

Request for Proposals

1000 N Lining Project

Issued by:

Davis County, a political subdivision of the state of Utah
PO Box 618
61 S Main St, Rm 104
Farmington, UT 84025

Date of Issue:

June 11, 2021

I. Introduction

II. Davis County is in need of constructing a concrete liner in the 1000 N Drain. The project will include 790 feet of trapezoidal channel with 65 feet of transitions and tie-ins. There are also some storm drain tie-ins that need to be tied into the channel.

Construction on the project will take place sometime this June – November (open to contractor’s schedule).

III. Scope of Work

Davis County is seeking a licensed and bonded contractor to provide the materials and perform the services to satisfy the plans and specifications attached hereto as Exhibit A and incorporated herein by this reference regarding the 1000 N Lining Project.

IV. Proposal Submission Requirements; Potential Proposal Protection

A. Proposal Submission Requirements. The proposals submitted by contractors in response to this RFP must not be larger than 50 single-sided pages (with a font size of 12 or greater) and must be organized sequentially to address each of the subsections directly below (Failure to comply with the sequential organization requirement or failure to satisfy one or more of the proposal submission requirements directly below may result in the rejection of a contractors submitted proposal):

1. Complete and submit the Contractor Proposal Form, attached hereto, which must be signed by an authorized representative of the Contractor;
2. Provide a detailed description of the contractor’s specific experience providing the materials and services sought through this RFP, including projects completed between April 1, 2018 and today that are similar in scope, size and complexity to this project (Provide a minimum of five similar projects completed during this time period, but no more than ten similar projects completed during this time period);
3. Provide the owner’s name and contact information (mailing address(es), telephone numbers and email addresses) for each project identified in subsection III.A.2 above;
4. If a contractor anticipates using the services of one or more subcontractors to provide any of the services sought through this RFP, the contractor shall submit a subcontractor schedule, similar to the subcontractor schedule below;

<u>SUBCONTRACTOR SCHEDULE</u>		
<u>Name/Address/License No.</u>	<u>Anticipated Services</u>	<u>Anticipated Costs</u>

5. If a contractor is required to submit a subcontractor schedule, the contractor shall submit a list of at least three references for each identified subcontractor, which sets forth the name(s), mailing address(es), telephone number(s), and email address(es) of each reference for each identified subcontractor;
6. Provide the contractors proposed approach and schedule regarding the materials and services sought by Davis County through this RFP;
7. Complete and submit a rate schedule, similar to the “Form Rate Schedule” below:

<u>FORM RATE SCHEDULE</u>				
	<u>Description</u>	<u>Quantity</u>	<u>Units Price</u>	<u>Total Cost/Price</u>
1	Remove vegetation, excavate side slopes and bottom as needed, prepare typical side slope and bottom width; compact native soil	1 LS		
2	Remove and haul away existing concrete head walls and wing walls at existing box culvert at two locations	1 LS		
3	Construct typical trapezoidal concrete channel liner: place fabric, install bedding material, place WWF and joint reinforcement, pour concrete	790 LF		
4	Construct concrete channel transition section b/t Sta. 0+00 - Sta. 0+50: place fabric, install bedding material, place rebar per details, pour concrete	15 LF		
5	Construct (3) concrete channel transition sections: (2) b/t Sta. 5+75 - Sta. 7+00 and (1) b/t Sta. 9+00 - Sta. 9+25, including new head walls and wing walls: place fabric, install bedding material, place rebar per details, pour concrete	50 LF		
6	Construct (3) SD outlet reinforced sections for concrete channel: thicken channel liner, additional rebar, trim pipe protrusions per details	1 LS		
7	Import granular borrow for backfill, including compaction	25 TN		
8	Install 2x2 precast catch basin box	4 EA		
9	Install 12" PVC SD line	40 LF		
10	Install 24" CPP SD line	30 LF		
11	Install 48" RCP SD line	16 LF		
12	Divert channel water and dewatering	1 LS		
13	Best management practices	1 LS		
14	Restore landscaping as needed	1 LS		
15	Mobilization	1 LS		
	TOTAL COST/PRICE:			

8. Provide a completed and fully executed Bid Bond for 5% of the total amount of the proposal, a form of which is attached hereto as Exhibit C and incorporated herein by this reference;
9. Submit one original, six copies, and one electronic copy of the Contractor's proposal to the County. The electronic copy of the Contractor's proposal must be in "PDF" format, and submitted on a CD, flash drive, or other electronic storage medium (see subsection III.B. below for potential proposal protection).

10.

- V. Submit one original and one electronic copy of the artist's proposal to Davis County. The electronic copy of the artist's proposal must be in "PDF" format, and submitted on a CD, flash drive, or other electronic storage medium (See subsections below for potential proposal protection). Please submit proposals by mail or hand delivery as set forth below and ensure that they are received by Davis County no later than June 28, 2021, at 5:00 p.m. Mountain Time.

If Provided by Mail:
Davis County

If Provided by Hand Delivery:
Davis County

Attn: Purchasing Manager
PO Box 618
Farmington, UT 84025

Attn: Purchasing Manager
61 S Main St, Room 102
Farmington, UT 84025

Alternatively, online submittals will be accepted through Scquest. Upload the proposal in the section “Supplier Attachments.” If you have trouble submitting online, you can email scquestadmin@utah.gov for assistance.

A. Potential Proposal Protection

1. The electronic pdf copy of the Contractor’s proposal must be a full and complete copy of the Contractor’s proposal unless:
 - a. The Contractor’s proposal contains information that may be protected under Utah Code 63G-2-305(1), 63G-2-305(2), or both; and
 - b. The Contractor complies with Utah Code 63G-2-309.
2. If the Contractor satisfies subsections III.B.1.a. and III.B.1.b. directly above, the electronic pdf copy of the Contractor proposal must be a redacted copy of the Contractor proposal.
3. If the Contractor complies with subsections III.B.1.a., III.B.1.b., and III.B.2. directly above, the County will release a copy of the Contractor’s redacted proposal upon receiving a records request for the Contractor’s proposal under the Utah Government Records Access and Management Act (“GRAMA”). However, if the Contractor fails to comply with subsections III.B.1.a., III.B.1.b., and/or III.B.2. directly above, the County will release a full and complete copy of the Contractor’s proposal upon receiving a GRAMA request for the Contractor’s proposal.

VI. Evaluation Criteria

The County’s evaluation committee will evaluate proposals submitted by Contractors based on the following criteria:

<u>Criteria</u>	<u>Criteria %</u>
Experience	40%
Project Approach and Schedule	20%
Cost	40%

VII. Mandatory Pre-proposal Meeting

A mandatory pre-proposal meeting will be held on June 23, 2021 at 10:00 am, located at 950 W 1000 N, Centerville, Utah. Failure to attend this meeting will disqualify that Contractor from bidding on this RFP. It is anticipated that the meeting will take about 30 minutes.

Projected Schedule for the RFP Process

The County reserves the right to modify the following projected schedule for this RFP process at its sole discretion.

<u>Activity</u>	<u>Date</u>	<u>Time</u>
Issuance of the RFP by the County	June 12, 2021	
Deadline for Contractors to submit proposals	June 28, 2021	5:00 pm
Report on register of proposals timely received by the County	June 29, 2021	4:00 pm
Issuance of Notice of Intent to Engage in Contract Negotiations	TBD	

VIII. Questions and Deadline for Questions

All questions relating to this RFP must be directed to Dax Teuscher, Davis County Purchasing Manager, via email at dteuscher@co.davis.ut.us. The deadline to submit questions regarding this RFP is June 25, 2021, at 4:30 p.m. Mountain Time. The County may reject any proposal submitted in response to this RFP if one or more employees, agents, representatives or otherwise contacts any other County employee, agent, or representative regarding this RFP.

IX. Protests

Contractors may file a protest relating to this RFP pursuant to the County's purchasing policy and procedures governing requests for proposals (the "RFP Policy"). Contractors may receive a copy of the RFP Policy by requesting a copy of the RFP Policy through an email sent to dteuscher@co.davis.ut.us.

X. Contractors Are Bound by This RFP and the RFP Policy

By submitting a proposal in response to this RFP, each Contractor agrees to be bound by this RFP and the RFP Policy, including the following:

- A. **Proposals Must Remain Constant.** Proposals, including costs, must remain constant from the proposal submission date through the execution of a contract between the County and a Contractor for the services sought through this RFP. A Contractor that submits a proposal that will not remain constant for this required time period may be rejected by the County.
- B. **Termination or Debarment Certification.** Federal and state regulations require certification by Contractor as to current history regarding debarment, eligibility, indictments, convictions, or civil judgements. Contractor must submit a certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from soliciting work by any governmental department or agency. Contractor must also certify that neither it nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If a Contractor cannot certify these two statements, the Contractor shall submit a written explanation of the circumstances for review. A Contractor must submit these certifications with its proposal.
- C. **Governing Law; Jurisdiction; Venue; Restriction on Assignment.** All contracts between the County and a Contractor for the services sought through this RFP will be interpreted, construed, and given effect according to the laws of the state of Utah and the ordinances and policies of the County. The courts within Davis County, Utah will have exclusive jurisdiction and be the exclusive venue regarding any matter regarding such contract(s) or any matter regarding this RFP. No such contract may be assigned, in whole or in part, without the written consent of the County.
- D. **Licensing.** A selected Contractor shall obtain all applicable federal, state, and local licenses before a contract for the services sought through this RFP and between the County and the selected Contractor is executed. These licenses must be maintained by the Contractor for the duration of the contract between the County and the Contractor.
- E. **Registration.** Contractors shall be registered with the Utah Department of Commerce, Division of Corporations and Commercial Code. Contractors may obtain forms and information regarding this registration requirement by calling (801) 530-4849 or 1-877-526-3994, or by accessing the following website: www.commerce.utah.gov.
- F. **Modifying Proposal.** A Contractor may modify its proposal at any time prior to the deadline for Contractors to submit proposals, which is set forth in the "Projected Schedule for the RFP Process" section above. After this deadline, a Contractor is precluded from modifying its proposal unless otherwise permitted by the RFP Policy or this RFP.
- G. **Independent Contractor.** Each Contractor agrees that, if it enters into a contract with the County, the Contractor will be an independent contractor, and, thus, the Contractor will not have the authority, express or implied, to bind the County to any agreements, settlements, liability, or understanding

whatsoever with any third party, and the Contractor will not have an interest in any benefits provided by the County to its employees.

- H. Free and Competitive Bidding. Any agreement or collusion among Contractors to fix a price, limit competition, or other similar conduct shall render the proposals of such Contractors void.
- I. Warranties. A selected Contractor shall warrant, under a contract with the County for the services sought through this RFP, that all services performed by it under such a contract shall be of reasonable quality, shall be free from faults, shall be free from defects, shall conform with reasonable professional standards, and shall conform to applicable codes, regulations and rules.
- J. Insurance. Each Contractor agrees that prior to entering into a contract with the County for the services sought through this RFP and for the duration of such contact, the Contractor shall secure and maintain, at its own expense, insurance coverage that satisfies the following:
 - 1. Professional liability insurance, including \$2,000,000 per occurrence and \$5,000,000 aggregate;
 - 2. Occurrence form commercial general liability insurance with the following minimum limits:
 - a. Each occurrence - \$2,000,000.00;
 - b. Damage to Rented Premises - \$100,000.00;
 - c. Medical Expense (any one person) - \$10,000.00;
 - d. Personal and Adv. Injury - \$2,000,000.00;
 - e. General Aggregate - \$5,000,000.00; and
 - f. Products – Comp/Op Agg. - \$2,000,000.00;
 - 3. Automobile liability insurance, including a combined single limit for each accident minimum of \$1,000,000.00; and
 - 4. Workers compensation and employer’s liability, including minimums of \$1,000,000.00.
- K. Indemnification. A selected Contractor shall agree to the following indemnification provision: “With respect to any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding (“Proceeding”) against Davis County, Davis County’s officers, employees, agents, consultants, advisors, and other representatives, and each of their heirs, executors, successors, and assignees (“Davis County Indemnitees”) that arises out of this contract or the acts or omissions of the Contractor (each, a “Claim”), the Contractor shall, for the duration of this contract and for a period of six years after the termination of this contract, indemnify those Davis County Indemnitees against any amount awarded in, or paid in settlement of any Proceeding, including interest (“Loss”), and any expense incurred in defending a Proceeding or in any related to investigation or negotiation, including court filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements (“Litigation Expense”) (Loss and Litigation Expense means “Indemnifiable Losses”) arising out of that Proceeding, except to the extent that Davis County negligently or intentionally caused those Indemnifiable Losses. The Contractor’s compliance with any provision of this agreement to secure and maintain insurance shall not waive or limit the obligations of this indemnification provision.
- L. Conflicts. Any conflicts between one or more of the following shall be resolved in the following order:
 - 1. The contract between the County and a Contractor for the services sought through this RFP;
 - 2. The RFP Policy;
 - 3. The County’s other policies and procedures;
 - 4. This RFP; and
 - 5. The proposal submitted by Contractor in response to this RFP.
- XI. The performance bond and payment bond should be similar, if not identical, to those identified in Exhibit D. The County anticipates that the project contract and the general conditions for the materials

and services sought through this RFP will be similar to the Project Contract and the General Conditions identified in Exhibit D.

EXHIBIT A

(Contractor Proposal Form)

Contractor Proposal Form

Name: _____

(Provide the complete legal name of the Contractor)

Address: _____

City: _____ State: _____ Zip: _____

List one person who Davis County may contact concerning the Contractor's proposal.

Name: _____

Telephone Number: _____

E-Mail: _____

I certify that to the best of my knowledge the information contained in this proposal is accurate and complete. I further certify that I am legally authorized by the Contractor to submit this proposal and bind the Contractor.

By: _____

Printed Name: _____

Position or Title: _____

Date: _____

EXHIBIT B

(Plans and specifications)

Exhibit C

(Bid Bond)

BID BOND

_____, a contractor licensed to do business in the State of Utah, who shall be called the "Principal" in this bid bond, and,____, a surety company authorized to do business in the State of Utah, which shall be called the "Surety" in this bond, do hereby obligate and bind themselves jointly and severally to DAVIS COUNTY, a political subdivision of the State of Utah, which shall be called the "Owner" in this agreement in the amount of \$_____ as a bid security for the above-designated project pursuant to Section 63G-6a-1102, *Utah Code Annotated*, subject to the following terms and conditions:

- I. **Project Bid and Bid Bond Amount.** Principal has submitted to Owner a bid in the amount of ___ to undertake the performance of the work described in the bid documents for Project No. ????-?, a project designated as the 1000 N Channel Lining_____ Project. The amount of this bid bond is \$_____, which is equivalent to five percent of the total amount of the bid submitted by the Principal to the Owner.
- II. **Condition of Bid Bond.** If the Principal is awarded the Project Contract and fails to execute and return the Project Contract together with the Performance and Payment Bonds required by the Contract Documents within ten days of receipt of the Notice of Award by the Principal, then the full amount of this bid bond as stated above will be forfeited to the Owner as liquidated damages, and as a penalty. However, if the Principal is awarded the Project Contract for said project by the Owner and if the Principal accepts the award of the Project Contract and executes and returns the Project Contract and other contract documents as required by and described in the bid documents, including a performance bond and payment bond within the time and in the manner set forth in the notice of award, then this obligation will be null and void; otherwise, this obligation shall remain in full force and effect.
- III. **Default.** If the Principal or Surety fail to comply with the terms and conditions or fulfill their obligations within ten days of notice of any default by either party, Principal and Surety, individually or jointly, shall be deemed to be in default under the terms of this bond and the Owner shall be entitled to enforce any remedy against either Principal or Surety as may be available under law.
- IV. **Indemnification.** Surety and Principal shall indemnify the Owner for all costs incurred by the Owner in the enforcement of this bond including, but not limited to, court costs and attorneys' fees.
- V. **Notice to Surety or Principal.** Any notice given by the Owner under this bond to both or either the Principal and Surety shall be deemed properly and sufficiently given if such notice is mailed or delivered to either the Surety or Principal at the following address and shall be deemed to have been given as of the date of mailing or delivery:

Principal: _____

Surety: _____

- VI. **Binding.** The terms, conditions, and obligations set forth in this bid bond shall be binding upon Principal, Surety, and their respective heirs, administrators, assigns, and successors in interest.

VII. Governing Law. This bid bond and any action or proceedings based upon it shall be governed by the laws of the State of Utah.

VIII. Authority. The undersigned representatives of the Principal and Surety verify that they are authorized by the Principal and Surety respectively to execute this bid bond and thereby legally bind and obligate the Principal and Surety to its terms. *(If that authority is granted by a power of attorney, a duly executed and acknowledged copy of that power of attorney shall be attached to and incorporated by reference into this bid bond.)*

Principal

By: _____

Title: _____

Date: _____

Acknowledgment of Principal

STATE OF UTAH)
COUNTY OF _____)

The foregoing bid bond was acknowledged before me, this _ day of _____,
,
20____, by _____, as _____ of _____,
designated as the Principal in the foregoing bid bond.

Notary Public: _____

Residing at: _____, Utah

Commission Expires: _____

Note: Acknowledgement must be completed for both Principal and Surety.

Surety

By: _____

Title: _____

Date: _____

Acknowledgment of Surety

STATE OF UTAH)
COUNTY OF _____)

The foregoing bid bond was acknowledged before me, this _ day of _____
,
20____, by _____, as _____ of _____,
designated as the Surety in the foregoing bid bond.

Notary Public: _____
Residing at: _____, Utah
Commission Expires: _____

Note: Acknowledgement must be completed for both Principal and Surety.

Exhibit D

**(Performance Bond, Payment Bond, Project
Contract and General Conditions)**

PERFORMANCE BOND

Surety Bond No. _____

Principal (Contractor)

Surety

The Principal and Surety, a surety company authorized to do business in the State of Utah, do hereby obligate and bind themselves, jointly and severally, to Davis County, which shall be called the "Owner" in this Performance Bond, in the amount of \$ _____, for the faithful performance of the terms and conditions of the Project Contract and any amendments or change orders to it for the Project, which is designated as Project No. ????-?, and is described as 1000 N Channel Lining Project, Centerville, Utah, subject to the following terms and conditions, pursuant to the provisions of Section 63G-6a-1103, *Utah Code Annotated* and other applicable law:

- A. **Project Contract.** Principal and Owner made and entered into a Project Contract dated __,2021, for the contract amount of \$_____, for the above-described Project and that Project Contract, together with any amendments, modifications, work directives and authorizations, or change orders thereto, is incorporated into this Performance Bond by reference.
- B. **Effective Date of Bond.** This Performance Bond is effective as of the date that the Project Contract was executed by all of the Parties.
- C. **Condition of Performance Bond.** If the Principal shall faithfully perform all of the terms and conditions of the Project Contract, and any modifications to it, including any amendments, change orders, or work directives and authorizations; if the Principal shall for a period of one year from the date of the issuance of a certificate of substantial completion of the Project and acceptance by the Owner, replace and remedy any and all defects or deficiencies resulting from workmanship or materials; and if Surety shall comply with its obligations under this Performance Bond, then this obligation shall be deemed void; otherwise, it shall remain in full force and effect.
- D. **Purpose.** This Performance Bond is executed in accordance with and for the purpose of complying with Section 63G-6a-1103, *Utah Code Annotated*, and for the protection of the Owner from all defaults of the Principal and all defects and deficiencies in construction, equipment, and materials, by Principal with respect to the above-designated Project.
- E. **Default by Principal.** In the event of any default by the Principal in the performance of the Project Contract, including, but not limited to, any defect or deficiency in the Project constructed by the Principal under this Performance Bond which has become known during the term of this Performance Bond, and if the Owner has given notice of such default, defect, or deficiency, to the Principal or Surety and the Principal remains in default or any defects or deficiencies have not been remedied within a reasonable time of that notice, not to exceed fifteen days, the Surety shall either:
 1. Arrange for the Principal, with the consent of the Owner, to correct such default, defect, or deficiency and complete the Project Contract; or
 2. Undertake to perform and complete the Project Contract itself or through its agents or independent contractors.
- F. **Obligation of Surety.** To the limit of this Performance Bond, the Surety is obligated in the event of a default by the Principal for:

1. The responsibilities of the Principal for the correction of any defect or deficiency and the performance and completion of the Project Contract;
2. Additional legal, design, professional, and delay costs resulting from the default, deficiency, or delay of the Principal and any failure of the Surety to act under the terms of this Performance Bond; and
3. Liquidated damages, if any, as specified in the Project Contract and Contract Documents.

G. Owner Payment to Surety. In the event that the Surety undertakes to perform and complete the Project Contract itself or through its agents or independent contractors and the Owner has terminated the right of the Principal to complete the Project Contract and fully perform its/their obligation(s) under this Performance Bond, the Owner shall pay the remaining balance of the contract price to the Surety in accordance with the terms of the Project Contract.

H. Notice to Principal or Surety. Any notice required to be given by the Owner to the Principal and Surety under this Performance Bond or by law shall be deemed properly and sufficiently given if such notice is given to either the Surety or the Principal. Notice shall be mailed or delivered to the Principal or Surety at the following addresses and shall be deemed to have been given as of the date of mailing or delivery:

Principal: _____

Surety: _____

I. Notice to Owner. Any notice to be given to the Owner with respect to this Performance Bond shall be mailed or delivered to the Owner at the following addresses:

Davis County
 Attn: Purchasing Manager
 & Public Works Director
 61 South Main Street,
 P.O. Box 618
 Farmington, UT 84025

J. Default of Surety. If the Surety does not proceed within fifteen days after notice from the Owner of any default on the part of the Principal or any defect or deficiency in the construction project by the Principal following reasonable notice from the Owner to the Principal, then the Surety shall be deemed to be in default under the terms of this bond and Owner shall be entitled to enforce any remedy against Surety available to Owner by law, equity or otherwise.

K. Changes in Project Contract. No modifications, including amendments, change orders, or work directives and authorizations to the Project Contract or any extensions of time granted under the provisions of the Project Contract shall release either the Principal or Surety from their respective obligations under this Performance Bond.

L. Indemnification. The Principal and Surety shall indemnify the Owner for any costs incurred in the enforcement of this Performance Bond, including court costs and reasonable attorney fees.

- M. Surety's Waiver of Notice.** Surety waives notice of any modifications including addenda, change orders, work directives and authorizations, and time changes, to the Project Contract.
- N. Time of Essence.** Time is of the essence in respect to all parts or provisions of this Performance Bond, which specify a time performance or otherwise, and the Parties each agree to comply with all such times.
- O. Choice of Law; Jurisdiction; Venue.** This Performance Bond and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Performance Bond or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the State of Utah, without reference to conflict of law principals. The Parties irrevocably agree that the courts located in Davis County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Performance Bond, or its formation or validity. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Any party who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing party for its attorneys' fees, and the party prevailing in any such dispute shall be awarded its attorneys' fees.
- P. Authority.** The undersigned representatives of the Principal and Surety verify that they are authorized by the Principal and Surety, respectively, to execute this Performance Bond and thereby bind and obligate the Principal and Surety to its terms. If that authority is granted by a power of attorney, a duly executed and acknowledged copy of that power of attorney shall be attached to and incorporated by reference into this Performance Bond.
- Q. Severability.** If any part or provision of this Performance Bond is found to be prohibited or unenforceable in any jurisdiction, such part or provision of this Performance Bond shall, as to such jurisdiction only, be inoperative, null and void to the extent of such prohibition or unenforceability without invalidating the remaining parts or provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render inoperative, null or void such part or provision in any other jurisdiction. Those parts or provisions of this Performance Bond, which are not prohibited or unenforceable, shall remain in full force and effect.
- R. Binding Effect.** The terms, conditions, and obligations set forth in this Performance Bond shall be binding upon the Principal and Surety and their respective heirs, assigns, administrators, and successors in interest.
- S. Waivers or Modification.** No waiver or failure to enforce one or more parts or provisions of this Performance Bond shall be construed as a continuing waiver of any part or provision of this Performance Bond, which shall preclude the Parties from receiving the full bargained for benefit under the terms and provisions of this Performance Bond. A waiver or modification of any of the provisions of this Performance Bond or of any breach thereof shall not constitute a waiver or modification of any other provision or breach, whether or not similar, and any such waiver or modification shall not constitute a continuing waiver. The rights of and available to each of the Parties under this Performance Bond cannot be waived or released verbally, and may be waived or released only by an instrument in writing, signed by the party whose rights will be diminished or adversely affected by the waiver.

- T. Entire Contract, Amendment.** This Performance Bond is binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, assigns, officers, directors, employees, agents, representatives, subrogees and to all persons or entities claiming by, through or under them. This Performance Bond, including all attachments, if any, constitutes and/or represents the entire agreement and understanding between the Parties with respect to the subject matter herein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth herein. Neither this Performance Bond, nor any provisions hereof may be supplemented, amended, modified, changed, discharged, or terminated verbally. Rather, this Performance Bond and all provisions hereof may only be supplemented, amended, modified, changed, discharged, or terminated by an instrument in writing, signed by the Parties.
- U. Rights and Remedies Cumulative.** The rights and remedies of the Parties under this Performance Bond shall be construed cumulatively, and none of the rights and/or remedies under this Performance Bond shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.
- V. Counterparts.** This Performance Bond may be executed in counterparts, each of which shall be deemed an original, and all such counterparts, taken together, shall constitute one and the same Performance Bond.

IN WITNESS WHEREOF, the Parties have executed this Performance Bond on the dates set forth below.

Principal

By: _____

Title: _____

Date: _____

Acknowledgment of Principal

STATE OF UTAH)

COUNTY OF _____)

The foregoing Performance Bond was acknowledged before me, the undersigned notary public, this ___ day of _____, 20___, by _____, as _____ of _____, the Principal designated in the foregoing Performance Bond.

Notary Public

Residing at: _____, Utah

Commission Expires: _____

Surety

By: _____

Title: _____

Date: _____

Acknowledgment of Surety

STATE OF UTAH)

COUNTY OF _____)

The foregoing Performance Bond was acknowledged before me, the undersigned notary public, this ___ day of _____, 20___, by _____, as _____ of _____, the Surety designated in the foregoing Performance Bond.

Notary Public

Residing at: _____, Utah

Commission Expires: _____

DAVIS COUNTY

By: _____

Lorene Miner Kamalu, Chair

Davis County Board of County Commissioners

Date: _____

Attest:

Curtis Koch, Davis County Clerk/Auditor

Date: _____

PAYMENT BOND

Surety Bond No. _____

Principal (Contractor)

Surety

The Principal and Surety, a surety company authorized to do business in the State of Utah, do hereby obligate and bind themselves, jointly and severally, to Davis County, which shall be called the "Owner" in this Payment Bond, in the amount of \$_____, and agree to pay each claimant supplying labor, services, equipment, or material for the performance of the terms and conditions of the Project Contract and any amendments or change orders to it for the Project, which is designated as Project No. ???-?, and is described as 1000 N Chanel Lining Project, Centerville, Utah, subject to the following terms and conditions, pursuant to the provisions of Section 63G-6a-1103, *Utah Code Annotated* and other applicable law:

- A. **Project Contract.** Principal and Owner made and entered into a Project Contract dated _____, 2021, for the contract amount of \$_____ for the above-described Project and that Project Contract, together with any amendments, modifications, work directives and authorizations, or change orders thereto, is incorporated into this Payment Bond by reference.
- B. **Effective Date of Payment Bond.** This Payment Bond is effective as of the date that the Project Contract was executed by all of the Parties.
- C. **Condition of Payment Bond.** If the Principal and Surety shall promptly make payment of all sums due to all claimants for all labor, services, equipment, and materials supplied or reasonably used or to be used in the performance of the Project Contract, within one year after the last day when the claimant performed the labor or service or provided the equipment or materials on which the claim is based, and if the Surety defends, indemnifies, and holds harmless the Owner from all claims, liens, or legal actions by any person who performed labor or services or supplied equipment or material or reasonably used or to be used in the performance of the Project Contract, including indemnification to the Owner for all costs of defense incurred by the Owner such as reasonable attorneys' fees, then this obligation shall be deemed void; otherwise, it shall remain in full force and effect.
- D. **Purpose.** This Payment Bond is executed in accordance with and for the purpose of complying with Section 63G-6a-1103, *Utah Code Annotated*, and shall inure to the benefit of any and all persons who perform or supply labor, services, equipment, or material used or to be used in the performance of the Project Contract, or any modifications, amendments, change orders, or work directives and authorizations thereto.
- E. **Copy of Payment Bond.** Upon the request of any person or entity appearing to be a potential beneficiary of this Payment Bond, the Principal shall promptly furnish a copy of this Payment Bond to be made and given to the requesting person or entity.

F. Notice by Owner. The Owner shall give prompt notice to the Surety and Principal of any claims, liens, or legal actions of any persons who perform or supply labor, services, equipment, or material used or to be used in the performance of the Project Contract, or any modifications, amendments, change orders, or work directives and authorizations thereto. Any notice required to be given by the Owner to the Principal and Surety under this Payment Bond or by law shall be deemed properly and sufficiently given if such notice is given to the Principal or Surety. Notice shall be mailed or delivered to the Principal or Surety at the following addresses and shall be deemed to have been given as of the date of mailing or delivery:

Principal: _____

Surety: _____

G. Notice to Owner. Any notice to be given to the Owner with respect to this Payment Bond shall be mailed or delivered to the Owner at the following addresses:

Davis County Attn: Purchasing Manager 61 South Main Street, P.O. Box 618 Farmington, UT 84025	Davis County Public Works Attn: Public Works Director 1500 East 650 North Fruit Heights, UT 84037	
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H. Changes in Project Contract. No modifications, including amendments, change orders, or work directives and authorizations to the Project Contract or any extensions of time granted under the provisions of the Project Contract shall release either the Principal or Surety from their respective obligations under this Payment Bond.

I. Hold Harmless, Indemnification and Legal Defense. The Principal and Surety shall hold the Owner harmless from all claims, liens, or actions filed or brought by any claimant who has supplied labor, service, equipment, or materials used or to be used in the performance of the Project Contract or any amendments or change orders thereto, including the costs of defense for any such claims, liens, or actions incurred by the Owner or claimed by a claimant; provided that the Owner has given notice within a reasonable time of the filing against or service upon the Owner of any such claim, lien, or action. Moreover, the Principal and Surety shall indemnify the Owner for any costs incurred in the enforcement of this Payment Bond, including court costs and reasonable attorneys' fees.

J. Surety's Waiver of Notice. Surety waives notice of any modifications including addenda, change orders, work directives and authorizations, and time changes, to the Project Contract.

K. Surety's Obligation Limits. Surety's obligation under this Payment Bond shall not exceed the amount of the Payment Bond.

- L. Time of Essence.** Time is of the essence in respect to all parts or provisions of this Payment Bond, which specify a time performance or otherwise, and the Parties each agree to comply with all such times.
- M. Choice of Law; Jurisdiction; Venue.** This Payment Bond and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Payment Bond or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the State of Utah, without reference to conflict of law principals. The Parties irrevocably agree that the courts located in Davis County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Payment Bond, or its formation or validity. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Any party who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing party for its attorneys' fees, and the party prevailing in any such dispute shall be awarded its attorneys' fees.
- N. Authority.** The undersigned representatives of the Principal and Surety verify that they are authorized by the Principal and Surety, respectively, to execute this Payment Bond and thereby bind and obligate the Principal and Surety to its terms. If that authority is granted by a power of attorney, a duly executed and acknowledged copy of that power of attorney shall be attached to and incorporated by reference into this Payment Bond.
- O. Severability.** If any part or provision of this Payment Bond is found to be prohibited or unenforceable in any jurisdiction, such part or provision of this Payment Bond shall, as to such jurisdiction only, be inoperative, null and void to the extent of such prohibition or unenforceability without invalidating the remaining parts or provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render inoperative, null or void such part or provision in any other jurisdiction. Those parts or provisions of this Payment Bond, which are not prohibited or unenforceable, shall remain in full force and effect.
- P. Binding Effect.** The terms, conditions, and obligations set forth in this Payment Bond shall be binding upon the Principal and Surety and their respective heirs, assigns, administrators, and successors in interest.
- Q. Waivers or Modification.** No waiver or failure to enforce one or more parts or provisions of this Payment Bond shall be construed as a continuing waiver of any part or provision of this Payment Bond, which shall preclude the Parties from receiving the full bargained for benefit under the terms and provisions of this Payment Bond. A waiver or modification of any of the provisions of this Payment Bond or of any breach thereof shall not constitute a waiver or modification of any other provision or breach, whether or not similar, and any such waiver or modification shall not constitute a continuing waiver. The rights of and available to each of the Parties under this Payment Bond cannot be waived or released verbally, and may be waived or released only by an instrument in writing, signed by the party whose rights will be diminished or adversely affected by the waiver.
- R. Entire Contract, Amendment.** This Payment Bond is binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, assigns, officers, directors, employees, agents,

representatives, subrogees and to all persons or entities claiming by, through or under them. This Payment Bond, including all attachments, if any, constitutes and/or represents the entire agreement and understanding between the Parties with respect to the subject matter herein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth herein. Neither this Payment Bond, nor any provisions hereof may be supplemented, amended, modified, changed, discharged, or terminated verbally. Rather, this Payment Bond and all provisions hereof may only be supplemented, amended, modified, changed, discharged, or terminated by an instrument in writing, signed by the Parties.

- S. **Rights and Remedies Cumulative.** The rights and remedies of the Parties under this Payment Bond shall be construed cumulatively, and none of the rights and/or remedies under this Payment Bond shall be exclusive of, or in lieu or limitation of, any other right, remedy or priority allowed by law, unless specifically set forth herein.
- T. **Counterparts.** This Payment Bond may be executed in counterparts, each of which shall be deemed an original, and all such counterparts, taken together, shall constitute one and the same Payment Bond.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Payment Bond on the dates set forth below.

Principal

By: _____
 Title: _____
 Date: _____

Acknowledgment of Principal

STATE OF UTAH)
 COUNTY OF _____)

The foregoing Payment Bond was acknowledged before me this ___ day of _____, 20____
 , by _____, as of _____, the
 Principal designated in the foregoing Payment Bond.

 Notary Public
 Residing at: _____, Utah
 Commission Expires: _____

Surety

By: _____
Title: _____
Date: _____

Acknowledgment of Surety

STATE OF UTAH)
COUNTY OF _____)

The foregoing Payment Bond was acknowledged before me this ___ day of _____, 20_____
, by _____, as _____
of _____, the Surety designated in the foregoing Payment Bond.

Notary Public
Residing at: _____, Utah
Commission Expires: _____

DAVIS COUNTY

By: _____
Lorene Miner Kamalu, Chairperson
Davis County Board of County Commissioners
Date: _____

Attest:

Curtis Koch, Davis County Clerk/Auditor
Date: _____

PROJECT CONTRACT

This PROJECT CONTRACT (this “Contract”) is made and entered into by and between DAVIS COUNTY (“County”), and _____ (“Contractor”). County and Contractor may be collectively referred to as the “Parties” in this Contract.

Recitals

This Contract is made and entered into by and between the Parties based, in part, upon the following recitals and representations:

A. Davis County intends to construct the 1000 N Channel Lining Project, as described in this Contract and the Contract Documents;

B. Contractor represents and warrants to Davis County that it is a qualified contractor licensed to engage in the construction business in the State of Utah and able and competent to undertake and complete the Project;

C. Contractor represents and warrants that it has:

- 1) Obtained copies of and examined all Contract Documents for this Project;
- 2) Examined the Project site and is fully informed as to all existing local conditions and limitations under which the Project work is to be performed, including, but not limited to, the availability of necessary labor, subcontractors, equipment, and materials;
- 3) Considered all applicable Federal, State and local laws, rules, regulations, codes and designations that may affect the cost, progress, performance, or furnishing of materials, equipment, labor or service for the Project;
- 4) Conducted any explorations, tests, studies, or investigations as may be necessary in order to obtain the information pertinent to the physical conditions at or contiguous to the Project site which Contractor deems necessary in order to undertake and complete the Project;
- 5) Become familiar with and considered the character, quality and quantities involved in the services to be performed and equipment and materials to be provided or used, prevailing hourly wage rates for the area and this type of project, and other construction business factors which may affect the ability of Contractor to undertake and complete the Project;
- 6) Informed the Project Manager by written notice of any significant or apparent errors or omissions as to the quantities of materials to be provided or removed from the Project site or as to time requirements designated in the Contract Documents; and
- 7) Given written notice to the Project Manager of all significant or apparent errors, ambiguities, conflicts, inconsistencies, omissions, or discrepancies in the Contract Documents and submitted any questions Contractor has had with respect to the provisions of the Contract Documents and requested an interpretation of or correction to the Contract Documents as to those matters.

D. Contractor is desirous of entering into this contract and undertaking and completing the Project for Davis County under the terms and provisions of this Contract as well as the Contract Documents.

Contract Terms

NOW, THEREFORE, in consideration of the mutual conditions and covenants contained herein, the parties hereto do hereby agree as follows:

1. Contract Documents.

A. The Contract Documents comprise the entire agreement between Davis County and Contractor concerning the Project. Each of the Contract Documents is deemed a part of this Contract.

B. The Contract Documents consist of the following:

- 1) Table of Contents;
- 2) (Not Used);
- 3) (Not Used);
- 4) Project Plans and Drawings;
- 5) (Not Used);
- 6) Bidder General Information
- 7) (Not Used);
- 8) (Not Used);
- 9) Bid Bond;
- 10) (Not Used);
- 11) (Not Used);
- 12) Project Contract;
- 13) General Conditions;
- 14) Supplemental Conditions;
- 15) Performance Bond;
- 16) Payment Bond;
- 17) Notice to Proceed;
- 18) Acceptance of Notice to Proceed;
- 19) Change Order(s);
- 20) Work Directive(s) and Authorization(s);
- 21) Request(s) for Clarification;
- 22) Draw Request(s);
- 23) Certificate of Substantial Completion; and
- 24) Specifications;
- 25) (Not Used);

C. Contractor shall immediately give written notice to Davis County of any conflicts, ambiguities, inconsistencies, errors, omissions or discrepancies of which Contractor becomes aware at any time pertaining to the any of the Contract Documents; any questions or requests

Contractor may have pertaining to the Contract Documents or any request of Contractor for interpretation and correction. Davis County shall respond as soon as reasonably possible to any such notice or requests for interpretation or correction.

2. **The Work.** The Parties acknowledge, understand and agree that Contractor's sole point of contact for all matters relating to the construction of the Project shall be Davis County, through the Project Manager, Adam Wright. The Parties further acknowledge, understand and agree Davis County shall not be liable to any of the Parties for any acts or omissions made by the Project Manager or any County employee relating to the Project, which are made in good faith and as a result of the Project Manager obligations set forth in this Contract and/or the Contract Documents. The project work is generally described as the construction of the 1000 N Channel Lining Project, complete as described in the project plans and specifications. This project includes the following: constructing a concrete liner in the 1000 N Drain. The project will include 790 feet of trapezoidal channel with 65 feet of transitions and tie-ins. There are also some storm drain tie-ins that need to be tied into the channel..

A. The Parties acknowledge, understand and agree that Contractor shall complete all work with respect to the Project as specified and described in the Contract Documents.

B. The Parties acknowledge, understand and agree that Contractor shall:

1) Attend a preconstruction conference with representatives from Davis County and other stakeholders and/or their representatives;

2) Provide all equipment, tools, labor, services, transportation, supervision, and other construction accessories, services, and facilities needed to complete the Project work;

3) Provide all materials, supplies, and equipment specified to be incorporated into and form a part of the complete Project work; and

4) Provide and perform all work in a substantial and skillful manner and in accordance with the provisions of the Contract Documents.

C. The Parties acknowledge, understand and agree that all work performed under this Contract and the Contract Documents shall be subject to inspection by and the approval of the Project Manager or Davis County authorized representatives.

D. Contractor represents, warrants and certifies that, under penalty of perjury, Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's employees that are employed in the State of Utah in accordance with Section 63G-12-302, *Utah Code Annotated*. Contractor further represents, warrants and certifies that it will require verification from sub-contractors that they and each of them are complying with Section 63G-12-302, *Utah Code Annotated*.

3. **Dates of Commencement and Substantial Completion.**

A. The work to be performed under this Contract shall be commenced within 14 days of the issuance to Contractor of the Notice to Proceed.

B. The work to be performed under this Contract shall be substantially completed,

within **60 days** from the date of issuance of the Notice to Proceed, subject to any modifications or amendments to this Contract, including, but not limited to, any authorized adjustments, change orders, or work directives and authorizations.

C. All work to be performed under this Contract shall be completed, within **75 days** from the date of issuance of the Notice to Proceed, subject to any modifications or amendments to this Contract, including, but not limited to, any authorized adjustments, change orders, or work directives and authorizations.

4. **Contract Price.** The Parties acknowledge, understand and agree that Davis County shall pay to Contractor, subject to additions and deductions by approved change orders or work directives and authorizations, as may be otherwise provided by the Contract Documents, the contract price for the Project in the total amount of (\$_____).

5. **Contract Payments.**

A. Upon fully completing Contractor's obligations regarding certain portions and/or divisions of the Project, Contractor shall submit written draw requests to Davis County, using Contract Document No. 22, for each payment request.

B. Upon receiving a written and properly completed draw request from Contractor, County shall make progress payments towards the contract price to Contractor, subject to appropriate inspection and verification by Davis County or their authorized representatives, within thirty days of the receipt of each draw request. In the event the County determines, after inspection of the Project, that Contractor has not fully completed its obligations regarding the certain portions and/or divisions of the Project for which it is seeking payment on a particular draw request, County shall not be obligated to pay Contractor for the portion of the work not completed and shall only be obligated to pay Contractor for such portions of the work within thirty days after County, determines that such portions of the work are not satisfactorily completed.

C. Draw requests shall generally be submitted by Contractor to County on a monthly basis and shall be accompanied by all relevant documentation indicating the progress within each portion or division of the contracted work, the total percentage of work completed and the total retainage as specified in this Contract.

D. Disbursements for each progress payment shall be made in the manner and subject to the conditions as set forth in Attachment A which is made a part of this Contract and is incorporated herein by reference.

E. County may withhold any payment regarding the Project including, interim or final payments, until Contractor has corrected or replaced any work or materials that are defective or fail to conform to the Contract Documents and/or reasonable construction standards, codes, regulations, and laws. In the event that Contractor fails to correct or replace any work or materials required by Davis County within fifteen days after receiving written notice to do so, Davis County may apply some or all of the retained funds to correcting or replacing any defective or nonconforming work or materials in addition to any other remedies available to Davis County under the Contract Documents, law, equity or otherwise.

6. **Liquidated Damages.**

- A. The Parties acknowledge, understand and agree that:
- 1) Time is of the essence with respect to this Contract;
 - 2) The County will incur damages and inconvenience if the Project is not completed within the time specified in Section 3 of this Contract;
 - 3) The Parties will likely incur unnecessary and unreasonable delay, expense and difficulties involved in any efforts, including legal proceedings, to establish the actual loss incurred by the County if the Project is not completed within the specified time; and
 - 4) Based upon the foregoing and in lieu of requiring any such proof of damage or loss attributable to the delay and the completion of the Project, Contractor shall pay County liquidated damages representing such damages or delay to the County in the sum of **\$600.00** per day following the specified date for substantial completion as set forth in this Contract including any adjustments made by any change order or addition to this Contract.

B. The Parties acknowledge, understand and agree that any payment of liquidated damages by Contractor to County under this Contract is not and shall not be deemed to constitute a penalty.

C. Upon substantial completion and the issuance of a Certificate of Substantial Completion, if Contractor should neglect, refuse, or fail to complete any remaining work within the time specified in Section 3 of this Contract or any approved extension thereof, Contractor shall pay to County the sum of **\$600.00** per day for each day after the time specified for completion in Section 3 of this Contract.

D. The acceptance by Contractor of final payment shall constitute a waiver of all claims by Contractor against Davis County except those previously made in writing and which remain unsettled at the time of the acceptance of final payment.

E. Before final payment may be made, Contractor shall submit to the County reasonable evidence that all payrolls, material bills, subcontracts, and outstanding indebtedness incurred by Contractor in connection with the Project have been paid or that appropriate and acceptable arrangements have been made for their payment.

7. Contractor's Warranty.

A. Contractor warrants to County that:

- 1) All materials and equipment furnished under this Contract shall be new and under manufacturer's warranty, if applicable, unless specified otherwise by this Contract; and
- 2) All work on the Project shall be of reasonable quality, free from faults and defects and shall be in conformance with the Contract Documents and reasonable construction standards and applicable codes, regulations, and laws.

B. Contractor shall correct or replace any work or materials that are defective or fail to conform to the Contract Documents and reasonable construction standards, codes, regulations, and laws within thirty days after written notice is sent by County to Contractor regarding any defect or failure to correct or replace any work or materials that are defective or fail to conform to the Contract Documents and reasonable construction codes, regulations, standards and laws.

C. Contractor shall deliver and assign to County all equipment and material warranties issued by the manufacturers of such materials and equipment. The warranties and assignments of warranties shall be delivered within ten (10) days of substantial completion of the Project.

D. All warranties of Contractor shall extend for a minimum period of three years from the date of final inspection of the Project.

8. Performance and Payment Bonds.

A. Upon the execution of this Contract and prior to the commencement of the Project, Contractor shall provide duly executed performance and payment bonds as specified in the Contract Documents. Contractor shall use either Contract Document Nos. 15 and 16, respectively, for such bonds together with any necessary attachments, or other documents for the required bonds that are acceptable to County.

B. These bonds shall remain in effect at least until one (1) year after the date when final payment becomes due, except as otherwise provided by law, regulation, or the Contract Documents.

C. If the surety on any bond furnished by Contractor is declared bankrupt, becomes insolvent, or loses its right to do business within the State of Utah, Contractor shall within five (5) days thereafter substitute another bond and surety, both of which must be acceptable to Davis County.

9. Insurance and Risk.

A. Contractor shall obtain and maintain insurance, with a company or companies lawfully authorized to do business in the State of Utah, with coverage provided for claims which may arise out of or resulting from Contractor's actions or omissions under this Contract and/or the Contract Documents and from any actions or omissions for which Contractor may be liable, whether such acts or omissions be by Contractor, a subcontractor, or any other party directly or indirectly employed by or contracted with any of them for the following claims:

- 1) Claims under Workers' Compensation, including coverage for occupational disease;
- 2) Claims for disability benefits;
- 3) Claims under similar employment benefit laws applicable to the work to be performed;
- 4) Claims for damages because of bodily injury, occupational sickness or disease or death of any person, including Contractor's employees or any person other than Contractor's employees;
- 5) Claims for damages for personal injury to or death of any person;
- 6) Claims for damages because of injury to or destruction of tangible property;
- 7) Claims for damages because of injury to or death of any person or the destruction of any property arising from the operation of a motor vehicle by Contractor's employees, agents, or representatives; and
- 8) Any other claims resulting from any injury or damages incurred or caused by any employees or agents of Contractor or any subcontractor, their employees or agents.

Contractor may self-insure any or all of these exposures if Contractor does so using a plan of self-insurance approved by the State of Utah and acceptable to Davis County.

B. Contractor shall provide to the Project Manager, prior to the commencement of the Project, a valid Certificate of Insurance for the required insurance which is acceptable to Davis County.

C. If any of the insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted to the Project Manager.

D. Coverages shall be written on an occurrence made basis and shall be maintained without interruption from the date of commencement of the Project until at least one year from the date of final payment or one year from the last date of work is performed on the Project, whichever is later.

E. From the commencement of the Project and continuing through the completion of the Project, Contractor shall carry all of the risk arising from, in connection with and/or relating in any way to the construction of the Project, including, but not limited to, all materials, fixtures, equipment, and regardless of whether the property is at the Project site, in transit or off the Project site. Contractor may, in its discretion, obtain a builders risk insurance policy to assist Contractor with this obligation.

10. Liability and Indemnification.

A. Contractor, for itself, and on behalf of its officers, officials, owners, members, managers, employees, agents, representatives, contractors, volunteers, and/or any person or persons under the supervision, direction, or control of Contractor (the "Contractor's Representatives"), agrees and promises to indemnify, defend, save and hold harmless Davis County, as well as its' officers, officials, employees, agents, representatives, contractors, and volunteers (the "County's Representatives"), from and against any loss, damage, injury, liability, claim, action, cause of action, demand, expense, cost, including defenses costs, fee, or otherwise (the "Claims"), that may arise from, may be in connection with, or may relate in any way to this Contract, the Contract Documents, and/or the acts or omissions, negligent or otherwise, of Contractor or Contractor's Representatives, whether or not the Claims are known or unknown, or are in law, equity, or otherwise, and which do not arise from the sole negligence of Davis County.

B. The Parties acknowledge, understand and agree that no term or condition of this Contract, including, but not limited to, insurance that is permitted or required under this Contract, shall limit or waive any liability Contractor may have arising from, in connection with, or relating in any way to this Contract, the Contract Documents and/or the Project, and/or the acts or omissions, negligent or otherwise, of Contractor or Contractor's Representatives.

C. Davis County hereby acknowledges and states that no provision of this Contract or the Contract Documents shall be, or shall be construed as, a waiver of any applicable provision of the Governmental Immunity Act of Utah.

11. Change Orders and Work Directives.

A. Any changes in the Project and adjustments to this Contract consisting of additions, deletions, or other revisions which increase the Contract price, extend the time, or change the scope of the Project may be authorized only by authorized representatives of the Parties and by completed change orders. All change orders shall be on the Change Order Form (Contract Document No. 19) signed and approved by authorized representatives of the Parties, and shall be performed under the applicable conditions of the Contract Documents.

B. Changes in the Project that do not increase the Contract Price, extend the time, or change the scope of the Project may be authorized by a Work Directive and Authorization Form (Contract Document 20) pursuant to the *General Conditions* (Contract Document 13).

12. Termination of This Contract.

A. Davis County may terminate the Contract if Contractor:

- 1) Persistently or repeatedly refuses or fails to supply sufficient and properly qualified and skilled workers or proper materials;
- 2) Fails to make payments to subcontractors for materials or labor in accordance with agreements between Contractor and the subcontractors;
- 3) Persistently disregards applicable laws, codes, standards, or regulations or any directives from Davis County to come into compliance with such laws, codes or regulations; or
- 4) Is otherwise in material breach of any provision of this Contract or the Contract Documents.

B. If Davis County has terminated this Contract under the provisions of this Section, Davis County may take possession of the Project site and of all the materials, equipment and tools located thereon and/or pertaining thereto and finish the work by whatever reasonable method Davis County may deem expedient. In the event that this should occur, Contractor shall not be entitled to receive further payment, if at all, until the Project is completed, including, but not limited to, payments from retained funds regarding the Project.

C. If the cost to Davis County for finishing the Project exceeds the unpaid balance of the Contract price, Contractor shall pay the entire difference to Davis County within thirty days after Davis County sends the Contractor written notice of the unpaid balance of the Contract for which Contractor is obligated to pay.

D. Upon seven days written notice, Davis County may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate this Contract and/or the Contract Documents. In the event that this should occur, Contractor shall be paid for all work executed and any expenses sustained by Contractor through the date of termination of this Contract and/or the Contract Documents.

E. Other terms and conditions pertaining to termination or suspension are set forth in the *General Conditions* (Contract Document 13) and incorporated herein and made a part of this Contract by this reference.

13. Safety and Precautions.

A. Contractor shall be responsible for initiating, maintaining and supervising reasonable and necessary safety precautions and programs in connection with the performance of the Project.

B. Contractor shall take all necessary and reasonable precautions for the safety of and shall provide reasonable protection to prevent damage, injury or loss to the employees of Contractor, subcontractor, employees of subcontractors, Davis County personnel and representatives, and any other persons affected by the Project.

14. Notices. Unless the express terms of this Contract provide otherwise, all notices, demands, and/or requests required or permitted under this Contract (collectively, the “Notices”) shall be in writing and shall be delivered personally, by a nationally recognized overnight courier, or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the party(ies) at their respective address(es) set forth below, and the same shall be effective upon receipt if delivered personally, on the next business day if sent by overnight courier, or three (3) business days after deposit in the United States mail, if mailed:

<u>If to Davis County:</u> Davis County Public Works Attn: Adam Wright, Public Works Director 1500 East 650 North Fruit Heights, UT 84037	<u>If to the Contractor:</u>
---	------------------------------

15. Assignment. The Parties agree that neither this Contract, nor the duties, obligations, responsibilities, or privileges under this Contract, may be assigned or transferred, in whole or in part, without the prior written consent of all of the Parties, except that Contractor consents hereby to the assignment by Davis County of their interest in the Project for security purposes or by reason of default in connection with the financing of the Project and agrees to execute any documents necessary with respect to such assignment for such financing or by reason of default.

16. Choice of Law; Jurisdiction; Venue. This Contract and all matters, disputes, and/or claims arising out of, in connection with, or relating to this Contract or its subject matter, formation or validity (including non-contractual matters, disputes, and/or claims) shall be governed by, construed, and interpreted in accordance with the laws of the State of Utah, without reference to conflict of law principals. The Parties irrevocably agree that the courts located in Davis County, State of Utah (or Salt Lake City, State of Utah, for claims that may only be litigated or resolved in the federal courts) shall have exclusive jurisdiction and be the exclusive venue with respect to any suit, action, proceeding, matter, dispute, and/or claim arising out of, in connection with, or relating to this Contract, or its formation or validity. The Parties irrevocably submit to the exclusive jurisdiction and exclusive venue of the courts located in the State of Utah as set forth directly above. Any party who unsuccessfully challenges the enforceability of this clause shall reimburse the prevailing party for its attorneys’ fees, and the party prevailing in any such dispute shall be awarded its attorneys' fees.

17. **Binding Nature.** This Contract is binding upon and shall inure to the benefit of the Parties and their respective heirs, successors, assigns, officers, directors, employees, agents, representatives, subrogees and to all persons or entities claiming by, through or under them.

18. **Contract Date.** The date of this Contract and the date upon which it shall become effective is the date that this Contract is executed and dated by the final party to execute and date this Contract.

19. **Counterparts.** This Contract may be executed in counterparts, each of which shall be deemed an original, and all such counterparts, taken together, shall constitute one and the same Contract.

IN WITNESS WHEREOF, the Parties have each executed this Contract on the dates set forth below.

CONTRACTOR

By: _____
Title: _____
Date: _____

DAVIS COUNTY

By: _____
Lorene Miner Kamalu, Chair
Davis County Board of County Commissioners
Date: _____

Attest:

Curtis Koch, Davis County Clerk/Auditor
Date: _____

Approved as to form and legality

Davis County Attorney's Office
Date: _____

Attachment A

Disbursement Retainage Option

All disbursements under this Contract shall be subject to the following terms and conditions in accordance with Section 13-8-5, *Utah Code Annotated*:

1. Disbursements for each progress payment shall be as follows:
 - A. Ninety-five percent to Contractor;
 - B. Five percent to be retained by Davis County in a separate interest bearing fund to be distributed, together with any accrued interest thereon, to Contractor within forty-five days after the later of:
 - 1) The date that County receives the billing statement from the Contractor;
 - 2) The date that a certificate of occupancy or final acceptance notice is issued to Davis County; or
 - 3) The date Contractor accepts the final pay quantities.
2. Disbursements shall be made in accordance with the provisions of the Contract Documents including, but not limited to, Sections 4 and 5 of this Contract (Contract Document 12).
3. If only partial occupancy of the Project is permitted, any retention proceeds withheld and retained pursuant to this section and any accrued interest shall be partially released within forty-five days under the same conditions as provided in the foregoing Section 1 in direct proportion to the value of the part of the Project occupied.
4. The billing statement from Contractor as provided in the foregoing Subsection 1.B.(1 of this Attachment A shall include documentation of lien releases and/or waivers.
5. If Contractor or a subcontractor is in default or breach of the terms and conditions of the Contract Documents, including the plans and specifications governing construction of the Project, County may withhold from payment for as long as reasonably necessary an amount necessary to cure the breach or default of Contractor or subcontractor; or if a project or a portion of the Project has been substantially completed, County may retain until completion up to twice the fair market value of the work of Contractor or a subcontractor that has not been completed:
 - A. in accordance with the construction contract documents, plans, and specifications;
 - or
 - B. in the absence of plans and specifications, to generally accepted draft standards.
6. If County refuses payment under the foregoing Section 5, it shall describe in writing within forty-five days of withholding such amounts what portion of the work was not completed according to the standards specified.
7. Contractor or a subcontractor who receives retention proceeds shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received within ten (10) days from the day that all or any portion of the retention proceeds is received by:

- A. Contractor from County; or
- B. The subcontractor from:
 - 1) Contractor; or
 - 2) a subcontractor.

If a retention payment received by Contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to that designated subcontractor.

GENERAL CONDITIONS

THESE GENERAL CONDITIONS are deemed part of the Contract and shall be in full force and effect except to the extent specifically modified or deleted by the Contract itself, any addendum to the Contract, any modifications to the General Conditions, or any specific Contract Documents. If any inconsistencies exist between the Contract and the General Conditions, the terms of the Contract shall govern.

Article 1. Definitions

Wherever used in these General Conditions or in any other Contract Document, the following terms have the following meanings, unless the express terms of these General Conditions or any of the other Contract Documents provide otherwise. The definition shall be applicable to both the singular and plural and to any pronoun used in place of the term.

- A. "Addenda" or "Amendment" means any written document approved and signed by Davis County which modifies the terms of the Contract or any of the Contract Documents.
- B. "Bond" means the bid, performance, and payment bonds or any other instruments of security.
- C. "Change Order" means a Contract Document approved and signed by Davis County authorizing an addition or revision to or deletion from the Project work or an adjustment in the Contract price or the Contract time.
- D. "Contract" or "Project Contract" means document No. 12 of the Contract Documents.
- E. "Contract Documents" means the following documents collectively, each of which shall be deemed a contract document:
 - 1. Table of Contents;
 - 2. (Not Used);
 - 3. (Not Used);
 - 4. Project Plans and Drawings;
 - 5. (Not Used);
 - 6. Bidder General Information
 - 7. (Not Used);
 - 8. (Not Used);
 - 9. Bid Bond;
 - 10. (Not Used);
 - 11. (Not Used);
 - 12. Project Contract;
 - 13. General Conditions;
 - 14. Supplemental Conditions;

15. Performance Bond;
16. Payment Bond;
17. Notice to Proceed;
18. Acceptance of Notice to Proceed;
19. Change Order(s);
20. Work Directive(s) and Authorization(s);
21. Request(s) for Clarification;
22. Draw Request(s);
23. Certificate of Substantial Completion; and
24. Specifications;
25. (Not Used);

Contract Documents also include all addenda or any other documents designated and approved by Davis County as a Contract Document.

- F. "Contract Price" means the total amount agreed upon by Davis County in the Contract, as adjusted by any addenda or Change Order to be paid by Davis County to Contractor for the Project Work.
- G. "Contract Time" means the number of days stated in the Project Contract, as modified by any addenda or Change Order, for the completion of the Project Work.
- H. "Contractor" means the person, firm or entity that is a party to the Contract with Davis County and the authorized representatives and employees of Contractor.
- I. "Engineer" or "Project Engineer" means an engineer retained by Davis County to provide services for the Project Work.
- J. "Project Manager" means the individual designated by Davis County. The Project Manager may be a County employee or officer or may be an engineer, architect or other qualified person retained by Davis County for the Project.
- K. "Project Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by Contractor in order to fulfill Contractor's obligations under the Contract.
- L. "Request for Payment" means the forms signed and submitted by Contractor stating a request for a progress or final payment.
- M. "Shop Drawings" shall mean those drawings, diagrams, schedules and other data specifically prepared for the Project Work by Contractor or any subcontractor, manufacturer, or supplier to illustrate or demonstrate any portion of the Project Work or which in any way depict the manner in which Contractor proposes to perform to the specifications and plans for the Project. Shop drawings are not Contract Documents.
- N. "The Parties" means Contractor and Davis County collectively.

Article 2. Contract Documents

- A. **Entire Agreement.** The Contract Documents constitute and/or represent the entire agreement and understanding between the Parties with respect to the subject matter therein. There are no other written or oral agreements, understandings, or promises between the Parties that are not set forth in the Contract Documents.
- B. **Complementary.** The Contract Documents are complementary in nature, meaning that what is called for by one document is as binding as if called for by all documents.

C. Intent.

1. The intention of the Contract Documents is to provide for and include all labor and materials, services, equipment, and other items necessary for the completion of the Project Work by Contractor.
2. It is intended that any labor, services, material or equipment that may be reasonably inferred from the Contract Documents as being required to produce the intended result will be performed or provided by Contractor whether or not specifically described in the Contract Documents.
3. Words or terms having a generally known technical or trade meaning shall be interpreted in accordance with such meanings.
4. Reference to any standard specifications, manuals or codes whether by specific reference or implication shall mean the latest version of such specification, manual, code, law or regulation, except as may be otherwise specifically stated in the Contract Documents. However, no provision of any such referenced standard specification, manual, code, law or regulation shall be effective to change the duties and responsibilities of Contractor or any of their agents, representatives or employees from the duties and responsibilities set forth in the Contract Documents.

D. Amending and Supplementing Contract Documents.

1. The Contract may be amended to provide for additions, deletions, and revisions in the Project Work or to modify the terms and conditions of the Contract or any of the Contract Documents. Such an amendment must be done by either of the following methods:
 - a) A written and executed addenda or amendment; or
 - b) An executed Change Order.
2. In addition, the requirements of the Contract Documents may be supplemented and minor variations in the Project Work may be authorized by a work directive and authorization approved by the Project Manager; providing, however, that no work directive may be used if the variation results in an increase in the Contract price or Contract time or modifies the scope of the Project.

E. Copies. All Contract Documents, including the plans, drawings, and specifications, will be provided to Contractor on a compact disk without cost and at the request of Contractor. Paper copies of the Contract Documents may be printed and distributed at will by Contractor for purposes of completing the Project only. All printing costs for such copies shall be borne by Contractor.

F. Plans, Drawings and Specifications. The plans, drawings and specifications are the property of Davis County and shall be used by Contractor, subcontractors, or any other party exclusively for the execution of the Project Work with respect to this Project and may not be used for any other purpose unless the specific written consent of Davis County is given for such other use. All copies of plans, drawings, and specifications shall be returned to Davis County, upon request, upon the completion of the Project Work, except for one copy which may be retained by Contractor as part of the Contract Documents.

G. Shop Drawings.

1. Contractor shall submit all shop drawings and the product data, samples, and similar submittals to the Engineer for review and approval.
2. Contractor shall perform no portion of the Project Work requiring submittal, approval, and review of any shop drawings, product data, and samples or other similar submittals until they have been approved by the Engineer.
3. Before submission of each shop drawing, product data, sample, or other similar submittals, Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog or parts numbers and similar data with respect to the materials submitted.

4. At the time of each submission, Contractor shall give the Engineer specific written notice of each variation that the shop drawings, product data, samples or other submittal may have from the requirements and specifications of the Contract Documents.

Article 3. Pre-commencement Requirements

A. Executed Contract Documents.

1. Within six days of the date of the Notice of Award, Contractor shall deliver three executed copies of the Contract including the required insurance information.
2. Within six days of the date of the Notice of Award and before commencement of the Project Work, Contractor shall deliver to Davis County a fully executed Performance Bond and Payment Bond as specified in the Contract Documents.

B. Commencement of Contract Time. Contract time will commence to run on the date that the Notice to Proceed is delivered to Contractor.

C. Confirmation of Information.

1. Before undertaking the Project Work, or any part of the Project Work, Contractor shall carefully study and compare all Contract Documents and check and verify pertinent measurement and figures set forth in the Contract Documents.
2. Contractor shall immediately give written notice to Davis County, Project Manager, and Engineer of any conflicts, ambiguities, inconsistencies, errors, omissions or discrepancies of which Contractor becomes aware or of any request Contractor may have for interpretation and correction with respect to the Contract Documents.

D. Preconstruction Conference. Prior to the commencement of mobilization and construction, Contractor shall attend a preconstruction conference with the representatives of Davis County.

E. Schedules. Within ten (10) days after the effective date of the Contract, Contractor shall submit to the Project Manager for comment and review:

1. An anticipated progress schedule indicating the starting and completion dates of the various phases of the Project Work;
2. A preliminary schedule of shop drawings, product data, or sample submissions anticipated by Contractor;
3. A preliminary schedule of values for all of the Project Work which will include quantities, mobilization costs, and prices of the items aggregating the Contract price, which schedule shall subdivide the Project Work into component parts in sufficient detail to serve as the basis for progress payments during the course of the project; and
4. At least ten (10) days before submission of the first request for draw, a conference will be held between Contractor, Project Manager, and such other persons as may be appropriate to meet the finalized and approved schedules; and
5. The purpose of the finalized progress schedule will be to provide an orderly progression of the Project Work to completion within the Contract time and provide a workable arrangement for processing any submissions made by Contractor to Davis County.

Article 4. Bonds

A. Performance Bond. Prior to the commencement of the Project Work, or any part thereof, Contractor shall provide a duly executed Performance Bond in accordance and in compliance with Section 63G-6a-1103, *Utah Code Annotated*, and protecting the owner(s) from all defaults of Contractor and any defects in construction by the principal with respect to the Project in an amount at least equal to the

Contract price as security for the faithful performance of all of the obligations of Contractor under the Contract Documents.

- B. Payment Bond.** Prior to the commencement of the Project Work, or any part thereof, Contractor shall provide a duly executed Payment Bond in accordance and in compliance with Section 63G-6a-1103, *Utah Code Annotated*, and protecting the owner from all defaults of Contractor and any defects in construction by the principal with respect to the Project in an amount at least equal to the Contract price as security for the faithful payment of all of the obligations of Contractor under the Contract Documents.
- C. Forms.** Contractor shall use Contract Documents Nos. 15 and 16, respectively, for the performance and payment bonds together with any necessary attachments.
- D. Execution by Surety.** All performance and payment bonds shall be executed by sureties authorized to do business in the State of Utah. Bonds signed by an agent of the surety must be accompanied by a certified copy of the authority of that agent to execute the bond on behalf of the surety.
- E. Term of Bonds.** The performance and payment bonds shall remain in effect at least until one year after the date of the issuance of a Certificate of Substantial Completion and a final payment, unless provided specifically otherwise by law, regulation, or the Contract Document.

Article 5. Insurance

- A. Required Contractor Insurance Coverages.** Contractor shall obtain and maintain insurance, with a company or companies lawfully authorized to do business in the State of Utah, with coverage provided for claims which may arise out of or resulting from Contractor's actions or omissions under the Contract and from any actions or omissions for which Contractor may be liable, whether such acts or omissions be by Contractor, a subcontractor, or any other party directly or indirectly employed by or contracted with any of them for the following claims:
 - 1) Claims under Workers' Compensation;
 - 2) Claims for disability benefits;
 - 3) Claims under similar employment benefit laws applicable to the work to be performed;
 - 4) Claims for damages because of bodily injury, occupational sickness or disease or death of any person, including Contractor's employees or any person other than Contractor's employees;
 - 5) Claims for damages for personal injury to or death of any person;
 - 6) Claims for damages because of injury to or destruction of tangible property other than to the Project Work itself;
 - 7) Claims for damages because of injury to or death of any person or the destruction of any property arising from the operation of a motor vehicle by Contractor's employees, agents, or representatives; and
 - 8) Any other claims resulting from any injury or damages incurred or caused by any employees or agents of Contractor or any subcontractor, their employees or agents.

Contractor may self-insure any or all of these exposures if Contractor does so using a plan of self-insurance approved by the State of Utah and acceptable to Davis County.

- B. Certificates of Insurance.** Contractor shall provide a Certificate of Insurance for the required insurance which is acceptable to Davis County as evidence of that insurance prior to the commencement of the Project Work.
- C. Extended Coverage.** If any of the insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted.

D. Continuing Coverage. Coverages shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement until one year from the date of final payment, or one year from the last date work is performed under this Project Contract, whichever is later.

E. Coverage Minimums. The coverage minimums for the insurance to be provided by the Contractor shall be:

1) **Workers' Compensation**

- a) The statutory limits for the State of Utah as set forth in the *Utah Code Annotated*;
- b) Applicable federal requirements; and
- c) Employer's liability in the amount of \$100,000.

2) **Comprehensive Automobile Liability.** Comprehensive Automobile Liability for all vehicles owned or leased and used by the Contractor in this project:

- a) A combined single limit of \$1,000,000 for each occurrence for bodily injury; or divided limits of \$500,000 per person, \$1,000,000 for each occurrence for bodily injury, and \$1,000,000 for property damage.
- b) No-fault insurance automobile coverage for the State of Utah.

3) **General Liability Insurance**

- a) Contractor shall obtain and maintain either Comprehensive General Liability Insurance in accordance with the following Subsection 1 or Commercial Liability Insurance coverage in accordance with the following Subsection 2:

1. **Comprehensive General Liability Insurance** including coverage for premises-operations, independent contractors, products and completed operations, personal injury liability with employment exclusion deleted, blanket contractual broad form property damage, exclusions deleted with minimum limits of coverage of:

- a. Combined single limits of \$ 2,000,000; and
- b. Aggregate limits of \$ 2,000,000.

2. **Commercial Liability Insurance** including coverage for premises operations, independent contractors, products and completed operations, with no exclusions applicable to the contractual obligations assumed under the Contract Documents with minimum limits of coverage of:

- a. General aggregate limit of \$2,000,000;
- b. Products-completed operations aggregate limit of \$2,000,000; and
- c. Combined bodily injury or property damage per occurrence of limit of \$2,000,000.

- b) Contractor shall cause the Comprehensive General Liability Insurance or the Commercial Liability Insurance obtained and maintained by Contractor to designate the Owner(s), Engineer, and Project Manager as additional insureds.

F. County Liability Coverage. (Reserved)

G. Property Coverage. Contractor shall obtain and maintain builder's risk coverage upon the property and the Project Work at the site to the replacement cost value of the work.

H. Deductibles. Davis County shall not be responsible to purchase or maintain any property insurance to protect the interest of Contractor or subcontractors with respect to deductible amounts. The risk of a loss within the deductible amount will be borne by Contractor or subcontractor as the case may be. The property deductible amount shall not exceed \$2,500.00 per occurrence.

I. Waiver of Rights. (Reserved)

J. Loss Adjustments and Proceeds. (Reserved)

K. Acceptance of Insurance. (Reserved)

Article 6. Information to be Provided by Davis County

- A. **Real Property.** Davis County shall furnish the real property upon which the Project Work is to be performed including any necessary rights-of-ways and easements for ingress and egress. The Contract time may be adjusted for any loss of time resulting from the failure of Davis County to provide such access.
- B. **Surveys.** Davis County shall furnish, upon request, the survey describing the physical characteristics, legal limitations, utility locations for the site of the Project and a legal description of the Project site.
- C. **Zoning Requirements.** Davis County shall provide evidence of the lawfulness or approval that may be required under the applicable zoning ordinances including any conditional use permits.
- D. **Differing Conditions.** In the event that there are material errors in the Contract Documents or that there are newly discovered conditions, if any change in the Contract Documents is required, including adjustments to the Contract price or contract time, the Parties shall enter into a Change Order accordingly.

Article 7. Project Manager

- A. **Representation of Davis County.** Project Manager will be Contractor's sole source of contact for all construction matters relating to the Project.
- B. **Inspections.** Project Manager will make visits to the Project Site at appropriate times during the various stages of construction to observe and inspect the progress and quality of the executed Project Work and to determine if the Project Work is proceeding in accordance to the Contract Documents.
- C. **Requests for Clarification of Contract Documents.** Project Engineer will respond to all Requests for Clarification (Contract Document 21) submitted by Contractor of the Contract Documents and any requirements or specifications stated therein.
- D. **Response to Notices.** Project Engineer will respond to any written notice submitted by Contractor of any significant or apparent errors or omissions as to the quantities of materials to be provided or removed from the Contract site or as to time requirements designated in the Contract Documents and to all significant or apparent errors ambiguities, conflicts, inconsistencies, omissions or discrepancies in the Contract Documents.
- E. **Authorized Variations in Work.** Project Manager may authorize minor variations in the Project Work from the requirements of the Contract Documents provided that such variations do not involve any increase in the Contract price or Contract time and such variations are consistent with the scope of the Project and the overall intent of the Contract Documents. These variations may be authorized by a work directive which will be binding upon Davis County and Contractor.
- F. **Change Orders.** All proposed Change Orders shall be submitted to and reviewed by Project Manager who shall make recommendations concerning the approval of the Proposed Change Order. Project Manager shall submit all proposed Change Orders to authorized representatives of Davis County.
- G. **Defective Work.** Project Manager shall have authority on behalf of Davis County to disapprove or reject any work which Project Manager believes to be defective and will have authority to require special inspection or testing of any work.
- H. **Disclaimer Responsibility.** Project Manager shall not be responsible for the acts or omissions of Contractor, any subcontractor, any supplier, or any other person performing or furnishing labor, materials, equipment, or services for the Project Work.
- I. **Coordination with Project Architect or Engineer.** In the event Project Manager is not Project Architect or Project Engineer, Project Manager shall work in association and cooperation with Project Architect and/or Project Engineer whose responsibilities shall be set forth in separate agreements and described in the supplemental conditions.

J. Communications. Davis County shall issue all communications to Contractor through Project Manager.

Article 8. Contractor

A. Contractor's Responsibilities.

- 1) Contractor shall supervise and direct the Project Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Project Work in accordance with the Contract Documents.
- 2) Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Project Work under the Project Contract, except as otherwise instructed by the Contract Documents. Contractor shall be responsible to assure that the finished Project Work complies accurately with the Contract Documents.
- 3) Contractor shall be responsible to Davis County for the acts and omissions of Contractor's employees, subcontractors, and their agents and employees, and other persons performing portions of the Project Work under a contract with Contractor for services, labor, materials, equipment or otherwise.
- 4) Contractor shall maintain a competent resident superintendent at the Project site who will be Contractor's representative and have authority to act on behalf of Contractor. All communications given by Davis County to Contractor's superintendent shall be binding upon Contractor.

B. Labor, Materials, and Equipment.

- 1) Contractor shall provide competent suitable qualified personnel to perform the Project Work as required by the Contract Documents and shall maintain, at all times, good discipline and order at the Project site.
- 2) Except as provided otherwise in the Contract Documents, Contractor shall provide and pay for all labor, materials, equipment, services, tools, utilities, sanitary facilities, and other facilities or services necessary for the proper execution and completion of the Project Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project Work.

C. Substitutions. Contractor may not make substitutions as to type, quantity or quality of materials or equipment as specified in the Contract Documents without the prior consent of Davis County. Project Manager may authorize the substitution upon review of the written application of Contractor for acceptance of the substitution providing that the proposed substitution does not increase the Contract Price or change the scope of the Project. The application will state the nature, purpose and details of the proposed substitution, as well as the effect on the Contract price, time and scope of the Project.

D. Subcontractors.

- 1) If Davis County determines that it is necessary and appropriate to have a list of qualified subcontractors, Davis County will issue a Qualified Subcontractor List (Contract Document 7). In that event, only subcontractors who have been pre-approved by Davis County for public improvement projects may be used in this Project. If Contractor desires to use a subcontractor who is not on the pre-approved list, then Contractor must provide evidence and information sufficient to enable Davis County to evaluate and approve the proposed subcontractor taking these factors into consideration.
- 2) Contractor will use in this Project only those subcontractors who possess the experience, capability, and financial ability, as well as a good reputation for consistency and reliability in the performance of their commitments.
 - a) All subcontractors must be duly licensed as required by state law.

- b) Davis County has the right to reject any or all subcontractors who they reasonably believe are unqualified or for any reason deemed not to be in the best interest of Davis County.
 - c) Bidder shall provide copies of all bids or proposals from subcontractors, upon request, for review by Davis County.
 - d) Subcontractors may be required to carry sufficient insurance and provide certificates of insurance or bonds upon request.
- 3) Contractor shall be fully responsible to Davis County for all acts and omissions of the subcontractors or their employees or agents who are performing or are to perform or furnish any of the Project Work under a contract with Contractor.
- E. Subcontracts.** Contractor shall require each subcontractor, to the extent the Project Work is to be performed by a subcontractor, to be bound to Contractor by terms of the Contract Documents and each such subcontract agreement shall preserve and protect the rights of Davis County under the Contract Documents with respect to the Project Work to be performed by a subcontractor. Nothing in the subcontracts, subcontractor agreements, or the Contract Documents shall create any contractual relationship between Davis County and any of the subcontractors, except as otherwise specifically provided by law.
- F. Permits.** Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, government fees, and inspections necessary for the proper execution and completion of the Project Work. Davis County will assist Contractor, as necessary, in obtaining such permits and licenses.
- G. Compliance.** Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities, including the giving of notices that are applicable to the Project Work.
- H. Use of Premises.**
- 1) During the progress of the Project Work, Contractor shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the work.
 - 2) At the completion of the Project Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment, machinery, and surplus materials. Contractor shall leave the Project site clean and ready for occupancy by Davis County.
 - 3) Contractor shall restore to original condition all property at the Project site not designated for alteration by the Contract Documents.
- I. Notice of Variance.** If Contractor determines that the provisions of any of the Contract Documents are at variance with any applicable laws, statutes, ordinances, building codes, rules, regulations or lawful orders of proper authorities, Contractor shall promptly notify Project Manager in writing so that necessary changes will be accomplished by appropriate addenda or other action.
- J. Utility Expenses.** Contractor shall pay all charges for utility expenses for connections to the Project Work and utility services during the period of construction.
- K. Site Restrictions.** Contractor shall confine construction, the use, storage and parking of construction equipment and the storage of materials and other equipment, and the operations of subcontractors and employees to the Project site and such other areas as are permitted by applicable laws and regulations, rights-of-way, permits, easements, or other authorization.
- L. Damages.** Contractor shall assume full responsibility for any damage to any such area or to the owner or occupant of such area or of any contiguous land or area resulting from the performance of the Project Work.
- M. Site Copies of Documents.** Contractor shall maintain in a safe place at the Project site a fully executed and current copy of all of the Contract Documents. This copy should be designated a record copy and shall be available, together with all approved shop drawings, to Project Manager, for on-site reference.

Article 9. Safety and Precaution

- A. Contractor Safety Responsibility.** Contractor shall be responsible for initiating, maintaining and supervising reasonable safety precautions and programs in connection with the performance of the Project Work.
- B. Safety Precautions.** Contractor shall take all necessary and reasonable precautions for the safety of and shall provide the necessary protection to prevent damage, injury or loss to:
- 1) All employees, agents or representatives of Contractor;
 - 2) Subcontractors or any employees, agents, or representatives of the Subcontractors;
 - 3) County personnel and representatives;
 - 4) Any other persons affected by the Project Work;
 - 5) The Project Work and all materials and equipment to which shall be incorporated in the Project Work, whether in storage on or off the site; and
 - 6) Other property at the Project site or adjacent thereto, including trees, landscaping, sidewalks, pavements, roadways, structures, utilities or other items which are not designated for removal, relocation or replacement in the course of the Project Work.
- C. Compliance.** Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities relevant to the safety of persons or property or their protection from danger, injury or loss.
- D. Safeguards.** Contractor shall erect and maintain all reasonable and necessary safeguards for safety and protection as required by existing conditions and the performance of the Contract.
- E. Notices.** Contractor shall notify the owners and users of adjacent property and any underground facilities or utilities when the performance of the Project Work may affect them, and Contractor shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- F. Remedial Responsibility.** Contractor shall promptly remedy damage and loss to property.
- G. Continuing Responsibility.** Contractor shall continue to be responsible for the safety and protection required in conjunction with the Project Work until such time as the Project Work is fully completed.
- H. Contractor Safety Representative.** Contractor shall designate a responsible representative at the Project Site whose duties will include the prevention of accidents.
- I. Emergency Actions.** In an emergency situation affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent the threatened damage, injury or loss and to take reasonable and necessary actions as may be appropriate in the circumstances.

Article 10. Changes in the Project Work

- A. Changes.** The Project Work, as well as dates, contract price, and other matters specified in the Contract Documents, may be changed by additions, deletions, or revisions, and without invalidating the Project Contract, by a Change Order (Contract Document 19) or a Work Directive and Authorization (Doc. 20) in accordance with the Project Contract, these General Conditions, and the other Contract Documents. Change orders and work directives and authorizations shall be deemed to be Contract Documents.
- B. Performance of Change Orders and Work Directives and Authorizations.** All Change Orders and Work Directives and Authorizations shall be performed under and in accordance with the applicable conditions of the Contract Documents.
- C. Payment Authorization.** All payments for any changes, including those authorized by a work directive and authorization, in the Project Work or other matters resulting in an increase in the Contract

Price shall not be made without approval of a change order specifying the changes and the costs by the authorized representatives of Davis County.

- D. Change Orders.** Any changes in the Project and adjustments to the Project Contract consisting of additions, deletions, or other revisions which increase the Contract price, length in the Contract time, or change the scope of the Project shall be authorized only by Change Orders duly approved and executed by the Parties. All such Change Orders shall be on the Change Order Form (Contract Document No. 19) signed and approved by the Parties.
- E. Change Order Review.** Change Orders shall be submitted to Project Manager who, together with the Engineer, shall review the proposed Change Order and, upon their approval, forward the proposed Change Order to the authorized representatives of the Government Party for approval and execution.
- F. Change Order Approval.** A Change Order shall not become effective until approved and signed by Contractor and approved and signed by the authorized representatives of Davis County.
- G. Work Directives and Authorizations.** Changes in the Project Work that do not increase the contract price, length of the Contract, or change the scope of the Project may be approved by Project Manager in a work directive and authorization using Contract Document 20.

Article 11. Contract Price Changes

- A. Total Compensation.** The Contract price constitutes the total compensation payable by Davis County to Contractor for performing the Project Work.
- B. Adjustments.** The Contract price may be increased or changed only by approved Change Orders or as otherwise provided by the Contract Documents or any addenda approved and executed by the parties.
 - 1) Payment for Contractor's costs for any changes will not exceed fifteen percent for overhead and profit for each change up to \$10,000 in cost and ten percent for overhead and profit for each change in excess of \$10,000 in cost.
 - 2) The markup as calculated by this formula is not a penalty but a reasonable calculation of overhead and profit because the actual amount of overhead and profit cannot be ascertained at the time of the execution of the Project Contract.
- C. Notice of Claim for Adjustment.** If any of the Parties believes that the Contract price should be increased or decreased, that party shall deliver a written notice to the other party(ies) within a reasonable time, not exceeding fourteen days, from the occurrence of any event which gives rise to the claim. The claiming party shall submit supporting data and information with that notice and an itemized statement setting forth the claimed adjustment. The other party(ies) will have a reasonable time to review and respond to that claim.

Article 12. Contract Time

- A. Commencement and Completion Dates.** The work to be performed under the Project Contract shall be commenced within the period specified in the Project Contract and shall be substantially completed, subject to any authorized adjustments, change orders, or work directives, within the time specified in the Project Contract.
- B. Changes.** The Contract time may be changed only by an addenda or Change Order. Any claim by either party for an extension or reduction of the Contract time shall be based upon a written notice delivered by the party making the claim to the other party(ies) within a reasonable time after the occurrence of the event giving rise to the claim. The notice of claim shall state the general nature of the claim and describe the factors and reasoning which support the claim. The other party(ies) shall have a reasonable time to review and respond to that claim.

- C. **Extensions.** The Contract time will be extended for a period equal to any time lost due to delays which are beyond the control of Contractor. Such delays may include acts or omissions by Davis County, natural phenomena or catastrophes, labor disputes, or other unanticipated intervening factors.
- D. **Time of the Essence.** All times specified in the Contract Documents are of the essence of the Contract.

Article 13. Warranty and Corrections

- A. **Warranty.** Contractor warrants to Davis County that:
- 1) All materials and equipment furnished under the Project Contract will be of good quality and new and under manufacturer's warranty, if applicable, unless otherwise required or permitted by the Contract Documents;
 - 2) All work on the Project shall be of reasonable quality, free from faults and defect, and shall be in conformance with the Contract Documents and reasonable construction standards as well as applicable codes, regulations, and laws;
 - 3) Contractor will, upon notice, take immediate and reasonable action to correct or remedy the defect or replace defective materials or equipment; and
 - 4) All warranties of Contractor shall extend for a period of at least one year, or longer as may be specified by the Project Contract, from the date of final inspection of the Project.
- B. **Tests and Inspection.**
- 1) Davis County, Project Manager, and the agents and representatives of Davis County or of any testing agency hired by Davis County or governmental agency having responsibility or jurisdiction with respect to the Project will have access to the Project Work at reasonable times for observation, inspection, and testing. Contractor shall provide appropriate and safe conditions for such access.
 - 2) Contractor shall give the testing agencies timely notice of readiness of the Project Work for all required inspections, tests or approvals.
 - 3) If the applicable laws, ordinances, regulations or codes require the Project Work, or any part thereof, to specifically be inspected, tested, or approved, Davis County shall assume full responsibility for such inspection, testing, or approval processes and pay all costs in connection with them.
 - 4) If any work that is to be so inspected, tested or approved is covered without the written concurrence of Project Manager, such work must, if requested by Project Manager or an agency having jurisdiction, be uncovered for observation, inspection, testing, and approval. Such uncovering shall be at Contractor's expense unless Contractor had given prior timely notice of Contractor's intention to cover the work and Project Manager has not acted with reasonable promptness in response to such notice.
 - 5) Neither observations, inspections, tests, or approvals by Project Manager or any other person shall relieve Contractor from any obligations to perform the Project work in accordance with the Contract Documents.
- C. **Stopping the Work.** Davis County may order Contractor to stop the work, or any portion of the Project Work, until the cause for such order has been eliminated under any of the following circumstances:
- 1) If the Project Work, or any portion of it, is defective;
 - 2) It does not meet the required standards of specification;
 - 3) It is not in conformance with applicable laws, ordinances, regulations and codes;
 - 4) If Contractor fails to provide sufficient skilled workers or suitable materials or equipment; or
 - 5) If the Contractor fails to furnish and perform the Project Work in such a way that the completed Project Work will conform to the Contract Documents.

D. Correction of the Work.

- 1) If required by Project Manager, Contractor shall promptly either correct all defective work or, if the work has been rejected by Project Manager, remove the rejected work from the site and replace it with non-defective work.
- 2) Contractor shall bear all costs of such correction or removal.
- 3) Contractor shall have thirty days after notice of any defect or failure to correct or replace any work or materials that are defective or fail to conform to the Contract Documents and reasonable construction codes, regulations, standards and laws.

E. Correction.

- 1) If, within one year after the date of occupancy or date of issuance of a Certificate of Substantial Completion of the Project, whichever is later, any work is found to be defective, Contractor shall promptly, without cost to Davis County and in accordance with Davis County's written instruction, either correct such defective work, or, if it has been rejected by Davis County, remove it from the site and replace it with non-defective work.
- 2) If Contractor does not promptly comply with the request for correction or replacement, or in an emergency situation where any delay would cause serious risk of loss or damage, Davis County may have the defective work corrected or the rejected work removed and replaced and all costs of such correction removal or replacement shall be paid by Contractor.

F. Davis County's Correction of Defective Work.

- 1) If Contractor fails within a reasonable time after written notice from Project Manager to correct any defective work or to remove and replace any rejected work as required by Project Manager in accordance with these General Conditions or the Contract Documents, Davis County may, after seven days written notice to Contractor proceed to the extent necessary to complete corrective and remedial action. In that circumstance, Davis County may exclude Contractor from the Project Site, take possession of all or part of the site, take possession of all or part of the work, and suspend Contractor's services relating to the Project Work. Davis County may also in that circumstance, take possession of Contractor's tools, appliances, equipment and machinery at the site and utilize the same for the corrective or remedial action. Contractor shall not prevent Davis County or their representatives, agents, or employees from access to the site in that event.
- 2) All costs of the incurred by Davis County in exercising their right to correct the defective work or remove and replace the rejected work shall be charged against Contractor and the Contract price shall be adjusted accordingly.

Article 14. Payments and Completion

A. Schedule. The schedule attached as Attachment A to the Project Contract will serve as the basis for progress payments.

B. Draw Request. At least twenty (20) days before each progress payment is scheduled, Contractor shall submit to Project Manager for review, a Draw Request, using Contract Document No. 22, for the Project Work completed as of the date of the Draw Request. The Draw Request shall be accompanied by such supporting documentation as is required by the Contract Documents and as will adequately describe the work completed and the basis of the billing set forth in the Draw Request.

C. Disbursements of Progress Payments. Each progress payment will be allocated and disbursed as follows:

- 1) A percentage of the progress payment, as specified in the Project Contract, shall be disbursed directly to Contractor;

- 2) A percentage of the progress payment as specified in the Project Contract shall be retained by Davis County in a separate interest bearing fund to be distributed, together with any accrued interest thereon, to Contractor in accordance with Attachment A of the Project Contract.

D. Progress Payment Procedure.

- 1) Project Manager will, within ten (10) days after receipt of each Draw Request, review the request and make a recommendation to Davis County concerning its payment or rejection.
- 2) In the event that Project Manager recommends rejection of the payment, Project Manager shall first return the Draw Request to Contractor in order to give Contractor an opportunity to make any necessary or reasonable corrections to the Draw Request. Contractor may resubmit the Draw Request with or without such corrections to Davis County for its action.
- 3) Davis County shall act upon the Draw Request no later than thirty days after the receipt of the request and the recommendations of Project Manager.

E. Contractor's Warranty of Title. Contractor warrants that the title to all Project Work, materials, and equipment covered by the Draw Request, whether incorporated at that time in the Project or not, will pass to Davis County no later than the time of payment and the title will be free and clear of any and all liens or encumbrances.

F. Substantial Completion.

- 1) Substantial Completion is the stage in the progress of the Project Work at which the Project Work is sufficiently complete, in accordance with the Contract Documents, so that Davis County may occupy and utilize the Project for its intended use.
- 2) When Contractor determines that the Project Work is ready for its intended use and occupancy by Davis County, Contractor shall notify Project Manager in writing that the Project Work is substantially complete and request the issuance of a Certificate of Substantial Completion.
- 3) Within a reasonable time, Project Manager shall inspect the Project Work to determine the status of completion.
- 4) Upon the completion of that inspection, Project Manager shall submit a report to the authorized representatives of Davis County with a recommendation that the Certificate of Substantial Completion be either issued or denied. That report shall include a description of the reasons and factors upon which the recommendation is based and shall include a tentative list of items to be completed or corrected before final payment.
- 5) Upon authorization from the authorized representatives of Davis County, Project Manager shall issue a Certificate of Substantial Completion to Contractor, together with the tentative list of items to be completed or corrected before final payment or, in the alternative, inform Contractor of the denial of the request for the issuance of a Certificate of Substantial Completion, together with stated reasons for the refusal and necessary actions to be taken by Contractor in order for the Certificate of Substantial Completion to be issued.

G. Partial Occupancy or Utilization.

- 1) Davis County may occupy and use any completed or partially completed portion of the Project Work at any stage if Davis County and Contractor mutually agree in writing that part of the work constitutes a separately functioning and usable part of the Project Work that can be used or occupied by Davis County without significant interference with Contractor's performance on the remainder of the Project Work. In that event, the use or occupancy by Davis County of that part of the work may be accomplished prior to the issuance of a Certificate of Substantial Completion.
- 2) In the event that Davis County, with the consent of Contractor, occupy or use a portion of the Project Work, Davis County and Contractor shall enter into a separate written agreement, which shall be deemed a Contract Document, authorizing such use and also designating responsibilities

for Davis County as to payments, retainage, security, maintenance, utilities, damages, insurance, or other terms relevant to partial use or occupancy.

- 3) Prior to such partial occupancy or use, Davis County and Contractor shall jointly inspect the area to be occupied or used in order to determine and make a record of the condition and status of that area.
- 4) Partial occupancy or use of a portion of the work shall not constitute acceptance of the Project Work which does not comply with requirements of the Contract Documents.

H. Final Inspection. Upon written notice from Contractor that the entire Project Work, or an agreed portion thereof, is complete, Project Manager will make a final inspection with Contractor. Project Manager will report to the authorized representatives of Davis County in writing and specify any particulars relating to incomplete or defective work as well as to compliance with the requirements of the Contract Documents. Contractor will be provided a copy of that report and given an opportunity to make such corrections, removals and replacements as may be required. Contractor shall then again notify Project Manager who shall conduct another inspection which shall be deemed the final inspection, provided all corrective work has been satisfactorily completed, and submit a report to the authorized representatives of Davis County.

I. Final Application for Payment.

- 1) After Contractor has completed the entire Project Work and a final inspection has been made by Project Manager, without the necessity of any further correction, replacement or removal, Contractor shall submit an Application for Final Payment to Davis County.
- 2) The application for final payment shall include or be accompanied by at least the following:
 - a) All documentation required by the Contract Documents;
 - b) Complete and legally effective executed releases or waivers, acceptable to Davis County, of all liens arising out of or filed in connection with the Project Work or, in lieu thereof, receipts or releases in full;
 - c) An affidavit of Contractor that the releases, waivers, or receipts include all labor, services, materials and equipment for which a lien could be filed and for which Davis County might be held responsible, including payrolls, material and equipment bills or other indebtedness connected with the work;
 - d) A certificate evidencing that the insurance required by the Contract Documents remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty days prior written notice has been given to Davis County or as otherwise set forth in the Project Contract;
 - e) A written statement that Contractor has no knowledge of any substantial reason that the insurance would not be renewable to cover the period required by the Contract Documents;
 - f) An acknowledgment of the amount of the final payment; and
 - g) As required by Davis County, any other data or information establishing the payment or satisfaction of obligations which might constitute a lien or claim against Davis County.
- 3) If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Davis County to indemnify Davis County against any lien or claim of such Contractor or supplier.

J. Final Payment and Acceptance.

- 1) If Davis County is reasonably satisfied that all documentation required by the Contract Documents has been provided, and that the Project Work has been completed and the obligations of Contractor and the Contract Documents fulfilled, Davis County shall submit final payment to Contractor.
- 2) The final payment shall not constitute a waiver of claims by Davis County.
- 3) Following completion of the Project, any remaining retainage held by Davis County shall be paid to Contractor in accordance with Article 14.C.

- 4) The obligation of Contractor to perform and complete the Project Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of any work not in accordance with the Contract Documents nor release of Contractor's obligation to perform the Project Work in accordance with the Contract Documents:
 - a) The issuance of a Certificate of Substantial Completion;
 - b) The payment by Davis County to Contractor under the Contract Documents;
 - c) The use or occupancy of the work or any part thereof by Davis County; or
 - d) Any correction of defective work by Davis County.

Article 15. Suspension of Work and Termination of Contract

A. Davis County May Suspend Work. Davis County may, at any time and without cause, suspend the Project Work or any portion thereof for a period of not more than ninety days by giving written notice thereof to Contractor. Contractor shall be allowed an increase in the Contract Price or an extension of the Contract time, or both, if directly attributable to any suspension invoked by Davis County upon Contractor submitting an approved claim for such increase or extension.

B. Termination by Davis County.

- 1) Upon the occurrence of any of the following, Davis County may terminate the Project Contract:
 - a) Contractor commences a voluntary case under any Chapter of the Bankruptcy Code or files a similar petition or takes similar legal action under any other federal or state law relating to bankruptcy or insolvency;
 - b) If a petition is filed against Contractor under any Chapter of the Bankruptcy Code or similar legal action is commenced under any other federal or state law relating to bankruptcy or insolvency;
 - c) Contractor makes a general assignment for the benefit of creditors;
 - d) A trustee receiver or other person is appointed under applicable law or contract with the authority to take charge of the business of Contractor for the purpose of enforcing a lien against the property or such business for the benefit of creditors;
 - e) Contractor states in writing its inability to pay its debts generally as they become due;
 - f) Contractor persistently or repeatedly refuses or fails to supply sufficient and properly qualified and skilled workers or proper materials;
 - g) Contractor fails to make payments to subcontractors for materials or labor in accordance with agreements between Contractor and the subcontractors;
 - h) Contractor persistently disregards applicable laws, codes or regulations or any directives from Davis County to come into compliance with such laws, codes or regulations; or
 - i) Contractor is otherwise in substantial breach of any provision of the Contract Documents.
- 2) If Contractor services have been terminated by Davis County, the termination will not affect any rights or remedies of Davis County against Contractor existing at that time, nor shall either the retention or payment of any monies due to Contractor by Davis County release Contractor from any liability.
- 3) Upon seven days written notice, Davis County may, without cause, and without prejudice to any other right or remedy, elect to abandon the Project Work and terminate the Project Contract. In that event, Contractor shall be paid for all work executed and any expenses sustained through the date of termination of the Project.

C. Contractor's Right to Suspend Work or Terminate Project Contract.

- 1) Contractor may, upon seven days written notice to Davis County, suspend the Project Work if, through no fault or act of Contractor, Davis County has failed to make any payment as required by

the Contract Documents. The Project Work may be stopped in that event until payments of all amounts then due have been made, but the exercise of this contractual right to stop work shall not relieve Contractor of any of its obligations to continue the work in accordance with the progress schedule.

- 2) Contractor may, upon seven days written notice to Davis County, terminate the Project Contract and recover from Davis County payment for all work executed and expenses sustained through the date of termination of the Project if, through no act or fault of Contractor;
 - a) The work is suspended for a period exceeding ninety days by Davis County or under an order of the court or other public authority; or
 - b) Davis County fails for thirty days to pay Contractor any sum finally determined to be due.

Article 16. Compliance With Federal and State Laws

A. General. In the performance of the Project Work, Contractor shall comply with all local, federal and State laws pertaining to:

- 1) The legal rights of employees, if any, for collective bargaining;
- 2) Non-discrimination against any employees or applicants for employment because of race, color, religion, sex, ancestry or national origin;
- 3) Affirmative action for equal treatment related to employment;
- 4) Wages and compensation;
- 5) Insurance coverages for employees, safe working conditions;
- 6) Pollution and environmental regulations; and
- 7) Any other applicable requirements.

B. Specific. In addition, Contractor shall comply with the provisions of the following specific laws:

- 1) Title VII of the Civil Rights Act of 1964 and any amendments thereto;
- 2) Executive Order No. 11246, which prohibits discrimination on the basis of race, creed, color, or national origin; 29 U.S.C. Chapter 14, which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on their disability, or any amendments thereto;
- 3) 29 CFR Parts 1604, 1605 and 1606, which prohibit employment discrimination;
- 4) The Americans with Disabilities Act (A.D.A.);
- 5) The Fair Labor Standards Act;
- 6) Utah Anti-Discrimination Act, Title 34A, Chapter 5, *Utah Code Annotated*; and
- 7) Title 34, Chapter 30, *Utah Code Annotated*, pertaining to employment on public works.

Article 17. Disputes

In the event of any controversy or dispute between the parties arising out of or related to the Project Work and the Project Contract, or any claim or purported breach thereunder or any purported breach thereof, the Parties agree to seek a prompt resolution of the matter in a reasonable manner that is based upon mutual consent and openness and that is fair and reasonable for all Parties. It is intended that the Parties establish a good working relationship and that the resolution of any disputes be handled in an expeditious manner. If the parties are unable to resolve the dispute themselves, then the Parties shall be

open to mediation. In any event, all resolutions and disputes will be resolved on the basis of the principles of fairness and openness and may be ultimately resolved in a court of law and/or equity.

IN WITNESS WHEREOF, the Parties have each executed this Contract on the dates set forth below.

CONTRACTOR

By: _____
Title: _____
Date: _____

DAVIS COUNTY

By: _____
Lorene Miner Kamalu, Chairperson
Davis County Board of County Commissioners
Date: _____

Attest:

Curtis Koch, Davis County Clerk/Auditor
Date: _____

Approved as to form and legality:

Davis County Attorney's Office
Date: _____