shall be taken into consideration in determining the Contract Time for the Construction Contract.

ARTICLE 5 – STANDARD OF CARE AND CORRECTIONS

5.1 CM/GC Responsibility

The CM/GC shall be responsible for the completeness and accuracy of reviews, reports, supporting data, and other pre-construction work prepared or compiled by CM/GC pursuant to its obligations under this Contract and shall correct such work or Deliverables at the sole expense of CM/GC. The fact that the CITY has accepted or approved the CM/GC's work or Deliverables shall in no way relieve the CM/GC of any such responsibilities under this Contract, nor does this requirement to correct the work or Deliverable constitute a waiver of any claims or damages otherwise available by law or Agreement to the CITY. The CM/GC is not assuming any obligation to perform design or responsibility for any design or performing any peer review of any Architect or other Designer's work.

5.2 Alteration in Character of Work

A. In the event an alteration or modification in the character of work or Deliverable results in a substantial change in this Agreement, thereby materially increasing or decreasing the scope of services, cost of performance, or Project Schedule, the work or Deliverable will nonetheless be performed as directed by the CITY. However, before any altered or modified work begins, a Change Order or Amendment will be approved and executed by the CITY and the CM/GC. Such Change Order or Amendment will not be effective until approved by the CITY.

B. Additions to, modifications, or deletions from the Project provided herein may be made, and the compensation to be paid to the CM/GC may accordingly be adjusted by mutual agreement of the contracting parties.

C. No claim for extra work done or materials furnished by the CM/GC will be allowed by the CITY except as provided herein, nor will the CM/GC do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing. Work or material(s) furnished by the CM/GC without such prior written authorization will be the CM/GC's sole responsibility, cost, and expense, and the CM/GC hereby agrees that without prior written authorization no claim for compensation for such work or materials furnished will be made.

5.3 Approved Alternates

A. Plans and specifications may contain references to equipment and/or materials (patented or unpatented) or "approved alternate(s)." Such references shall be regarded as establishing a standard of quality, finish, appearance, performance or as indicating a selection or design based upon compatibility with existing equipment, materials or details of construction inherent to the project design. Such references shall not be construed as limiting the selection to a specified item, source or design detail. The use of an alternate or substitute, item or source as an approved alternate will be permitted, subject to the procedure set forth in the State of Utah.

B. The CM/GC/subcontractor, as applicable, shall submit a written Proposal for substitution to the CM/GC and Contract Administrator at least eight (8) days prior to the original deadline for receiving Bids. Requests for substitution submitted to the CITY'S contracted Consultant or other CITY Staff shall not be reviewed. The submittal envelope must be clearly marked with Bid Number and "REQUEST FOR APPROVED ALTERNATE". Requests must be time stamped by the CM/GC and Contract Administrator by 4:00 P.M. (approved alternate date). The proposal shall include all information necessary for proof of quality and suitability for substitution including benefits, engineering design and data (calculations) and/or detailed plan modifications which may be required by the substitution. The Bidder shall submit additional information and/or samples when required.

C. The CM/GC and the Contract Administrator will evaluate the information submitted, perform tests when necessary and make comparisons in order to approve or reject the proposal. If rejected, the CM/GC shall give notice of rejection to the Bidder submitting the proposal.

D. The CM/GC, if the proposal is accepted, shall issue a written addendum to the Invitation For Bid specifying the approved alternates and distribute the modification in the same manner as the original bidding documents.

E. The Specifications may reference equipment or materials "or alternate". The reference to "or alternate" shall be construed to mean "or approved alternate" in every instance.

F. Use of an alternate or substitute item shall be allowed only if approval was received as outlined in this Article.

G. "Construction Document" references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number may be permitted, unless indicated that no substitutes or alternates may be permitted, subject to the following:

H. The CM/GC shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

I. The submittal shall state any required changes in the Construction Documents to adapt the design to the proposed substitution.

J. The submittal shall contain an itemized estimate of all costs and credits that will result directly or indirectly from the acceptance of such substitution including cost of design, license fees, royalties, and testing. The submittal shall also include any adjustment in the Contract Time created by the substitution. Substitutions will only be considered if they do not extend Contract Time.

5.4 CITY's Responsibilities

The CITY, at no cost to the CM/GC, will furnish the following information:

A. One copy of data the CITY determines pertinent to the work. However, the CM/GC will be responsible for searching the records and requesting information it deems reasonably required for the Project.

B. All available data and information pertaining to relevant policies, standards, criteria, studies, etc.

C. The name of the CITY employee or CITY's representative who will serve as the Contract Administrator during the term of this Agreement. The Contract Administrator has the authority to administer this Agreement and will monitor the CM/GC's compliance with all terms and conditions stated herein. All requests for information from or decisions by the CITY on any aspect of the work or Deliverables will be directed to the Contract Administrator.

The CITY additionally will:

A. Contract separately with one or more design professionals to provide Project Designer and/or engineering design services for the Project. The scope of services for the Project Designer will be provided to the CM/GC for its information. The CM/GC will have no right to limit or restrict any changes of such services that are otherwise mutually acceptable to the CITY and the Project Designer.

B. Supply, without charge, all necessary copies of programs, reports, drawings, and specifications reasonably required by the CM/GC except for those copies whose cost has been reimbursed by the CITY.

C. Provide the CM/GC with adequate information in its possession or control regarding the CITY's requirements for the Project.

D. Give prompt written notice to the CM/GC when the CITY becomes aware of any default or defect in the Project or non-conformance with the Drawings and Specifications.

E. Notify the CM/GC of changes affecting the budget allocations.

F. The CITY'S Contract Administrator will have authority to approve the Project Budget and Project Schedule and render decisions and furnish information the Contract Administrator deems appropriate to the CM/GC.

ARTICLE 6-- CONTRACT PRICE

6.1 Fees

A. For pre-construction phase services rendered by CM/GC as described herein CITY shall pay CM/GC a fee not to exceed the sum of \$ _____, as set forth in Exhibit B. Payment will be made monthly on the basis of progress reports. An Application and Certification for Payment Sheet must be submitted to CITY which shall be accompanied by a progress report, detailed invoices and receipts, if applicable. This submittal shall include, as a minimum, a narrative description of the tasks accomplished during the billing period, a listing of any deliverables submitted, and as to any sub-consultants, their actual requests for payment plus similar narrative and listings of their work.

B. CM/GC's pre-construction phase services fee is all inclusive of all amounts to be paid by CITY for the CM/GC pre-construction services and includes, without limitation, all sales, franchise privilege, use, consumer, income and other taxes, all fees, all insurance premiums, and all costs of complying with applicable Legal Requirements, all of which will be paid by CM/GC without reimbursement by CITY.

C. The CM/GC will pay all sums due subcontractors for services and reimbursable expenses within fourteen (14) calendar days after the CM/GC has received payment for those services from the CITY. In no event will the CITY pay CM/GC more than ninety (90%) percent of the Contract Amount until final acceptance of all pre-construction services and award of the final approved GMP. Upon award of the CM/GC for Construction Services Agreement, final payment will be made to the CM/GC for the remaining ten (10%) percent of the contract amount.

D. The CM/GC agrees that no charges or claims for costs or damages of any type will be made by it for any delays or hindrances beyond the reasonable control of the CITY during the progress of any portion of the services specified in this Agreement. Such delays or hindrances, if any, will be solely compensated for by an extension of time for such reasonable period as may be mutually agreed between the parties. It is understood and agreed, however, that permitting the CM/GC to proceed to complete any services, in whole or in part after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the CITY of any of its legal rights herein.

E. If any service(s) executed by the CM/GC is abandoned or suspended in whole or in part, for a period of more than one hundred eighty (180) days through no fault of the CM/GC, the CM/GC is to be paid for the services performed prior to the abandonment or suspension.

6.2 Taxes

The Contract Price is deemed to include all transaction privilege, sales, use, consumer and other taxes which are legally enacted when the negotiations concluded, whether or not yet effective or merely scheduled to go into effect and any and all other taxes applicable to the activities hereunder. The CITY shall have no obligation to pay additional amounts for taxes of any type.

ARTICLE 7 -- CLAIMS AND DISPUTES

7.1 Dispute Avoidance and Resolution

A. The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, CM/GC and CITY each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the work.

B. CM/GC and CITY shall first attempt to resolve disputes or disagreements at the field level through discussions between CM/GC's Representative and CITY'S Representative.

C. If a dispute or disagreement cannot be resolved through CM/GC's Representative and CITY's Representative, CM/GC's Principal-in-charge and the Public Services Director, or his/her designee, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than five (5) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Principal-in Charge and the Public Services Director, or his/her designee, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

D. In any unresolved dispute arising out of an interpretation of this Agreement or the duties required therein, the final determination at the administrative level will be made by the Contract Administrator.

7.2 Duty to Continue Performance

CM/GC shall continue to perform the work and CITY shall continue to satisfy its payment obligations to CM/GC, pending the final resolution of any dispute or disagreement between CM/GC and CITY.

7.3 Withholding Payment

The CITY, reserves the right to withhold funds from the CITY's progress payments up to the amount equal to the claims the CITY may have against the CM/GC, until such time as a settlement on those claims has been reached. CITY reserves the right to withhold payment from CM/GC for noncompliance with any provision of the Contract Documents.

7.3.1 Disputed Items

CITY may temporarily delete any disputed items contained in CM/GC's invoice, including items disputed due to lack of supporting documentation, and pay the remaining amount of the invoice. CITY shall promptly notify CM/GC of the dispute and request clarification and/or remedial action. CITY may withhold payment on all disputed items until the issues are resolved. After any dispute has been settled, CM/GC shall include the disputed item on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

7.3.2 Disputed Invoices

In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

ARTICLE 8-- REPRESENTATIVES OF THE PARTIES

8.1 City Representatives

A. CITY designates the individual listed below as the individual that has the authority and responsibility for avoiding and resolving disputes pursuant to Article 7: _____, City Engineer, 2549 Washington Blvd, Ogden, UT 84401

B. CITY designates the individual listed below as its CITY Representative who shall be the single point of contact for CM/GC, and who has the authority and responsibilities set forth herein:

C. CITY designates the individual below as the Contract Administrator who shall have the authority and responsibilities set forth herein:

8.2 CM/GC Representatives

A. CM/GC designates the individual listed below as its Principal-in-charge ("CM/GC's Principal-in-charge"), which individual has the authority and responsibility for avoiding and resolving disputes:

B. CM/GC designates the individual listed below as its CM/GC's Representative, which individual has the authority and responsibilities set forth herein:

ARTICLE 9-- SUSPENSION AND TERMINATION

The CITY has the right to terminate this Agreement or abandon any portion of the project for which services have not been performed by the CM/GC.

9.1 Termination for Convenience

A. CITY reserves the right to terminate this Agreement or any part hereof for its sole convenience with thirty (30) days written notice to CM/GC. In the event of such termination, CM/GC shall immediately stop all work hereunder, and shall immediately cause any of its suppliers and Subcontractors to cease such work. As compensation in full

for services performed to the date of such termination, the CM/GC shall receive a fee for the percentage of services actually completed. This fee shall be in the amount to be mutually agreed upon by the CM/GC and the CITY, based on the agreed Scope of Work. If there is no mutual agreement, the Contract Administrator shall determine the percentage of completion of each task detailed in the Scope of Work and the CM/GC's compensation shall be based upon such determination. The CITY shall make this final payment within sixty (60) days after the CM/GC has delivered the last of the partially completed items. CM/GC shall not be paid for any work done upon receipt of the notice of termination or for any costs incurred by CM/GC's suppliers or Subcontractors for which CM/GC could reasonably have avoided.

B. CM/GC shall be entitled to profit and overhead on completed work only, but shall not be entitled to anticipated profit or anticipated overhead.

C. If CITY terminates this Agreement pursuant to this Subsection and proceeds with the Project through its employees, agents or third parties, CITY'S rights to use the work product shall be as set forth in Section 9.2 hereof.

9.2. CITY'S Right to Perform and Terminate for Cause

A. CITY may also terminate this Agreement or any part hereof with seven (7) days prior written notice for cause in the event of any default by the CM/GC, or if the CM/GC fails to comply with any of the terms and conditions of this Agreement. Unsatisfactory performance notwithstanding a reasonable opportunity to cure as judged by the Contract Administrator and failure to provide CITY, upon request, with adequate assurances of future performance shall all be causes allowing CITY to terminate this Agreement for cause. In the event of termination for cause, CITY shall not be liable to CM/GC for any amount, and CM/GC shall be liable to CITY for any and all damages sustained by reason of the default, which gave rise to the termination. In the event CM/GC is in violation of any Federal, State, County or CITY law, regulation or ordinance, the CITY may terminate this Agreement immediately upon giving notice to the CM/GC.

B. Upon the occurrence of an event set forth in Subsection 9.2(A) above, CITY may provide written notice to CM/GC that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of CM/GC's receipt of such notice.

C. If CM/GC, within such seven (7) day period, fails to cure, or reasonably commence to cure, such problem, CITY may declare the Agreement terminated for default by providing written notice to CM/GC of such declaration and, immediately upon receiving such notice, the CM/GC shall discontinue advancing the work under this Agreement and proceed to close said operations, and the expenditure, if any, of costs resulting from such abandonment or termination.

D. Upon such termination or abandonment, the CM/GC shall deliver to the CITY all drawings, special provisions, field survey notes, reports, and estimates, entirely or partially completed, in any format, including but not limited to written or electronic

media, together with all unused materials supplied by the CITY. Use of incomplete data shall be the CITY's sole responsibility. If through any cause, the CM/GC shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the CM/GC shall violate any of the covenants, agreements, or stipulations of this Agreement, the CITY may withhold any payments to the CM/GC for the purpose of setoff until such time as the exact amount of damages due the CITY from the CM/GC is determined by a court of competent jurisdiction.

E. The CM/GC will appraise the work completed and submit an appraisal to the CITY for evaluation. The CITY will have the right to inspect the CM/GC's work or Deliverable to appraise the work completed.

F. Upon declaring the Agreement terminated pursuant to Paragraph C above, CITY may employ any person or persons to complete the work and provide all of the required services and other items.

G. The CM/GC will receive compensation in full for services satisfactorily performed to the date of such termination. The fee will be paid in accordance with Article 6 of this Agreement, and will be an amount mutually agreed upon by the CM/GC and the CITY. If there is no mutual agreement, the final determination will be made in accordance with Article 7. However, in no event will the fee exceed that set forth in Article 6 or as amended in accordance with Section 5.2.

H. If CITY'S cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, CM/GC shall be obligated to pay the difference to CITY. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by CITY in connection with the re-procurement and defense of claims arising from CM/GC's default.

I. If CITY improperly terminates the Agreement for cause; the termination for cause will be converted to a termination for convenience in accordance with the provisions of Subsection 9.1.

9.3 Funds Appropriation

If the CITY Council does not appropriate funds to continue this Agreement and pay for charges hereunder, the CITY may terminate this Agreement at the end of the current fiscal period. The CITY agrees to give written notice to the CM/GC at least thirty (30) days prior to the end of its current fiscal period and will pay the CM/GC for all approved charges incurred through the end of such period.

ARTICLE 10– INDEMNIFICATION

10.1 Indemnification

- A. Indemnification of OWNER: CM/GC shall indemnify, *defend*, and hold harmless OWNER and ENGINEER, *and their elected officials, officers, agents, employees and volunteers* from and against any and all claims, damages, losses and expenses, direct, indirect or consequential (including, but

not limited to, fees and charges of ENGINEERs, architects, attorneys and other professionals and court costs) arising out of or resulting from the negligent acts or omissions in performance of the work by CM/GC, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not the claim, damage, loss, etc. arising from the act or omission is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party.

- B. Indemnification Not Limited: In any claims against OWNER or ENGINEER or any of their *elected officials, officers, agents, employees or volunteers* by any employees of CM/GC, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 10.1A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CM/GC or any such subcontractor or other person or organization under worker's compensation acts, disability benefit acts or other employee benefit acts.
- C. Liability of ENGINEER, etc.: The obligations of CM/GC under Paragraph 10.1A shall not extend to the liability of ENGINEER, OWNER's consultants, agents or employees arising out of the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or specifications.
- D. CM/GC to Save OWNER Harmless: CM/GC shall assume the OWNER's defense, and save OWNER harmless from any claims directly or indirectly arising from CM/GC's use or alleged use of patented or trademarked materials, design, equipment, devices, product or processes on or ultimately successful. In the event of such claims:
 - 1. OWNER shall promptly notify CM/GC and CM/GC shall defend against such claims, in OWNER's name, but at CM/GC's expense;
 - 2. OWNER shall have the right to be represented by counsel, but such representations shall be at the OWNER's own expense; and
 - 3. at the request and expense of CM/GC, the OWNER shall actively cooperate and assist CM/GC to the fullest extent in the defense of any such proceedings.

In the event that CM/GC shall fail to defend against any such claims, the OWNER may, in addition to any other legal remedies which the OWNER might have, at OWNER's election, defend such suit and be reimbursed by CM/GC of all reasonable expenses (including attorney's fees) incurred by the OWNER in this connection, and CM/GC shall pay all damages and costs awarded or otherwise suffered by OWNER in any such claim against OWNER.

ARTICLE 11 – INSURANCE

11.1 Insurance

- A. **In General:** All policies of insurance provided shall be issued by insurance companies qualified to do business in the State of Utah and listed on the U.S. Treasury Department's current Department of Treasury Fiscal Services List 570, or having a general policy holder's rating of not less than "A-" in the most current available A. M. Best Co., Inc.'s, Best's Insurance Report.
- a. Each insurance policy required by the Agreement, excepting policies for Workers' Compensation and Professional Liability, shall include an endorsement providing that Ogden City, its elected and appointed officials, employees, agents and volunteers are to be named as additional insured as respect to operations and activities of, or on behalf of, the named insured as performed under Agreement with the City.
 - b. Insurance is to be placed with insurers acceptable to and approved by the CITY. CM/GC's insurer must be authorized to do business in Utah at the time the contract is executed and throughout the time period the contract is maintained, unless otherwise agreed to in writing by the CITY. Failure to maintain or renew coverage or to provide evidence of renewal will be treated by CITY as a material breach of contract.
 - c. The CITY shall be furnished with original certificated of insurance and endorsements effecting coverage required within, signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received by the CITY before signing the Agreement.
 - d. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its elected and appointed officials, employees, agents and volunteers; or CM/GC shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.
 - e. In addition to any other remedies CITY may have if CM/GC fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time limits required, CITY may, at its option:
 1. Obtain such insurance, deduct and retain the amount of premiums for such insurance from any sums due under the Agreement,
 2. Order CONTACTOR to stop work under this Agreement and/or withhold any payment(s) which become due to CONTACTOR until CM/GC demonstrates compliance with requirements,
 3. Terminate this Agreement
 4. Or other reasonable remedy
 - f. CM/GC shall include all subcontractors and insured under its policies or

shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

- g. Nothing contained herein shall be construed as limiting in any way the extent to which CM/GC may be held responsible for payments of damages to persons or property resulting from CM/GC's or its subcontractor's performance of the work covered under this Agreement.
- h. If requested, CM/GC shall also furnish copies of the insurance policies secured for the Work. The CITY reserves the right to require complete, certified copies of all required insurance policies at any time. CM/GC shall procure and maintain for the duration of the contact, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the CM/GC, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in CM/GC's Bid. The amount of the insurance shall not be less than the following:
 1. **Worker's Compensation Insurance:** In addition to other required insurance, the CM/GC shall obtain and maintain during the life of the Construction Contract, worker's compensation insurance as required by Laws and Regulations for all of CM/GC's employees employed at the site of the Work, and in case any Work is subcontracted, the CM/GC shall require the subcontractor similarly to provide worker's compensation insurance for all of the latter's employees, unless such employees are covered by protection as required by Laws and Regulations. Worker's compensation limits as required by the Labor Code of the State of Utah and employers' liability limits are \$1,000,000 per accident.
 2. **Business Automobile Liability:** \$1,000,000.00 combined single limit per accident for bodily injury and property damage for owned, non-owned and hired vehicles.
 3. **Commercial General Liability Insurance:** CM/GC shall secure and maintain during the life of the Construction Contract and at all times thereafter when CM/GC may be correcting, removing or replacing Defective Work, a comprehensive commercial general liability insurance policy. The policy shall protect the CM/GC, the OWNER, the ENGINEER, and any subcontractor performing work covered by the Construction Contract from claims for damages for personal injury, including accidental death, and from claims for property damage which may arise from CM/GC's operations under this Construction Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Unless specified otherwise in the Supplementary Conditions, the minimum amounts of such insurance for

combined single limit per occurrence shall be \$1,000,000.00 for bodily injury, personal injury and property damage and \$4,000,000 general aggregate.

- i. The policies are to contain, or be endorsed to contain, the following provisions:
 - a. The CM/GC's insurance coverage shall be primary insurance and any insurance or self-insurance maintained by the City, its officers, official, employees or volunteers shall be excess of the CM/GC's insurance and shall not contribute with insurance provided by this policy. Each policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
 - b. Policy to include coverage for premises and operations. Contractual liability, personal injury liability, products/completed operations liability, broad-form property damage (if applicable) and independent CM/GC's liability (if applicable) written on an occurrence form.
 - c. Any deductibles or self-insured retention must be declared to and approved by the City. Insurance is to be place with insurers acceptable to and approved by the City. The City shall be furnished with certificates of insurance and with original endorsements affecting coverage required within, signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
 - d. The CM/GC shall include all subcontractors as insured under its policies or shall furnish separated certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.
 - e. **Automotive Public Liability Insurance:** Whenever CM/GC or any subcontractor shall use and operate automobiles, trucks or other vehicles on public streets and highways in complying with the terms and conditions of the Construction Contract, CM/GC or each subcontractor shall carry automobile public liability insurance with limits not less than \$1,000,000.00 for any on accident or loss.
 - f. **Insurance Non-cancelable for 30 Days:** Each policy of insurance provided in the Contract Documents shall be absolutely non-cancelable for a period of not less than 30 days after notice and shall contain the following provisions or one substantially the same as the following: *"This policy shall not be*

subject to cancellation, change, or reduction of coverage by the other party or parties hereto, unless notice, as defined herein is sent to the OWNER, with a copy to the ENGINEER and the OWNER's attorney."

- g. **Builder's Risk:** CM/GC agrees to and assumes the risk of loss for any damage or loss to the Work and Project by any means or occurrence until Substantial Completion. If this contract includes construction of an above ground structure, CM/GC further agrees to obtain builder's risk or course of construction insurance in the total amount of the Contract Price.
- h. **Ogden City Corporation Additional Insured:** Each policy of insurance provided in the Contract Documents shall also protect the government of O.C.C. during the life of the Construction Contract and at all times thereafter from public liability and property damage claims indicated in paragraph 5.2D, and automotive public liability damage claims indicated in paragraph 5.2E above.

ARTICLE 12 – NOTICE

Unless otherwise provided herein, whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given or received either (a) on the date of service if delivered in person to the individual intended to receive such notice or (b) three (3) days after the date of the postmark of deposit by first class United States mail, registered or certified mail, postage prepaid, properly addressed to the address indicated below. Notice by facsimile or electronic (e-mail) shall not be considered adequate notice as required herein.

To CITY:	[REDACTED]
To CM/GC	[REDACTED]
To Project Designer:	[REDACTED]
Copy to City Representative:	[REDACTED]

ARTICLE 13 -- CONFLICT OF INTEREST

A. To evaluate and avoid potential conflicts of interest, the CM/GC shall provide written notice to the CITY, as set forth in this Article, of any work or services performed by the CM/GC for third parties that may involve or be associated with any real property or personal property owned or leased by the CITY. Such notice shall be given seven (7) business days prior to commencement of the Project by the CM/GC for a third party, or

seven (7) business days prior to an adverse action as defined below. Written notice and disclosure shall be sent to the Contract Administrator identified in Article 12.

B. Actions that are considered to be adverse to the CITY under this Contract include but are not limited to:

1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the CITY;
2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the CITY; and
3. Using data to produce income for the CM/GC or its employees independently of performing the services under this Contract, without the prior written consent of the CITY.

C. The CM/GC represents that except for those persons, entities and projects identified to the CITY, the services to be performed by the CM/GC under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the CITY.

D. The CM/GC's failure to provide a written notice and disclosure of the information as set forth in this Article on Conflicts of Interest shall constitute a material breach of this Contract.

ARTICLE 14 -- CONTRACTOR'S LICENSE

Prior to award of the Agreement, the CM/GC must provide to the CITY's Finance Department its Contractor's License Classification and number and its Federal Tax I.D. number and Federal W-9 Form.

ARTICLE 15 -- SUCCESSORS AND ASSIGNS

This Agreement shall extend to and be binding upon the CM/GC, its successors and assigns, including any individual, company, partnership, or other entity with or into which the CM/GC shall merge, consolidate, or be liquidated, or any person, corporation, partnership, or other entity to which the CM/GC shall sell its assets. No right covered by this agreement shall be assigned in whole or in part without the prior written consent of the CITY. In no event will any contractual relation be created or be construed to be created as between any third party and the CITY.

ARTICLE 16 -- FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

ARTICLE 17 -- NON-WAIVER PROVISION

The failure of either party to enforce any of the provisions of this Agreement or to require performance by the other party of any of the provisions hereof will not be construed to be a waiver of such provisions, nor will it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

ARTICLE 18 -- JURISDICTION

This Agreement will be deemed to be made under and will be construed in accordance with and governed by the laws of the State of Utah, without regard to the conflicts or choice of law provisions thereof. An action to enforce any provision of this Agreement or to obtain any remedy with respect hereto will be brought in the Superior Court, Weber County, Utah, and for this purpose, each party hereby expressly and irrevocably consents to the jurisdiction and venue of such Court.

ARTICLE 19 -- SURVIVAL

All warranties, representations, and indemnifications by the CM/GC will survive the completion or termination of this Agreement.

ARTICLE 20 -- MODIFICATION

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only after approval of all parties signing the original Agreement.

ARTICLE 21 -- SEVERABILITY

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted.

ARTICLE 22 -- INTEGRATION

This Agreement constitutes the entire understanding of the parties and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

ARTICLE 23 -- TIME IS OF THE ESSENCE

Time of each of the terms, covenants, and conditions of this Agreement is hereby expressly made of the essence.

ARTICLE 24 -- THIRD PARTY BENEFICIARY

All duties and responsibilities undertaken pursuant to this Agreement are the sole and exclusive benefit of the CITY and the CM/GC and not for the benefit of any other party.

ARTICLE 25 -- COOPERATION AND FURTHER DOCUMENTATION

The CM/GC agrees to provide the CITY such other duly executed documents as may be reasonably requested by the CITY to implement the intent of this Agreement.

ARTICLE 26 -- CONFLICT IN LANGUAGE

All work or Deliverables performed will conform to all applicable CITY codes, ordinances and requirements as outlined in this Agreement. If there is a conflict in interpretation between provisions in this Agreement and any Exhibits, the provisions in this Agreement will prevail.

ARTICLE 27 -- ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, or on account of any breach of default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 28 -- HEADINGS

The headings used in this Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

This Contract will be in full force and effect only when it has been approved and executed by the duly authorized City officials.

ARTICLE 29 -- EXECUTION

29.1 EFFECTIVE DATE

A. Owner and Contractor executed this Agreement and declared it in effect as of the _____ day of _____, 20__.

In Witness Whereof, we have hereunto set our hands and seal at Ogden City, Utah, on the day and year first above written:

OGDEN CITY CORPORATION, Owner

By _____
«Chief_Administrative_Officer_for_Ogden_C»
Chief Administrative Officer

Attest:

Ogden City Recorder, «Ogden_City_Recorder»

Contractor _____

By _____

Printed Name _____

Title _____

Attest: If Corporation _____

**Witness: if individual or
partnership**