

**GENERAL CONDITIONS  
FIXED-PRICE CONSTRUCTION CONTRACT**

1.0 DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

1.1 “County” shall mean Salt Lake County, a body corporate and politic of the State of Utah.

1.2 “Contractor” shall mean the individual, firm, partnership, corporation, or association contracting to perform the work outlined herein.

1.3 “Subcontractor” shall mean those having a direct contract with Contractor for the performance of work called for hereunder, including one who furnishes material worked to a special design according to the plans and/or specifications of this work but shall not include one who merely furnishes material not so worked. A subcontractor shall not have any contractual relationship with County.

1.4 “Contract” shall mean all of the following documents including, but not limited to, Agreement, General Conditions, Performance Bond, Payment Bond, Specifications including Addenda, Plans and Drawings, and Change Orders.

1.5 “Site” shall mean the property as described in the Contract upon which the project shall be constructed.

1.6 “Project” shall mean the complete construction and related activities required to accomplish the intent and meaning of the Contract.

1.7 “Parties” shall mean County and Contractor.

2.0 COUNTY REPRESENTATIVE

County will designate, and make known to the Contractor, a representative with respect to the work to be performed under the agreement and shall have complete authority to transmit instruction, receive information, interpret and define County policy and decisions, with respect to materials, equipment, elements and systems pertinent to the work covered by this agreement.

3.0 SITE INVESTIGATIONS, REPRESENTATIONS, AND PHOTOGRAPHIC SURVEY

3.1 Contractor acknowledges that Contractor is satisfied as to the nature and location of the work, the general and local conditions particularly those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, road, uncertainties of weather, the conformation and condition of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work and all other matters which can in any way affect the work or the cost thereof under this contract. Any failure by Contractor to become acquainted with all the available information concerning these conditions shall not relieve Contractor from responsibility for performing the work.

3.2 County assumes no responsibility for any understanding or representations made by any of its officers or agents during or prior to the execution of this contract, unless such understandings and representations by County are expressly stated in the contract. Representations made, but not so expressly stated and for which liability is not expressly assumed by County in the contract, shall be deemed to be for the information of Contractor and County shall not be liable or responsible therefore.

3.3 Contractor shall give all notices and comply with all federal, state, and local laws, ordinances and regulations in any manner effecting the conduct of the work, and all such orders and decrees as exist or may be enacted by bodies or tribunals having any jurisdiction or authority over the work, and shall indemnify and save harmless County against any claim or liability arising from or based on, the violation of any such law, ordinance, regulation, order, or decree, whether by Contractor or Contractor's employees.

3.4 Prior to beginning work, photograph existing site, walks, curbs, roadways, etc. in area of project. Purpose of these photographs is to establish existing conditions prior to construction. Photographs shall be by a photographer experienced in construction photography. Photographs shall show existing conditions, details and close-ups at each level.

3.5 One copy of all photographs shall be labeled and correlated to plan views on contract drawings. Deliver to County prior to commencing work under the contract. Format shall be as follows: digital color prints clearly marked to identify exact location and view of each print, and date photo was taken. Failure to comply with this requirement may result in Contractor being responsible for all damage to surface or structure in the work area, whether new or existing.

#### 4.0 INTERPRETATION OF SPECIFICATION AND DRAWINGS

4.1 The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all.

4.2 In the event of an inconsistency between provisions of the Contract Documents, the inconsistency shall be resolved by giving precedence in the following order: (1)Change Orders, (2)Construction Agreement, (3) General Conditions, (4) Specifications including attached addenda, and (5) Drawings.

4.3 Within the working drawings, the larger scale takes precedence over smaller; figured dimensions over scaled; and noted materials over graphic indications.

4.4 Within the working drawings, the architectural drawings shall take precedence over the other drawings and shall govern in all cases where discrepancies occur.

4.5 For convenience or reference and to facilitate letting of subcontracts, the specifications are separated into respective divisions and sections. The forming of these separations shall not operate to make County or any of its representatives any arbiter to establish subcontract limits between Contractor and Subcontractors or suppliers.

4.6 The intention of the Documents is to include all labor and materials, equipment and transportation necessary for the proper execution of the work. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

4.7 In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to County by Contractor or such discrepancy shall be deemed to have been waived. County shall promptly make a determination in writing. Any adjustment by Contractor without this determination shall be at their own risk and expense.

4.8 County shall furnish from time to time such detail drawings and additional information as it may consider necessary for clarification of contract documents.

4.9 Omissions from the drawings or specifications, or the inaccurate description of details of work which are manifestly necessary to carry out the intent of the drawings or specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or inaccurately described details or work, but they shall be performed as if duly and clearly set forth and described in the drawings and specifications.

## 5.0 MATERIALS AND WORKMANSHIP

5.1 Unless otherwise specifically provided for in the specifications, all equipment, materials and articles incorporated in the work covered by this contract are to be new, of the most suitable grade of their respective kinds for the purpose, free from defects, and all workmanship shall be first class. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, County shall decide the question of equality. The Contractor shall furnish to County for approval the name of the manufacturer of machinery, mechanical and other equipment which Contractor contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications or when called for by County, Contractor shall furnish to County for approval full information concerning the materials or articles which Contractor contemplates incorporating in the work.

5.2 Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials and articles installed or used without such approval shall be at the risk of subsequent rejections by County.

5.3 Specific reference in the specifications or drawings to any article, device, product, material, fixture, form or type of construction, etc. by name, make or catalogue number shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. Contractor may at Contractor's option use any articles, device, product, material, fixture, form or type of construction, etc., but only after approval by County of Contractor use. When three or more names are mentioned in the specifications and Contractor desires to use a product of another manufacturer Contractor shall state the name of the substituted manufacturer or supplier in a request for approval and shall also state the addition or deduction from the contract amount if the product submitted is accepted.

## 6.0 DELIVERY OF MATERIALS

Unless otherwise provided in this contract, all materials to be furnished by Contractor shall be delivered to the Site.

## 7.0 OTHER CONTRACTS

County may undertake or award other contracts for additional work upon the project, and Contractor shall fully cooperate with such other Contractors and County employees and carefully fit Contractor's own work to such additional work as may be directed by County. Contractor shall not commit or permit any act which shall interfere with the performance of work by any other Contractor or by County employees.

## 8.0 ROYALTIES AND PATENTS

For any design, device, material or process covered by letters patent or copyright, or for which letters patent or copyright have been applied, as used by Contractor, Contractor shall provide for such use by legal agreement with County of the patent or proposed patent or copyrights or a duly authorized licensee of such County, and shall save harmless County from any and all loss or expense or account thereof including its use by County.

## 9.0 LABOR REGULATIONS AND REQUIREMENTS

9.1 Contractor shall comply with provisions set forth in the Labor Laws of the State of Utah, Title 34, Utah Code Annotated and comply with current existing federal and state laws applicable to contracts on public construction.

9.2 County may in writing require Contractor to remove from the work such employee as County deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by County to be contrary to the public interest.

## 10.0 EXCUSABLE DELAY

10.1 **General.** If Contractor is delayed at any time in the progress of the Work on the critical path schedule by an act or neglect of County or other causes beyond the Contractor's control or by other causes which County determines may justify delay, then the Contract Time shall be extended by County Change Order. Contractor shall immediately take all steps reasonably possible to mitigate the adverse impact of such delay. Notwithstanding the above and except as set forth in Subsection 10.2, to the extent any of the causes for delay were caused by Contractor, reasonably foreseeable by Contractor or avoidable by Contractor, then to such extent the delay shall not be cause for extension of Contract Time. For purposes of this Subsection, Contractors shall include all Subcontractors and others under the responsibility of Contractor. The determination of a total number of days extension, if any, shall be based upon the current construction schedule in effect at the inception of the change and/or delay and upon all data relevant to the extension as it exists in the project record. Once approved, such data shall be incorporated in the next monthly update of the schedule. Contractor acknowledges and agrees that delays in work items which, according to the schedule analysis, do not affect milestones dates or the Contract completion dates shown on the schedule at the time of the delay, shall not be the basis for a contract extension.

10.2 **Weather-Related Excusable Delay.** The contract price shall not be increased and the completion time shall not be extended for normal bad weather or any weather that is reasonably foreseeable at the time of entering into the contract. The time for completion as stated in the contract documents includes due allowance for calendar days on which Work cannot be performed out of doors. Contractor acknowledges that it may lose days due to weather conditions. County Project Manager must be notified via email by Contractor within 24-hours of the notification for the weather delay. Acknowledgment of the notification shall be provided by County Project Manager. Contract time may be extended at no cost to County if all of the following criteria are met as established by Contractor:

10.2.1 The weather prevented Work that is on the critical path for the project based upon a critical path schedule submitted to County and to the extent accepted by the County;

10.2.2 There are no concurrent delays (see Subsection 10.3 for concurrent delay) attributed to the Contractor;

10.2.3 The Contractor took all reasonable steps to alleviate the impact of the weather and took reasonable attempts to prevent the delay and despite such reasonable actions of the Contractor, the weather impacted the critical path as described above; and one of the following occurred:

10.2.3.1 The weather was catastrophic, such as tornado, severe blizzard, severe windstorm, severe hail storm (severe weather is defined as dangerous

meteorological phenomena with the potential to cause damage, serious social disruption, or loss of human life); or

10.2.3.2 Based on the full history of information published from the closest station as indicated from the Western Region Climate Center (Desert Research Institute, 2215 Raggio Parkway, Reno, Nevada 89512, and as may be described on the website at <http://www.wrcc.dri.edu/summary/>), one or more of the following occurred: (a) For any day between November 1 and March 31, the minimum temperature fell below the average minimum temperature plus the extreme low temperature recorded for the month divided by 2; (b) For any day between November 1 and March 31, the maximum temperature fell below the monthly average for the minimum temperature; (c) The daily precipitation exceeded 75% of the historical one day maximum for the month; or (d) The snow fall for the month exceeded 175% of the historical average snow fall for the month.

### 10.3 **Compensable Delay, Suspension, or Interruption.**

10.3.1 **Basic Conditions.** In addition to the other requirements of the Contract Documents for excusable delay, a compensable delay, suspension, or interruption of the Work occurs only when the following are met: (1) The delay is wholly unanticipated by the parties at the time of execution of the Contractor's Agreement or is caused by the breach of a fundamental obligation of the Contract Documents attributable to County; AND (2) Contractor shall provide a written notice to County within seven (7) calendar days that Contractor knows or should have known of the condition giving rise to the purported compensable delay, disruption, suspension or interruption, and said continuation affects the Contract Time as indicated by the last submitted and reasonable critical path schedule.

10.3.2 **Compensable Delay Formula.** If there is a compensable delay, the Contractor's total entitlement for the compensable delay damages is the computed result of the following formula: Original Contract Amount divided by the Original Contract Time (in calendar days); the result of which is then multiplied by 0.05 and the result of which is multiplied by the number of calendar days of compensable days allowed under these General Conditions that are beyond the Contract Time. Notwithstanding any other provisions of these General Condition or the Contract Documents, to the extent the Contractor is entitled to receive a markup under Section 18.3, this Section 10.3.2 shall be inapplicable, and the markup provided under Section 18.3 shall be deemed to include all the compensable delay damages provided by this Section 10.3.2.

10.3.3 **Period of Compensable Delay, Suspension, or Interruption.** The length and extent of compensable delay shall be determined by ascertaining the number of additional days to the Contract Time that are needed to perform the Work. This determination shall be made in accordance with the Contract documents and after County's receipt of the written notice under Subsection 10.3.1.

10.3.4 **Concurrent Delay.** Notwithstanding any other provisions of these General Conditions, to the extent a non-compensable delay occurs at the same time as a compensable delay, County shall not be responsible for any compensation for the non-compensable delay period. County shall only compensate Contractor for the time period applicable to the compensable delay.

10.3.5 **Time Extension Request.** Time extension requests with support documentation shall be requested within 21 days after Contractor knew or should have known about the delay and shall be supported by the project critical path schedule analysis.

11.0 POSSESSION PRIOR TO COMPLETION

County shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the contract. If such prior possession or use by County delays the progress of the work or causes additional expense to Contractor, an equitable adjustment in the contract price and/or the time of completion shall be made and the contract shall be modified in writing accordingly.

12.0 COUNTY-FURNISHED PROPERTY

County shall deliver to Contractor for use in connection with and under the terms of the contract only such County property as may be specified in the schedule or specifications, together with such related data and information as may reasonably be required for the intended use of such property. The delivery or performance dates for supplies or services to be furnished by Contractor under this contract are based upon the expectation that County-furnished property suitable for use shall be delivered to Contractor to meet such delivery or performance dates. In the event that the County-furnished property is not delivered to Contractor by such time or times, County shall, upon timely written request made by Contractor make a determination of the delay occasioned Contractor and shall equitably adjust the contract price, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay. In the event that the County-furnished property is received by Contractor in a condition not suitable for the intended use, Contractor shall, upon request thereof, notify County of such fact and, as directed by County either (1) return such property at the County's expense or otherwise dispose of the property, or (2) effect repairs or modifications. Upon completion of (1) or (2) above, County shall, upon written request of Contractor, equitably adjust the contract price, or delivery or performance dates, or all of them, and any other contractual provisions affected by the return or disposition, or the repair or modification. The foregoing provisions for adjustment are exclusive and County shall not be liable to suit for breach of contract by reason of any delays in delivery of County-furnished property or delivery of such property in a condition not suitable for its intended use.

13.0 SCHEDULE REPORT

Contractor shall within five (5) working days after receiving the Notice To Proceed, prepare and submit to County for approval, a critical path schedule to include all work required by the contract. The schedule shall be prepared in the form prescribed by County and of suitable scale to indicate appropriately the percentage of the actual progress at each weekly meeting or at such intervals as directed by County, and shall immediately deliver to County six (6) copies thereof. County reserves the right to accept or reject the critical path schedule, which right shall be exercised in a reasonable manner. If Contractor fails to submit its critical path schedule as required herein, they may be subject to a work stoppage by County until such schedule is provided. County shall not be liable for a delay claim as a result of such a stoppage.

14.0 PROSECUTION OF WORK

14.1 Contractor shall keep on the site a copy of the drawings and specifications and shall at all times, give County access thereto.

14.2 Contractor shall furnish sufficient forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, weekend, and holiday work, as

may be necessary to ensure the prosecution of the work in accordance with the approved progress schedule. If, in the opinion of County, Contractor falls behind the progress schedule, Contractor shall take such steps as may be necessary to improve Contractor's progress, and County may require Contractor to increase the number of shifts, and/or overtime operation days of work, and/or the amount of construction plant, all without additional cost to County.

14.3 Failure of Contractor to prosecute the work pursuant to Section 14.0 shall be grounds for "Termination for Default" and County may terminate Contractor rights to proceed with the work, or any separable part, thereof, in accordance with Section 29.0.

#### 15.0 CHANGED CONDITIONS

Contractor shall promptly, and before such conditions are disturbed, notify County in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. County shall promptly investigate the conditions, and if they find that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim for adjustment hereunder shall not be allowed unless Contractor has given notice as required above.

#### 16.0 NOTICE OF LABOR DISPUTES

Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the time of performance of this contract, Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to County.

#### 17.0 CERTIFICATION

Contractor shall furnish written certification in the form required by County, that the work was completed in compliance with the plans and specifications.

#### 18.0 CHANGES IN THE WORK

18.1 **Minor Changes.** County or the Architect shall issue supplemental instructions authorizing minor changes in the work which the parties agree do not involve adjustment to the Contract Sum or Contract Time.

18.2 **Types of Changes in the Work.** Changes in the work that require an adjustment to the Contract Sum or Contract Time shall be initiated in one of the following manners:

18.2.1 **County Initiated Changes.** When County requests a change to the work, County shall direct the Architect to issue a numbered Proposal Request (PR) to Contractor. It shall include a detailed description of proposed changes in the work and may include supplemental or revised drawings and specifications.

18.2.1.1 A request issued by County may be either a directive to perform the work described therein (this request shall only be issued if in its sole discretion deems the work thereof to be required by an exigency situation or otherwise not suitable to the delay inherent in requesting Contractor's response) or, the request by County may be designated as one for information only. In such a case, Contractor should not consider a request as instructions either to stop work in progress or to execute the proposed change. However, Contractor should inform County of any impact to work or schedule.

18.2.1.2 Contractor shall respond to the latter type of request with a written, itemized proposal within 14 calendar days of receipt a Proposal Request.

18.2.2 **Contractor Initiated Changes.** When latent or unforeseen conditions require modifications to the contract or Contractor initiates changes through a value engineering proposal, Contractor must propose said changes by submitting a request to County. Contractor shall:

18.2.2.1 Include a statement outlining the reason for the change and the effect of the change on the Work.

18.2.2.2 Provide a complete description of the proposed change and indicate the effect of the proposed change on the Contract Sum and Contract Time.

18.2.2.3 Provide all information about the change as outlined below (Subsection 18.3) for “Contractor Proposal.”

18.2.2.4 Notify County of changes requiring immediate action to prevent injury or loss of property. Contractor shall complete such changes as soon as reasonably possible and as appropriate under the circumstances.

18.3 **Contractor Proposal-required elements.** Contractor shall submit a proposal of changes and costs to County and Architect for review. The Proposal shall completely itemize all quantities of materials, unit costs, labor estimates, hourly rates, delivery charges, taxes, and markup factors in the overall costs. Costs for the purpose of the changes shall be limited to the following:

18.3.1 All site direct and indirect costs of labor, including workers compensation insurance, social security and other federal and state payroll based taxes, and payroll based fringe benefits paid by Contractor so long as they are reasonable and no higher than those charged to other clients. Labor rates shall not exceed those listed at Journeyman schedules as established for this region by R.S. Means;

18.3.2 Costs of materials, on-site temporary facilities, supplies, and equipment (except hand tools) required for or incorporated into the work. Materials costs shall not exceed those listed at established market levels;

18.3.3 Rental costs of machinery, equipment, tools (except hand tools), and on-site temporary facilities, whether rented from Contractor or others;

18.3.4 Costs of permits and other fees, sales, use or similar taxes related to the Work;

18.3.5 Additional costs of field supervision and field office personnel directly attributed to the change;

18.3.6 Overhead and profit by the following formula which is not a penalty but a reasonable calculation agreed upon at the time of execution of Contractor’s Agreement, and provided by formula herein due to the fact that the actual amount due for said overhead and profit cannot easily be ascertained at the time of such execution. The markups in Subsections 18.3.6.1 and 18.3.6.2 are to cover Contractor’s additional payment and performance bond premiums, insurance premiums not specified under Subsection 18.3.1, home office and on-site overhead and profit. Overhead and profit includes, but is not limited to, Contractor’s Project Manager and Cost Estimator. Each request for pricing shall stand on its own and not be combined with other requests for pricing in determining the allowed markup described below. A particular request for pricing shall include all items reasonably related together and determinable at the time of the request. If several unrelated requests for pricing are grouped together in a



single County Change Order, each request for pricing shall be considered separately for purposes of calculating the markup under the following formula:

18.3.6.1 A markup in 15% shall be applied to the cost of each individual change up to and including \$20,000.00 in cost, but in no case shall the markup be less than \$150;

18.3.6.2 A markup of 10% shall be applied to the portion of the cost of each individual change in excess of \$20,000.00;

18.3.6.3 Subcontractors at any tier shall be entitled to markup their costs related to a change with the same percentages as specified in Subsections 18.3.6.1 and 18.3.6.2, except that the minimum markup shall be \$50 for any individual change.

18.3.7 Contractor shall notify County Project Manager in writing if it determines that a proposed change shall affect the contract duration. In the notice, Contractor shall identify how much time it needs to complete the work, and explain the reasons why the proposed change shall extend the contract duration. If Contractor fails to submit this notice to County Project Manager, County shall not grant any additional time to complete the work.

18.3.8 **Changes in Contract Time.** The critical path schedule as the term is used herein shall be based on the current version of Contractor's schedule for the project and accepted by County just prior to the commencement of the modification, asserted delay, suspension or interruption. Contractor may request a Change Order for an extension of time, which shall be accompanied by a critical path impact analysis reflecting the added or changed work including an analysis of the impact on unchanged activities.

18.4 **Change Authorization Proposals.** When it has been determined that a change to the Contract is necessary, but exact terms and conditions and/or plans and specifications are impossible to ascertain due to time constraints, County may issue a Change Authorization.

18.4.1 County shall issue a Proposal Request to Contractor. This request shall include a detailed description of proposed changes in the work.

18.4.2 Contractor shall respond to the Proposal similar to that outlined above, but rather than a fixed price, the proposal may include any of the following: Estimated price, unit costs, equipment costs, hourly rates or a not to exceed amount.

18.4.3 After review of the Proposal, County may issue a Change Authorization which shall authorize Contractor to begin work on the proposed changes. This shall allow full compensation of properly documented work performed by Contractor.

18.4.4 At completion of the changed work or at times allowed by County, costs shall be totaled, documented, reviewed and executed as a Change Order.

18.5 **Execution of Change Orders.** No application for payment on a change order item may be made until the Change Order has been fully executed by County. Any work performed prior to the issuance of a Change Authorization or Change Order signed by an authorized agent of County is at Contractor's risk.

## 19.0 PAYMENTS

19.1 County shall make monthly progress payments to Contractor in an amount of money equal to ninety-five (95) percent of incurred costs for labor expended and materials, including overhead on such labor and materials supplied to the job site during the month next proceeding. However, in no event shall the cumulative total of progress payments exceed County's estimate of the percentage of work completed. Said payments shall be made upon submission of a progress payment report in the form prescribed by County. Contractor shall keep

and maintain books and records available to audit by County or its representatives at all reasonable hours.

19.2 In making any progress payments as provided in Subsection 19.1, County may retain five (5) percent of the payment amount until final completion and acceptance of all work covered by the contract pursuant to Utah Code Ann. § 13-8-5. It is expressly agreed by Contractor that all funds withheld or retained from payment by County because of faulty work, materials, or equipment or for contract items not provided or installed by Contractor in accordance with the plans, specifications, drawings, and other contract documents or any amount in dispute shall not be considered as retained amounts under Utah Code Ann. § 13-8-5 and shall not be subject to the provisions of this Subsection 19.2. It is also agreed that this Subsection shall not be construed so as to prevent the County from waiving the requirement for retainer under the contract or to prevent Contractor from waiving the requirement that any retained amounts be placed in an interest-bearing account. Any waiver by Contractor, however, must be in writing and furnished to County prior to being given the notice to proceed under the contract.

19.3 All rights, title and interest in and to material and work covered by partial payments made shall thereupon become the sole property of County, but this provision shall not be construed as relieving Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of County to require the fulfillment of all of the terms of the contract.

19.4 Upon completion and acceptance of all work required hereunder, the amount due Contractor under this contract shall be paid upon the presentation of a properly executed final payment application and a Claim Release and Waiver, releasing County from all Claims arising under or by virtue of this contract. If Contractor's claim to amounts payable under the contract has been assigned, a release may also be required of the assignee at the option of County.

## 20.0 ACCEPTANCE FOR PAYMENT

20.1 Upon substantial completion of all work under this contract, the work shall be given a punch-list walk through by County. When all of the work including punch-list items is found to be satisfactorily completed in accordance with the contract, and the entire work is accepted by County, final payment shall be made to Contractor.

20.2 For purposes of this clause, final acceptance refers only to final acceptance which shall allow Contractor to be paid and does not release Contractor of warranty requirements.

## 21.0 INSPECTION

21.1 When special inspections or testing are required, County shall employ an independent, qualified testing agency for all special inspections and testing required. Contractor shall be responsible for coordinating and scheduling all inspections with a minimum advance notice of 24 hours. The testing agency shall be responsible for disseminating all required reports to the proper parties.

21.2 Contractor shall be responsible for setting up a meeting which Contractor, County, and the testing agency shall attend before construction begins. The purpose of this meeting shall be to establish the testing requirements and the frequency of testing including, but not limited to, the testing and inspection specified in the Contract Documents.

21.3 Except as otherwise provided herein all material and workmanship, if not otherwise designated by the specification, shall be subject to inspection, examination, and test by County at any and all times during manufacture and/or construction at any and all places where such

manufacture and/or construction are carried on. County shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and Contractor shall promptly segregate and remove the rejected material from the premises. If Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship County may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to Contractor, or may terminate the right of Contractor to proceed as provided in Sections 29.0 or 30.0.

21.4 Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and tests that may be required by County shall be performed in such manner as not unnecessarily to delay the work. Contractor shall be charged with cost of inspection when material and workmanship are not ready at the time inspection is requested by Contractor. All costs of re-testing for previously failed tests shall be paid by Contractor.

21.5 Should it be considered necessary or advisable by County at any time before the final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, Contractor shall, upon request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of Contractor or Contractor's subcontractors, Contractor shall pay all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 10%, shall be allowed Contractor and Contractor shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time due to the additional work involved.

## 22.0 TESTING OF ASSEMBLY AND FABRICATED SYSTEMS

Tests or trials to determine effectiveness of performance of completed assembly or fabricated system as may be required by the plans and specifications shall be made by Contractor, without cost to County.

## 23.0 WARRANTY

23.1 Contractor expressly warrants the workmanship, materials and manner of construction provided for and contemplated by this contract and the plans, profiles and specifications accompanying and forming part of the same and agrees that if the improvement contemplated therein does not remain in good condition for a period of **one year** from the date of final acceptance by County of the entire property, ordinary wear and tear excepted, because of defects in the workmanship, materials or manner of construction, then and in that event Contractor agrees that any and all repairs necessary to maintain said improvement and each and every part thereof in such good condition shall be made by said Contractor without additional charge or cost to the property owners or to County.

23.2 During the warranty period, Contractor shall make reasonable efforts to correct deficient work. Unless the specifications call for a shorter time, when the deficiency involves safety of the building occupants or patrons; the loss of or damage to property; or renders the building unusable for its intended purpose; Contractor shall respond and begin to correct the work no later than 24 hours after having received notice.

23.3 In the event Contractor does not respond as indicated herein, County may elect to complete the work and contact Contractor surety for payment of completed work. Failure to respond to warranty work may be grounds to deny future work for Contractor.

#### 24.0 INDEMNIFICATION OF COUNTY; PROTECTION OF PROPERTY

24.1 To the fullest extent allowable by law, Contractor agrees to indemnify, the County, its officers, agents, and employees against any and all actual or threatened claims, losses, damages, injuries, and liabilities of, to, or by third Parties, including Contractor, its subcontractors, or the employees of either, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, Contractor's breach of this Agreement or any acts or omissions of or by Contractor, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Agreement.

24.2 County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904. The Parties agree that County shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

24.3 Contractor shall not enter upon private property for any purpose without obtaining permission, and Contractor shall be responsible for the preservation of all public property, trees, monuments, etc. along and adjacent to the street and/or right-of-way, and shall use every precaution necessary to prevent damage or injury thereto. Contractor shall use suitable precautions to prevent damage to the pipes, conduits, and other underground structures including public utilities, and shall protect carefully from disturbance or damage all monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed. Contractor shall indemnify and save harmless County from and against all losses and all claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description brought or recovered against County by reason of any omission or act of Contractor, Contractor's agents or employees in the execution of the work or in the guarding of it. Contractor shall obtain and shall maintain and pay the premiums of such insurance in such amount and with such provisions as shall protect County from contingent liability under this contract and a copy of such insurance policy or policies shall be available to County upon request with County listed as an additional insured.

24.4 Care shall be taken by Contractor in felling trees authorized for removal to avoid any unnecessary damage to vegetation that is to remain in place. Any limbs or branches or trees broken during such operation shall be trimmed with a clean cut and painted with an approved tree-pruning compound if required by County. Contractor shall be liable for or may be required to replace or restore at Contractor's own expense all vegetation not protected and preserved as required herein.

24.5 Contractor shall provide and maintain all necessary watchmen, barricades, red lights and warning signs and take all necessary precautions for the protection and safety of the public. Contractor shall continuously maintain adequate protection of all work from damage, and shall take all reasonable precautions to protect County's property from injury or loss arising in

connection with this contract. Contractor shall make good any damage, injury or loss to Contractor's work and to the property of County resulting from lack of reasonable protective precautions, except such as may be due to errors in the contract documents, or caused by agents or employees of the County. Contractor shall adequately protect adjacent private and public property, as provided by law and the contract documents.

24.6 In an emergency affecting the safety of life or of the work or of adjoining property, Contractor is, without special instructions or authorization from County, hereby permitted to act at Contractor's discretion to prevent such threatened loss or injury. Contractor shall be entitled to reasonable compensation for emergency work.

## 25.0 OPERATION AND STORAGE AREAS

25.1 All operations of Contractor (including storage of materials) upon County's premises shall be confined to areas authorized or approved by County. No unauthorized or unwarranted entry upon, passage through, or storage or disposal of materials shall be made upon County premises. County premises adjacent to the construction shall be made available for use by Contractor without cost whenever such use shall not interfere with County other uses or purposes. Contractor shall hold and save County, its officers and agents, free and harmless from liability of any kind arising from the use, trespass or damage occasioned by Contractor's operations on County-owned property or premises of a third person.

25.2 Temporary buildings (storage sheds, shops, office, etc.) shall be erected by Contractor upon County premises only with approval of County, and shall be built with labor and materials furnished by Contractor without expense to County, and shall be removed by Contractor at Contractor's expense upon the completion of the work. With written consent of County, such buildings and/or utilities may be abandoned and need not be removed.

25.3 Contractor shall, under regulations prescribed by County, use only established roadways or construct and use such temporary roadways as may be authorized by County. Where materials are transported in the prosecution of work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state or local law or regulation. When it is necessary to cross curbs or sidewalks, protection against damage shall be provided by Contractor, and any damaged roads, curbing, or sidewalks shall be repaired by, and at the expense of Contractor.

25.4 Contractor shall at all times keep the construction area, including storage areas used by Contractor, free from accumulations of waste material or rubbish and prior to completion of the work, remove any rubbish from and about the premises, and all tools, scaffolding, equipment, and materials not the property of County. Upon completion of the construction, Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to County.

25.5 Contractor shall at all times ensure that public streets utilized during construction shall be mud and debris free and constantly maintained in that condition.

## 26.0 LIABILITY OF CONTRACTOR

Contractor shall be responsible for all damages to persons or property that occurs as a result of the negligence or fault of Contractor in connection with the prosecution of the work. Contractor shall also be responsible for all materials delivered and work performed until completion and final acceptance.

27.0 INSURANCE

27.1 Contractor shall secure and maintain insurance from insurance companies authorized to write casualty insurance in the State of Utah as shall protect Contractor, Contractor’s subcontractors, and County from fire and extended coverage losses and from claims for bodily injury, death or property damage which may arise from operations under this contract. All such insurance policies must be approved and accepted by County. Contractor shall not commence work under this contract until Contractor has obtained all insurance required under this paragraph and shall have filed the certificate of insurance or the certified copy of the insurance policy with County. The certificate of insurance must name “**Salt Lake County**” as an **additional named insured**. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without ten (10) days written notice to County of intention to cancel. The amounts of such insurance shall be not less than the following:

27.1.1 Workers’ compensation and employer’s liability insurance as required by the State of Utah, unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations and partnerships. In the event any work is subcontracted, the Contractor shall require its subcontractor(s) similarly to provide workers’ compensation insurance for all of the latter’s employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

27.1.2 Public Liability, Bodily Injury, Death and Property Damage:

Injury or death of one person	\$2,000,000
Injury to more than one in single accident	\$4,000,000
Property damage	\$2,000,000

27.1.3 Automobile and Truck Liability, Bodily Injury and Property Damage:

Injury or death of one person	\$2,000,000
Injury to more than one in single accident	\$4,000,000
Property damage	\$2,000,000

27.2 In addition to such fire insurance as Contractor elects to carry for Contractor’s protection, Contractor shall secure and maintain, in the name of “Salt Lake County,” policies upon such structures and materials in such amounts as shall be designated by County. The policies shall be secured from a Utah company which is satisfactory to County and shall be delivered to County.

27.3 During the term of this contract (from commencement of the Contractor’s work through final completion and County’s acceptance), Contractor shall obtain and maintain in full force, at its own expense, an “all risk” builder’s risk insurance, or Inland Marine (may also be referred to as an Installation Floater) including coverage for collapse, earthquake and flood coverage with “**Salt Lake County**” as **co-insured**. The policy(s) shall insure buildings, structures, machinery, equipment, fixtures, supplies/materials and equipment to be used for completion of the work performed under this contract. No theft limitations should apply. Minimum on-site limits shall be no less than 100% of Contractor’s contract price. Minimum off-site/transit limits shall be in no event less than 10% of the on-site limit.

27.3.1 The maximum allowable deductible shall be \$1,000,000 per occurrence.

27.3.2 Insurance carrier shall have an A.M. Best rating of A- or better with a financial size category rating of not less than VII. OR be listed in the United States Treasury Department’s current Listing of Approved Sureties (Department Circular 570, as amended).

## 28.0 BONDS

28.1 Contractor shall furnish a payment bond with good and sufficient surety or sureties for the protection of persons furnishing material or labor in connection with the performance of the work under this agreement. The penal sum of such payment bond shall be 100% of the contract price.

28.2 Contractor shall furnish a performance bond with good and sufficient surety or sureties in a form acceptable to County in connection with the performance of the contract work. The penal sum of the performance bond shall be 100% of the contract price.

28.3 Bonds required hereunder shall be on the American Institute of Architects (AIA) form A312-2010, shall be dated as of the same date as the contract, and shall be furnished by Contractor to County at the time of execution of this contract and before Notice To Proceed is issued by County.

28.3.1 Surety shall have an A.M. Best rating of A- or better with a financial size category rating of not less than VII. OR be listed in the United States Treasury Department's current Listing of Approved Sureties (Department Circular 570, as amended).

28.3.2 Bonds shall bind the Surety for performance of all of the work of the Contract through substantial completion and continuing thereafter to bind the Surety's obligation through any applicable warranty periods.

28.4 If any surety upon any bond furnished in connection with this contract becomes unacceptable to County, or if the surety fails to furnish reports as to Contractor's financial condition as requested by County, Contractor shall promptly furnish additional surety as shall be required to protect the interests of County and of persons supplying labor or materials in the prosecution of the work contemplated by the contract.

28.5 In the event any changes, alterations, modifications or amendments are made from time to time to this contract, or plans or specifications, subsequent to the date of bonds furnished hereunder, Contractor shall secure from the Surety, a Bond Rider to the effect that the Surety waives Right of Discharge by reason of such action.

28.6 The bonds furnished hereunder shall be in a form acceptable to County and shall contain words to the effect Surety waives notice of any modifications or amendments to this contract or plans or specifications hereunder.

28.7 Bonds shall also contain a provision to the effect that, if Contractor fails to give the Surety notice of changes, alterations, modifications, or amendments to this contract, Surety shall not be released of liability under existing bonds or any riders issued thereto. County shall have the right to withhold any payments due Contractor hereunder until such time as Contractor secures the bonds required or riders thereto and the same has been approved by County.

28.8 The duty of securing required bonds for this contract and riders thereto shall be upon Contractor.

## 29.0 TERMINATION FOR DEFAULT.

29.1 If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or fails to complete said work within such time, the County may, by written notice to the Contractor, terminate Contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event the County may take over the work and prosecute the same to completion, by contract or otherwise and the Contractor and

Contractor's sureties shall be liable to the County for any excess cost occasioned the County thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying papers, until such reasonable time as may be required for final completion of the work, or if liquidated damages are not so fixed, any actual damages occasioned by delay. If the Contractor's right to proceed is so terminated, the COUNTY may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefore.

29.2 If the County does not terminate the right of the Contractor to proceed, as provided in Subsection 29.1 hereof, the Contractor shall continue the work, in which event Contractor and Contractor's sureties shall be liable to the County, in the amount set forth in the specifications or accompanying papers, for fixed, agreed, and liquidated damages for each calendar day of delay until the work is complete or accepted, or if liquidated damages are not so fixed, any actual damages occasioned by such delay.

29.3 The right of the Contractor to proceed shall not be terminated, as provided in Subsection 29.1 hereof, because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, or of the public enemy, acts of the Government, in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to such causes provided, that the Contractor shall within ten (10) calendar days from the beginning of any such delay, unless the County shall grant a further period of time to the date of final settlement of the contract, notify the County in writing of the causes of delay. The County shall ascertain the facts and the extent of the delay and extend the time for completing the work when in the County judgment the findings of fact justify such an extension, and the County finding of facts thereon shall be final and conclusive on the parties hereto.

### 30.0 TERMINATION FOR CONVENIENCE.

30.1 The performance of work under this contract may be terminated in whole, or from time to time in part, by the County in accordance with this clause. Termination of work hereunder shall be affected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated. If the notice is hand delivered to Contractor by County, termination becomes effective on date signed for. If the notice is delivered to Contractor by certified mail, date of signature on return receipt will be the effective date of termination.

30.2 After receipt of a Notice of Termination and except as otherwise directed by the County, the Contractor shall, (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portions of the work under the contract as may be terminated; (3) terminate all orders and subcontracts to the extent that they are related to the performance of any work terminated by the Notice of Termination; (4) assign to the County in the manner, at the times, and to the extent directed by the County, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of



the County to the extent the County may require, which approval or ratification shall be final for all the purpose of this clause; (6) transfer title and deliver to the County in the manner, to the extent, at the times directed by the County (i) the fabricated or non-fabricated parts, work in progress, complete work, supplies and other material produced as a part of, or required in connection with the performance of the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would be required to be furnished to the County; (7) use its best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the County and property of the types referred to in provision (6) of this Subsection, provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the County and provided further that the proceeds of any such transfer or disposition shall be applied in deduction of any payments to be made by the County to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the County may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the County may direct for protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the County has or may acquire an interest.

30.3 After receipt of a Notice of Termination, the Contractor shall submit to the County its termination claim, in the form and with the certification prescribed by the County. Such claim shall be submitted promptly, but not later than 90 calendar days from the effective date of termination. Upon failure of the Contractor to submit its termination claim within the time allowed, the County may determine, on the basis of information available to it, the amount, if any, due to the Contractor in respect to the termination of such determination under this Subsection; County shall pay the Contractor the amount so determined.

30.4 Subject to the provisions of Subsection 30.3, the Contractor and the County may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the County shall pay the agreed amount or amounts; provided that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of the work not terminated.

30.5 The obligation of the County to make any payments under this clause shall be subject to deductions in respect of (1) all un-liquidated advance or other payments on account theretofore made to the Contractor, (2) any claim which the County may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the Contractor, or sold, and not otherwise recovered by or credited to the County.

30.6 If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the County a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate fair and reasonable adjustment shall be made in such price or prices.

However, nothing contained herein shall limit the right of the County and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued

portion of the contract when said contract does not contain an established contract price for such continued portion.

30.7 The County may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in respect to the termination portion of the contract, whenever in the opinion of the County the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the Contractor to the County upon demand, together with interest thereon computed, for the period from the date on which such excess payment is received by the Contractor to the date on which such excess is repaid to the County provided however that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor claim by reason of retention or other disposition of termination inventory until ten (10) calendar days after the date of such retention or disposition, or such later date as determined by the County by reason of the circumstances. The Salt Lake County Treasurer will establish the monthly average interest the Contractor will pay the County based on the rate earned by the County on its pooled investments of County funds in general.

30.8 Unless otherwise provided for in the contract, or by applicable statute, the Contractor, for a period of three (3) years after final settlement under the contract shall make available to the County at all reasonable times at the office of the Contractor all its books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under the contract and in respect to the termination of work hereunder or, to the extent approved by the County, photographs, microphotographs, or other authentic reproductions thereof.

30.9 For purposes of Subsection 30.4, the amounts of the payments to be made by the County to the Contractor shall be: (a) the cost of work performed prior to the effective date of the Notice of Termination; (b) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided hereinabove exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract; (c) a sum of money, as a profit, equal to a maximum amount that the Contractor can establish from Contractor's own records Contractor would have received if the agreement had been carried through to completion, provided however, that in no event shall said profit exceed ten percent (10%) of the total sum of incurred costs; (d) the total sum to be paid to the Contractor under (a), (b), and (c) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and is further reduced by the contract price of work not terminated.

### 31.0 COUNTY EMPLOYEES NOT TO SHARE

It is understood and agreed that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of Contractor or any member of their families shall serve on any County board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Contractor's operations, or authorizes funding or payments to Contractor.

32.0 COUNTY EMPLOYEES NOT TO PARTICIPATE

Contractor warrants that no County employee, official, or agent has been retained by Contractor to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, contingent fee, or any other form of compensation. For breach or violation of this warranty the Government shall have the right to terminate this contract for default as set out herein or in its discretion to deduct from the contract price or otherwise recover the full amount of such enumeration.

33.0 SUBCONTRACTORS BOUND

Contractor shall include the provisions contained in Sections 8.0, 9.0, 26.0, and 27.0 in all subcontracts or supplier agreements

34.0 ASSIGNMENT OF CONTRACT

Contractor shall not assign, transfer or sublet this contract or any interest therein or any part thereof, without prior written consent of County.

35.0 PRE-CONSTRUCTION CONFERENCE

A pre-construction conference shall be held before the start of any work with Contractor and representatives of County to review all project drawings, specifications, methods, schedules, and related application requirements pertaining to the work; and, to establish mutual understanding of all procedures and precautions related to the proper prosecution of the work. County shall assure the completion of all required procedures by Contractor prior to the commencement of any work by Contractor including, but not limited to, insurance and bonding requirements, schedules, and contract documents.

36.0 PERMITS AND FEES

36.1 The following shall be the County's responsibility unless modified according to terms of Subsection 34.2:

36.1.1 County shall submit the construction documents to the permitting authority for plan review. When permits or fees are required by the permitting authority, County shall pay the following costs directly to the governing agency and/or entity upon request from Contractor: (1) Plan check fees; (2) Building Permits; (3) Impact Fees (i.e. - hydrology); (4) Conditional Use Permit Fees (completed prior to bidding); (4) Utility Connection Fees (i.e. - gas, sewer, water, power, phone).

36.1.2 Utility unit labor and material costs for work not included with connection fees and normally performed by the utility company.

36.2 The following shall be Contractor's responsibility:

36.2.1 County may require at the pre-construction conference that Contractor submit construction documents to the permitting authority for plan review. When fees are required by the permitting authority, County shall pay the costs directly to the governing agency and/or entity upon request from Contractor.

36.2.2 When permits and fees are required by the permitting authority, Contractor shall make arrangements to secure the building permit and shall notify County's project representative, in a timely manner, of the fee amount required to obtain the building permit. Contractor shall research, coordinate and schedule all work required by the utility companies, special service districts and subcontractors to complete all work shown on the

construction documents. Contractor shall be responsible for all work not normally performed by the utility companies or special service districts (i.e. - trenching and backfilling) even if this work is not indicated in the construction documents, and shall comply with Section 18.0 - Changes In The Work.

36.3 Contractor shall be responsible for all bonding requirements and deposits that might be required by utility or government entities to perform the work.

36.4 Reimbursement. In the event Contractor pays any of the fees required by the permitting authority or utility fees, said fees shall be reimbursed by County at actual cost.

#### 37.0 WORK UNDER OTHER CONTRACTS

County reserves the right to issue other contracts that might impact this project. Contractor shall be required to schedule and coordinate under this contract with such other Contractors.

#### 38.0 WORK SEQUENCE

Contractor shall be responsible for the work, means, methods, sequence and scheduling of all work to complete the project.

#### 39.0 SCHEDULE OF VALUES; LIST OF SUBCONTRACTORS

No changes to the original schedule of values shall be allowed except by change order. Changes to the original List of subcontractors involving major subcontractors shall not be allowed except with the approval of County project representative.

#### 40.0 CONTRACTOR SUPERVISION

40.1 Contractor shall designate and keep continuously on the project, during its progress and until the project is finally accepted, an experienced and competent project manager and superintendent and any necessary assistants, all satisfactory to County. The project manager and superintendent shall not be changed except with the consent of County unless the project manager or superintendent proves to be unsatisfactory to Contractor and ceases to be in Contractor's employ.

40.2 The superintendent shall represent Contractor project manager in Contractor's absence and all notices, requests and instructions given to the superintendent shall be considered as having been given to Contractor project manager.

40.3 Contractor shall give efficient supervision to the work, using Contractor's best skill and attention. Contractor shall carefully study and compare all drawings, specifications and other instructions giving prompt notice to County of any errors, inconsistency, or omission which Contractor should have reasonably discovered.

#### 41.0 WEATHER DELAYS

County and Contractor agree that adverse weather conditions are normal and expected during the Contract period and that days have been included in the Contract period that shall account for delays caused by weather conditions.

#### 42.0 DISPUTE RESOLUTION

42.1 **Pre-Resolution Procedure.** A Contractor raising an issue related to a breach of contract or an issue concerning time or money shall file a Pre Resolution request to County Project

Manager as a prerequisite for any consideration of the issue by the County. The Pre-Resolution is subject to approval by County District Attorney Office as necessary.

42.1.1 The Pre-Resolution request must be filed in writing by Contractor with the County Project Manager within twenty-one (21) days of issuance of the occurrence in which Contractor disagrees with such assessment or an issuance of a denial of a written request by Contractor for additional monies or time.

42.1.2 County shall issue to Contractor a written decision providing the basis for the decision of the issues presented by all of the parties within thirty (30) days of receipt of all of the information required by County in Section 18.0.

42.2 **Resolution of Claim.** If the decision on the Pre-Resolution is not issued within the required timeframe or if Contractor is not satisfied with the decision, Contractor may submit a Claim as a prerequisite for any further consideration by County or the right to any judicial review of the issue giving rise to the claim.

42.2.1 The Claim must be filed in writing by Contractor with County's Division of Contracts and Procurement and County Project Manager within twenty-one (21) days after the decision is issued on the Pre-Resolution.

42.2.2 The Claim shall include: (1) a description of the issues in dispute; (2) the basis and justification for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim; (3) a detailed cost estimate for any amount sought, including copies of any related invoices; and (4) a specification identification of the relief sought.

42.3 **Contractor Required to Continue Performance.** Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by County, Contractor shall proceed diligently with performance of the Contract and County shall continue to make payments in accordance with the Contract Documents.

42.4 **Decision.** County shall issue to Contractor a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of the receipt of the information required under Subsection 43.2.2.

#### 43.0 EMPLOYEE STATUS VERIFICATION SYSTEM

Contractor shall register and participate in the Status Verification System before entering into a contract with the County as required by Utah Code Ann. § 63G-11-103(3). The Status Verification System is an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. § 1373 to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision. Contractor is individually responsible for verifying the employment status of only new employees who work under Contractor's supervision or direction and not those who work for another contractor or subcontractor, except each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified, through the Status Verification System, the employment status of each new employee of the respective contractor or subcontractor. The Contractor shall comply in all respects with the provisions of Utah Code Ann. § 63G-11-103(3). Contractor's failure to so comply may result in the immediate termination of its contract with the County.

#### 44.0 NOTICE TO RETIREES OF UTAH RETIREMENT SYSTEMS (“URS”)

County is a URS “participating employer.” Entering into an agreement with County may affect a URS retiree’s retirement benefits including, but not limited to, cancellation of the retiree’s “retirement allowance” due to “reemployment” with a “participating employer” pursuant to Utah Code Ann. § 49-11-504 to -505. In addition, Contractor is required to immediately notify County if a retiree of URS is the contractor; or an owner, operator, or principal of the Contractor. Contractor shall refer the URS retiree to the URS Retirement Department at 801-366-7770 or 800-695-4877 for all questions about post-retirement employment regulations.

#### 45.0 SEVERABILITY

The invalidity of any part, paragraph, subparagraph, phase, provision, or aspect of these General Conditions, the Construction Agreement, the Instruction to Bidders, or any other documents that are incorporated into this Agreement, shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of the Agreement.

#### 46. APPRENTICESHIP UTILIZATION PROGRAM

46.1. The following definitions will apply to this Section 46.

46.1.1. "Apprentice" means an apprentice enrolled in a certified training program, as recognized by the United States Department of Labor.

46.1.2. “Building Improvement” means the same as defined by Utah Code Title 11 Chapter 39.

46.1.3. “Certified Training Program" means an apprenticeship training program approved by the United States Department of Labor.

46.1.4. “Emergency Repair” means the same as defined by Utah Code Title 11 Chapter 39

46.1.5. "Labor Hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of a building improvement or public works project. "Labor hours" includes hours performed by workers employed by the general contractor and all subcontractors working on the project. "Labor hours" does not include hours worked by foremen, superintendents, project managers, project engineers, and owners.

46.1.6. "Public Works Project" means the same as defined by the Utah Code Title 11 Chapter 39.

46.1.7. “Qualifying Projects” means contracts executed by Salt Lake County on or after January 1, 2020 for all Salt Lake County owned building improvements or public works projects where the contract, or in the case of a Construction Manager/General Contractor Agreement the construction estimate, for the project exceeds \$3,000,000.00.

46.1.8. “Trade” means electricians, bricklayers, ironworkers, operating engineers, plumbers, pipefitters, welders, HVAC&R technicians, operative cement masons, painters, drywallers, laborers, heat and frost insulators, sheet metal workers, sprinkler fitters, and roofers.

46.2. Apprenticeship Labor

46.2.1. Unless waived by the Salt Lake County Mayor or designee pursuant to Salt Lake County Ordinance §3.26.030(D), for all Qualifying Projects the Contractor shall use no less than 10 percent of the labor hours within each Trade be performed by Apprentices of that Trade.

46.2.2. The Contractor may not divide work among subcontractors in order to evade the requirements of this Section 46. Where two or more contractors or subcontractors perform work within a trade, all such contractors or subcontractors shall comply with the requirements of this section.

46.2.3. The Contractor shall, and shall cause its subcontractors, provide payroll reports on at least a monthly basis to the County, certifying the names of all workers performing Labor Hours, their Trade, hours worked, and designation as journey level worker or Apprentice.

46.2.3.1. This Section 46.2.3 will not be deemed a request or requirement for Certified Payroll, as that term is commonly understood in the construction industry.

46.3. Penalty

46.3.1. If the Contractor fails to comply with the requirements of Section 46.2, the County will assess the Contractor a penalty fee amount for each hour that the Contractor so fails.

46.3.2. The Contractor agrees and understands that this is a penalty for non-compliance with Section 46.2 and is not an alternate to performance of Section 46.2.

46.3.3. The amount per hour of the penalty will be based on the extent the contractor or sub-contractor met its goal the requirement. The amount per hour that will be assessed is as follows:

<u>Percent of goal met</u>	<u>Assessment per unmet hour</u>
100%	\$ 0.00
90% to 99%	\$ 2.00
75% to 89%	\$ 3.50
50% to 74%	\$ 5.00
1% to 49%	\$ 7.50
0%	\$10.00

46.3.4. The Contractor agrees and understand that in the event the Contractor continually fails to comply with Section 46.2, the County may terminate this Agreement for default, entitling the County to all remedies allowed by law and under this

Agreement. In such an event, the Parties would be governed by the processes further described in Section 29 of this Agreement.

46.4. Exceptions

46.4.1. The requirements of Section 46.2 of this Agreement do not apply to a Qualified Project if:

46.4.1.1. The requirements are waived by the Salt Lake County Mayor or designee pursuant to Salt Lake County Ordinance §3.26.030(D);

46.4.1.2. This Agreement is modified by change order or amendment where the original agreement did not meet the initial dollar threshold of a Qualified Project.

46.4.1.3. This Agreement is for an Emergency Repair; or

46.4.1.4. This Agreement is a project subject to a grant requirement or other legal obligation the County must honor as a condition of receiving a grant or other funds which limit the application of the requirements of this section.

46.5. By signing the Agreement, the Contractor hereby waives any claims that the requirements of this section 46 constitute the County's exercise of control over the Contractor's means, methods, techniques, sequences, and procedures of construction.

47. CONSTRUCTION PROCUREMENT MINIMUM STANDARDS

47.1. Definitions: the following definitions apply to this Section 47.

47.1.1. "Building improvement" means the same as defined by Title 11 Chapter 39 of Utah Code.

47.1.2. "Covered employee" as used in Salt Lake County Ordinance Section 3.27.030(A)(2) means an individual who provides services directly related to a construction contract for a contractor or subcontractor and works at least 30 hours per calendar week for the contractor or subcontractor.

47.1.3. "Emergency Repairs" means the same as defined in Title 11 Chapter 39 of Utah Code.

47.1.4. "Public works project" means the same as defined in Title 11 Chapter 39 of Utah Code.

47.1.5. "Qualified health insurance coverage" means the same as defined in Utah Code Ann. § 26-40-115(1).

47.1.6. "Qualifying projects" means contracts executed by Salt Lake County on or after January 1, 2020, for all Salt Lake County owned building improvements or public works projects where the contract, or in the case of a Construction Manager/General Contractor Agreement the construction estimate, for the project exceeds \$3,000,000.00.

47.1.7. "Qualifying Subcontractor" means a subcontractor hired by the Contractor to complete the work under this Agreement, where the subcontractor's bid to the Contractor exceeds the amount of \$1,000,000.00.

47.2. Unless waived by the Salt Lake County Mayor or designee pursuant to Salt Lake County Ordinance §3.27.060, for all Qualifying Projects, the Contractor certifies that the Contractor



- 47.2.1. Offers qualified health insurance coverage for the Contractor's employees and the employee's dependents for the duration of the contract;
  - 47.2.2. Has and will maintain a drug and alcohol testing policy, consistent with applicable Utah law, for the duration of this Agreement that requires all covered employees to submit to random testing under the drug and alcohol testing policy; and
  - 47.2.3. Has and will maintain a safety program that complies with the standards of Utah Occupational and Safety and Health (UOSH).
- 47.3. Subcontractors
- 47.3.1. Unless waived by the Salt Lake County Mayor or designee pursuant to Salt Lake County Ordinance §3.27.060, for all Qualifying Projects the Contractor shall by contract require any Qualifying Subcontractors to comply with Section 47.2 of this Agreement
- 47.4. Compliance Monitoring
- 47.4.1. Contractor agrees that County may, no more than twice within any twelve (12) month period, submit a written request for recertification by the selected contractor, and that the contractor shall respond in writing within ten (10) business days after receipt of the county's request.
  - 47.4.2. Contractor agrees that the County may audit contractor's, and affected subcontractor's, compliance with the requirements of subsections 3.27.030(A) and (C)(1) of Salt Lake County Ordinance. The Contractor shall provide documents as requested by the county to comply with any such audit, including documents relating to affected subcontractors.
- 47.5. Penalty
- 47.5.1. As a penalty for non-compliance and not as an alternate method of compliance, if the Contractor, or the Contractor's Qualified Subcontractors, fail to maintain the minimum standards found in Section 47.2 of this Agreement, the Contractor's fee will be reduced by \$250.00 per day for each day the Contractor is out of compliance.
  - 47.5.2. The Contractor agrees and understand that in the event the Contractor continually fails to comply with Section 47.2, the County may terminate this Agreement for default, entitling the County to all remedies allowed by law and under this Agreement. In such an event, the Parties would be governed by the processes further described in Section 29 of this Agreement.
- 47.6. Exceptions: The requirements of Section 47.2 of this Agreement do not apply to a Qualified Project if:
- 47.6.1. The requirements are waived by the Salt Lake County Mayor or designee pursuant to Salt Lake County Ordinance §3.27.060;
  - 47.6.2. This Agreement is modified by change order or amendment where the original agreement did not meet the initial dollar threshold of a Qualified Project.
  - 47.6.3. This Agreement is for an Emergency Repair; or

47.6.4. This Agreement is a project subject to a grant requirement or other legal obligation the County must honor as a condition of receiving a grant or other funds which limit the application of the requirements of this section.

#### 48. COVID-19 RELATED DELAYS

48.1. County and Contractor agree that delays related to or caused by COVID-19 are expected during the Contract period and that days have been included in the Contract Time that shall account for delays caused by, in whole or in part, COVID-19. County and Contractor agree that Contractor will not be entitled to an excusable delay or compensable delay, as outlined in Section 10 above, for such delays that extend beyond the Contract Time. The Contractor further agrees that delays caused by, in whole or in part, COVID-19 will not qualify as an “unforeseeable cause” as provided in section 29.3 above.

#### 49. SECURITY

49.1 County will investigate thoroughly any of the Contractor’s current or prospective employees and subcontractors who will provide services related to this Construction project. The Contractor agrees that all employees or subcontractors who provide services related to this Construction project will consent to an appropriate background and security check by the Salt Lake County Sheriff or the Utah Department of Public Safety. The Salt Lake County Sheriff, in the Sheriff’s sole discretion, shall have the right to prohibit any of the Contractor’s employees or subcontractors with unsatisfactory investigation results from working on or accessing plans or specifications relating to this Construction project. The Contractor further understands and agrees that all employees or subcontractors working within the Salt Lake County Adult Detention Complex (the “SLCADC”) will be subject to an initial drug and alcohol screen and be subject to random alcohol and drug testing for the duration of the project.

Contractor understands and agrees that all employees or subcontractors, their equipment, and baggage are subject to search prior to entering and/or exiting the SLCADC. Contractor, its employees and subcontractors, will not communicate in any way with a prisoner unless allowed by SLCADC staff.

Contractor shall not at any time, in any manner, either directly or indirectly, communicate to any person, firm, corporation or other entity, except its subcontractors working on this project, any information of any kind concerning SLCADC plans, specifications, security operations, computer systems, processes or other information that may compromise the safety and security of the SLCADC. Contractor acknowledges and agrees that the aforementioned matters are important, material, and confidential and gravely affect the effective, safe, and successful conduct of the business of the SLCADC.