

Agreement Between
Owner and Construction Manager
where the Construction Manager is also
THE CONSTRUCTOR

AGREEMENT

made as of the _____ day of _____, 2019

BETWEEN the Owner:

PARK CITY MUNICIPAL CORPORATION

445 Marsac Avenue
Post Office Box 1480
Park City, Utah 84060-1480

and the Construction Manager (CMAR):

ASCENT CONSTRUCTION

310 West Park Lane
Farmington, UT 84025

The Project is:

Woodside Park Phase 2 Construction
1361 Woodside Avenue
Park City, UT 84060

The Architect is:

Method Studios, INC.
360 W. Aspen Avenue
Salt Lake City, UT 84101

The Owner and Construction Manager agree as set forth below:

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ATTACHMENTS:

- Exhibit A: Sample Amendment No. 1
- Exhibit B –Preconstruction Scope of Services

ARTICLE 1
GENERAL PROVISIONS

1.1 GENERAL INTENT OF THE AGREEMENT, RELATIONSHIP OF PARTIES AND PERFORMANCE STANDARDS

1.1.1 General Intent of the Agreement. The general intent of this Agreement is for Owner to retain a highly skilled and competent construction manager at risk, who shall be loyal to Owner; provide sound, accurate, reliable and complete information, guidance, costing and advice to Owner and its Architect; and utilize the highest degree of knowledge, skill, judgment, experience and expertise in the construction industry to help Owner design and build the Project on time and within the construction budget.

1.1.2 The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager, and other persons or entities employed by the Owner for the Project.

1.1.3 Independent Contractor. CMAR is an Independent Contractor and is not an agent or employee of Owner or Agent in performing the Work. Except as otherwise provided herein, CMAR shall maintain complete control and responsibility over its own employees, agents and operations and those of its Subcontractors, Suppliers/Vendors and their respective employees and agents. CMAR hereby accepts complete responsibility as a principal for its agents, Subcontractors, Suppliers/Vendors, their respective employees, agents and Persons acting for or on their behalf, and all others CMAR hires to perform or assist in performing the Work.

1.1.4 Relationship of Trust and Confidence with Owner. CMAR shall work in a relationship of trust and confidence with Owner. CMAR accepts the relationship of trust and confidence with Owner established by this Agreement and covenants to fully cooperate with Owner, Owner's Representatives and Architect and to perform its Work in a professional manner.

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

1.2 GENERAL CONDITIONS

The General Conditions of the Contract shall be the 2007 Edition of AIA Document A201, General Conditions of the Contract for Construction, as amended, which is incorporated herein by reference (hereinafter it is referred to as “AIA Document A201, as amended”). The term “Contractor,” as used in the original AIA Document A201, has been changed to “Construction Manager.”

1.3 CMAR’S PERFORMANCE STANDARDS; GENERAL SCOPE.

1.3.1 Performance Standards. CMAR shall use the highest degree of skill, judgment and resources in performing the Work, shall use its own means and methods consistent with sound and prudent construction practices, applicable laws, rules, regulations, industry standards; and shall perform all Work in strict accordance with the Agreement. CMAR shall furnish efficient business administration and superintendence and shall perform the Work in the most efficient, expeditious and economical manner consistent with the Agreement, Owner's procedures, and in the best interest of Owner.

1.3.2 Standards of Workmanship. Contractor shall demonstrate workmanship equal to or better than current industry standards for this Project. Where Park City specifications exist (for example, asphalt, concrete, water lines and landscaping), those specifications shall provide the benchmark for determination of acceptability.

1.3.3 General Scope. The services that CMAR shall provide to Owner are not limited to those described or specified in this Agreement, and the services that are described or specified in this Agreement shall not be deemed to constitute a comprehensive specification having the effect of excluding other services not specifically mentioned herein. Generally, CMAR shall be obligated to perform all services ordered, authorized or directed in an Owner Approved Guaranteed Maximum Price (GMP) or through an Agreement Modification. Without limiting the general scope described above, CMAR shall perform the following services, which are more specifically described throughout the Agreement:

1. Pre-Construction Services. CMAR will work cooperatively with Owner in performing the Pre-Construction Services contemplated in this Agreement attached and incorporated herein as Exhibit B. Among other things, the parties contemplate that CMAR shall, as ordered, authorized or directed by a GMP: confirm the constructability of the Project; validate the established construction budget; propose and cooperate with the Owner in developing the GMP; prepare and provide reliable and accurate cost estimates and data to the Owner during the design phase of the Program to assure that the Project and each Component is designed and is constructible, and can be built within the construction budget; propose a Project Control Schedule for the construction of the overall Project consistent with Owner's Program objectives; propose and cooperate with

the Owner in developing the individual GMP schedule, GMP scope of Work and special terms and provisions applicable to each GMP; provide prudent value engineering and cost saving measures to facilitate completing the Project at or under the construction budget; investigate the Project Site; make prudent recommendations to Owner for the integration of the new Work into the existing facilities; and, provide the Pre-Construction Services contemplated in this Agreement.

2. General Conditions Services. CMAR will work cooperatively with Owner in performing the general conditions services contemplated in this Agreement. Among other things, the parties contemplate that CMAR shall, as ordered, authorized or directed by a GMP: maintain and update the Project Control Schedule; prepare Cost Control Reports and, provide the other general conditions services identified in this Agreement. General conditions services shall be incorporated into each GMP.

3. Construction Services. CMAR will work cooperatively with the Owner in performing the Construction Services contemplated in this Agreement. Among other things, the parties contemplate that CMAR shall, as ordered, authorized or directed by GMP: build and construct the Project and each physical Component of the Project within the approved GMPs, construction budget, applicable GMP Control Schedules and in accordance with the Agreement and Owner's Program objectives; provide supervision and construction management services, cost controls, schedule management and updates, Project coordination and coordination of Subcontractors and Suppliers; compile and propose estimates for change orders; and, provide the Construction Services identified in this Agreement.

4. Comply with All Laws. In providing its services hereunder, CMAR agrees to comply at its own expense with all applicable laws of the United States of America, the state of Utah, Park City and other local authorities, and lawful rules and regulations promulgated by their authority and all applicable lawful rules, regulations and ordinances of Park City now in force or thereafter prescribed and promulgated by authority of law, specifically including all fire and building codes.

1.4 REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES.

The CMAR represents that it has not: (1) provided an illegal gift or payoff to a city officer or employee or former city officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in City's conflict of interest ordinance, Title 3 of Park City Municipal Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a city officer or employee or former city officer or employee to breach

any of the ethical standards set forth in City's conflict of interest ordinance, Title 3 of Park City Municipal Code.

1.5 EXTENT AND INTERPRETATION OF AGREEMENT.

1.5.1 This Agreement shall not be superseded by any provisions of the Construction Documents and may be amended only by written instrument signed by both Owner and CMAR indicating a clear intent to change the terms of this Agreement. Construction Documents shall be construed in a harmonious manner with this Agreement, whenever possible.

1.5.2 If any ambiguity or question of intent or interpretation arises, then this Agreement will be construed as if drafted jointly by the parties.

1.5.3 This Agreement and the Construction Documents shall be considered together, so that any part of the work shown or described on the plans, though not specifically referred to in the specifications or elsewhere in the documents, and any work described or referenced in the specifications or other document, but not shown or described on the plans, shall be executed by CMAR, as well as any Work that, in the opinion of Owner, may be fairly inferred from the specifications, plans, this Agreement or by normal industry practice.

1.5.4 Detail plans shall take precedence over general plans for the same part of the Work. Specifications and detail plans that are prepared or approved by Owner after Owner Approval of a GMP shall be deemed part of such specifications and plans if their requirements may be fairly inferred from the original specifications and plans, and that portion of the Work shown thereby shall be performed without any change in the GMP Substantial Completion Dates or Final Completion Dates.

1.5.5 **ORDER OF PRECEDENCE.** In the event of a conflict in connection with this Agreement and/or the Construction Documents, more stringent requirements shall apply if the conflict cannot be resolved by applying the following Order of Precedence:

1. Agreement Modifications
2. GMP and GMP Modifications
3. Executed Agreement
4. Supplemental conditions (if any, issued for self-performed Work)
5. Bid addenda (if any, issued for self-performed Work)
6. Specifications and drawings. Drawings take precedence over specifications as to

quantity and location. Specifications take precedence over drawings as to quality of materials and workmanship.

7. Unit price schedules contained in a GMP
8. Instructions to bidders and all information required from bidders (if any issued for self-performed Work)
9. Invitation to Bid (if any issued for self-performed Work)
10. Measurements by scale

ARTICLE 2

CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article.

2.0 GENERAL

2.0.1 GENERAL. The CMAR's services shall be those necessary and appropriate to the successful completion of the Program in a timely and cost-effective manner and shall include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned. Unless otherwise provided in this Agreement, or as otherwise agreed in writing between Owner and CMAR, the form and content of all systems, reports, forms and regular submittals by CMAR to Owner shall be subject to Owner Approval, and CMAR shall submit such materials to Owner through the Owner's Representative prior to implementation. Owner Approval shall not limit Owner's right to require reasonable changes or additions to approved systems, reports, forms, and regular submittals by CMAR to Owner. The CMAR acknowledges that it is not entitled to receive any Work under this Agreement. The CMAR hereby waives all claims for anticipated profits and all claims based upon the Owner's decision to not proceed with the Program, any GMP or any portion thereof.

2.0.2 SCOPE OVERVIEW. CMAR will work cooperatively with the Owner in performing the services contemplated in this Agreement. Among other things, the parties contemplate that CMAR shall as authorized or directed by Owner; maintain and update the Project Control Schedule; prepare Cost Control Reports; prepare and maintain a Project Manual; and, provide the other general conditions services identified in this Agreement. General Services shall be incorporated into each GMP, and also into a separate GMP for project-wide General Services.

2.0.3 OWNER APPROVAL. CMAR will proceed with the Work set forth in a GMP only after Owner Approval of the GMP. Owner's signature on the GMP constitutes Owner Approval of the GMP and Notice to Proceed on the terms specified in the GMP.

2.0.4 A Monthly Construction Progress Report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations, permits, construction problems and recommendations, and plans for the succeeding month.

2.1 PRECONSTRUCTION

2.1.1 PRELIMINARY EVALUATION

The Construction Manager shall provide a preliminary evaluation of the Owner's program and Project budget requirements, each in terms of the other.

2.1.1.1 Scope. In addition to any other services to be performed during the pre-construction phase as may be specified elsewhere in this Agreement, the CMAR shall provide all management, supervision, labor, services, equipment, tools, supplies and any other item of every kind and description required to provide comprehensive pre-construction services, including, attending design meetings, suggesting value engineering options, preparing detailed CPM schedules and detailed estimates, conducting design and constructability reviews, conducting pre-bid meetings, bid interviews, managing all bidding and negotiations with all subcontractors and Suppliers and all other services required by the Owner for establishing GMP Proposals to cover all Project Components and conducting all necessary coordination with contractors and consultants.

2.1.1.2 Preliminary Evaluation. The CMAR shall become thoroughly familiar with the site and conditions surrounding the site and document the conditions observed on the site with photos or videos. The CMAR shall review with the Owner and Architect, the site data such as access, location of services, public safety, security, surveys, soils information, and other relevant information related to the Program and carrying out the Work. The CMAR shall be responsible for the proper identification and location of all existing utilities, services and other underground facilities that may impact the Program. The CMAR shall participate in a kick-off meeting with Owner to establish rapport and develop a common appreciation of the goals of the Program.

2.1.2 CONSULTATION

The Construction Manager, with the Architect, shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and the

Architect regarding site use and improvements and the selection of Materials, building systems, and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or Material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost, including estimates of alternative designs or Materials, preliminary budgets, and possible economics.

2.1.2.1 Design Review and Recommendations

1. The CMAR shall participate in all design review meetings with the Owner that may be scheduled. For each design submittal, the CMAR shall review the design documents for clarity, consistency, constructability, construction feasibility and practicality, and identification of errors, omissions, conflicts and apparent defects and coordination of documentation.
2. The CMAR shall follow the development of design through final Construction Documents, reviewing the in-progress Schematic Design Documents and Design Development Documents, and familiarize itself thoroughly with all construction documents related to the Program, involving all required disciplines, including without limitation the evolving architectural, civil, mechanical, plumbing, electrical, information technology, and structural plans and specifications, as well as all other drawings and data related to the Program prepared by the Architect. The CMAR shall analyze the design for constructability, including construction feasibility and practicality, and alternative materials/methods.
3. The CMAR shall assist and advise the Owner in exploring potential value engineering, alternative approaches, materials and systems to minimize total construction and operation costs, or to enhance the quality of the Project or any Components thereof.
4. The CMAR shall continuously monitor the impact of proposed design on the Program and GMP schedules and recommend adjustments in the design documents or construction bid packaging to ensure completion of the Program and GMPs in the most expeditious manner possible.

2.1.2.2. Within 14 calendar days of receipt of each design submittal, or within other such time set forth in the Program Schedule or GMP Schedule, the CMAR shall submit a written report to the Owner identifying any apparent ambiguities, defects or conflicts in the design, plans and specifications or other documents, use of illegal or restrictive requirements, overlap between the trade contracts, omissions, lack of correlation between plans and any other deficiencies so that the Architect may arrange for necessary corrections. The report shall also provide advice on site use and improvements, selection of materials, building systems and equipment, methods of Project delivery, permitting, phasing and subdivision of the Work, recommendations on relative

feasibility of construction methods, potential value engineering and alternative materials, availability of materials and labor, time requirements for procurement, installation and construction and factors related to changes in the Work including, the costs of alternative designs and materials and possible economies and all comments related to the design review. The report shall also address the suggestions and/or recommendations previously submitted, additional suggestions or recommendations, as it may deem appropriate.

2.1.2.3 At completion of the CMAR's review of the 100% submittal for a Component, or other design phase submittal that is used for bidding, except only as to specific matters as may be identified by appropriate comments pursuant to this section THE CMAR CONFIRMS THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE BASED ON STANDARDS EXPECTED IN THE INDUSTRY. THE CMAR FURTHER CONFIRMS THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS SUBCONTRACT BID PACKAGES ARE CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME AND BUDGET. THE OWNER DISCLAIMS ANY WARRANTY THAT THE PLANS AND SPECIFICATIONS FOR THE PROJECT ARE ACCURATE, PRACTICAL, CONSISTENT OR CONSTRUCTIBLE. The owner is expressly relying on the skill and expertise of the Architect to produce accurate, practical, consistent and constructible plans and specifications.

2.1.3 PRELIMINARY PROJECT SCHEDULE

1. When Project requirements described in Subparagraph 3.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the Services and activities of the Owner, Architect, and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long lead time procurement, and Owner's occupancy requirements showing portions of the Project having occupancy priority. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

2. Procurement activities shall be included for all Components to reflect durations for contracting, submittal and shop drawing preparation, CMAR review, Architect and Owner review, and fabrication and delivery. Activities shall be included for samples, mock-ups, color selections, testing and inspections, construction clean-up, final clean-up, preparation and completion of CMAR's Punch list, and preparation and completion of Owner's Punch list.

3. The CMAR shall incorporate into its schedule the Work and procurement activities of all contractors and subcontractors, including, but not limited to the utility providers. Such Work shall logically be tied to CMAR's activities so as to accurately represent total GMP progress.

4. Upon review and acceptance by Owner of any GMP schedule, such schedule shall be deemed part of this Agreement. The CMAR shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise Owner of any delays or potential delays.

5. Following development and submittal of the Construction Schedules described above, the CMAR shall, submit with each monthly payment application, or at such earlier intervals as circumstances may require, updated and/or revised progress schedules to show the actual progress of the Work performed, variance from scheduled completion dates, the occurrence of all events that have affected the progress of performance of the Work already performed or will affect the progress of the performance of the Work yet to be performed in contrast with the planned progress of performance of such Work, as depicted on the original Construction Schedule, and all updates and/or revisions thereto as reflected in the updated and/or revised Construction Schedule last submitted prior to submittal of each such monthly update and revision. The CMAR shall prepare and incorporate into the schedule, the following schedules for the GMP:

6. Pre-Bid Schedules. The CMAR shall prepare a Construction Schedule for the Work encompassed in each bid scope. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid scope as a framework for contract completion by the successful bidder, shall show the interrelationships between the Work of the successful bidder and that of other subcontractors for the applicable GMP.

7. Subcontractor Construction Schedules. Upon the award of each subcontract, the CMAR shall jointly with the Subcontractor, develop a schedule that is more detailed than the pre-bid schedule included in the specifications, taking into account the Work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the Subcontractor. The Subcontractor construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop plan schedules and material delivery schedules. All Subcontractor schedules shall be integrated into, made a part of and conform to the GMP schedule.

2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and the Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of

the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economics, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect, and Construction Manager.

2.1.5.2 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and the Architect.

1. Initial Program and GMPs Estimates. Within 45 calendar days after the effective date of this Agreement, the CMAR shall prepare an estimate for the Program. In addition, the CMAR shall prepare an estimate for each individual GMP, as requested by the Owner.

2. Project Estimate Updates. The CMAR shall prepare budgeting, estimating and pricing appropriate to each level of design for the Program and the GMP, with increasing level of detail as the design progresses. The CMAR shall assist the Owner in achieving the Program and the GMP budget requirements and other design parameters. The CMAR shall provide construction budget evaluations of alternative materials and systems. The CMAR shall provide input to the Owner on clarifications needed to reduce allowances for contingencies. The CMAR shall work with the Owner to reconcile any inconsistencies in the estimates.

3. Construction Document Estimates. The CMAR shall continue to review and refine the estimates as Construction Documents are completed and advise the Owner immediately if it appears that the Program or the GMP cannot be completed within the budget or schedule.

2.1.5.3 The CMAR shall make written recommendations to the Owner with respect to phasing and subdividing the Work in such manner as will permit the CMAR to complete the Work within the Program budget and schedule. The evaluation shall include recommendations for options to fast track the Program, or certain parts thereof, to achieve earlier completion of the Program. The CMAR shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner. The CMAR shall take such measures as are

appropriate to provide that all construction requirements for the Program will be covered and that the separate construction subcontracts will be without duplication or overlap, and will be sequenced to maintain completion of all Work on schedule. Particular attention shall be given to provide that each bid scope clearly identifies the Work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors. The CMAR shall obtain Owner Approval of the proposed phasing and subdivision of the Work for each GMP before proceeding with any procurement or performance of the Work.

2.1.5.4 The CMAR shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Program. The CMAR shall be responsible to stimulate bidder interest in the local, and regional market place, and to identify and encourage bidding competition, including utilization of all Owner subcontractor and vendor lists.

2.1.5.5 The CMAR shall advise and assist the Architect in dealing appropriately and complying with all applicable laws and regulations, including local building departments, local utilities, communications, and other infrastructure issues. The CMAR shall represent the Owner with these entities only if requested by the Owner. The CMAR shall assist the Owner with interfacing, as necessary, with any federal, State or local agencies with jurisdiction over the Program or any portion of the Project.

2.1.5.6 Cost Status Report presenting the budget, estimate, and baseline costs (awarded subcontracts and purchase orders) for any given subcontract or budget line item. It shall show approved Agreement Modifications for each subcontract that, when added to the base-line costs, will become the revised costs. Pending Agreement Modifications will also be specifically identified and incorporated into the Cost Status Report to illustrate the total estimated probable cost to complete the Program and the GMP.

2.1.5.7 Payment Status Report showing the value in place (both current and cumulative), the amount invoiced to CMAR (both current and cumulative), the amount paid by the CMAR to date, the retainage, the amount payable (both current and cumulative), and the balance remaining.

2.1.5.8 Detailed Status Report showing the complete activity history of each item in the Program and each GMP accounting structure. It shall include the budget, estimate and base-line costs figures for each subcontract. It shall give the Agreement Modification history including Agreement Modification numbers, description, proposed and approved dates, the proposed and approved dollar amounts and detailed reasons for the Agreement Modification, and parties responsible. It shall also show all pending or rejected Agreement Modifications. The payment history shall include the date, value-in-place, retainage, and accounts payable

2.1.5.9 Report on Construction Contingency, reconciling the Construction Contingency in each GMP, showing the initial amount in both the CMAR's Contingency and the Owner's Contingency, along with an itemization of expenditures charged to the respective contingencies .

2.1.6 SUBCONTRACTORS AND SUPPLIERS

2.1.6.1 In procuring subcontractor and supplier contracts, Construction Manager shall utilize competitive bidding practices in accordance with Utah Code Annotated §§ 11-39-101 to -107 and the Park City Contracting and Purchasing Policy. Prior to procuring subcontracts and supplier contracts, the Construction Manager shall develop a procurement plan, for review and approval by the Owner, outlining how the Construction Manager will conduct the competitive bidding process. The CMAR shall be fully responsible to the City for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

2.1.6.2 If written approval is granted to subcontract a part of this contract the CMAR shall require each subcontractor that physically performs services within Utah to submit an affidavit to the CMAR stating that the subcontractor has used E-Verify, or equivalent program, to verify the employment status of each new employee.

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

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

2.1.6.5 All subcontracts shall be competitively awarded to the lowest qualified, responsible and responsive bidder subject to Park City's local bidder preference and contract policy. The CMAR shall generally follow the Owner's standard procedures for the procurement of construction services, unless the Owner directs that an alternative basis of award is in the best interest of the Owner. In the event CMAR recommends award of a subcontract to a bidder that is not the lowest bid, CMAR shall explain the reasons for such recommendation and obtain Owner Approval prior to awarding such subcontract. The CMAR and its related entities, such as parent corporations, subsidiaries, affiliates, joint venture partners, or other entities with common ownership or

management, may submit bids and proposals to self-perform the Work as long as the CMAR meets the other requirements for self-bidding, as set forth below, and in PERFORMANCE OF WORK AND SUBCONTRACTS. The CMAR shall prepare the invitations for bids, requests for proposals and assemble all bid documents and contract documents for each subcontract. All solicitations shall specifically state that no contractual relationship will be created with the Owner. Specifically, in connection with procurement of subcontracts, the CMAR shall:

1. Develop proposed pre-qualification criteria, which shall include the subcontractor's financial stability and financial condition, the availability of adequate fixed and liquid assets and equipment to properly perform the subcontract, past performance, bonding capacity, safety record, and the experience and qualifications of the key personnel.
2. Submit the proposed pre-qualification criteria and proposed selection process for Owner Approval.
3. Publicly advertise the Request for Qualifications that includes all of the pre-qualification criteria and the selection process.
4. Open and evaluate all statements of qualifications in accordance with the published notice.
5. Submit the proposed list of pre-qualified subcontractors for Owner's review. Owner will have five (5) business days to notify CMAR of denial of any subcontractor.
6. Conduct a pre-bid conference with prospective bidders, the Architect, and the Owner. In the event that questions are raised that requires an interpretation of the Bid Documents or otherwise indicates a need for a clarification or correction of the invitation for bids, the CMAR shall coordinate the preparation of an addendum to the Bid Documents with the Architect. The addendum shall be the medium for making any clarifications or corrections to the Bid Documents and will be issued to all of the prospective bidders
7. Solicit bids or proposals only from the pre-qualified subcontractors or Suppliers, or, in the event the Notice allows for qualification during the solicitation period,
8. Analyze and evaluate the bids and proposals and their relationship to the budgeted and estimated amounts, and prepare a bid tabulation analysis and such other support data as necessary to document the comparison of the various bids, their responsiveness to the Bid Documents, and the basis for the CMAR's recommendation, including an explanation if the CMAR recommends award to any entity that is not the apparent lowest bidder,

9. Present the bid results, analysis and related documentation for Owner review. Owner will have five (5) business days to object to CMAR recommendation.
10. Ensure that Work shall not commence until Owner Approval of the GMP is obtained.
11. Ensure that related entities, such as parent companies, affiliates, subsidiaries, or other entities having common ownership or management with that of a Subcontractor are prohibited from submitting competing bids or proposals and shall be disqualified for doing so.
12. SELF-PERFORMANCE OF THE WORK. Upon written consent of the Owner, the CMAR may use its own forces or related entities, such as parent corporations, affiliates, subsidiaries, joint venture partners, or other entities with common ownership or management, to perform a portion of the Work,. CMAR may be selected to perform the Work on a GMP if CMAR submitted the lowest bid or if the Owner deems it in Owner's best interest for CMAR to perform the Work. Sealed Bids must be submitted to the owner by 5 PM the day prior to the bid opening.

Self-performed Work will be paid in accordance with the CMAR's submitted bid if two other higher competitive bids have been received. If two other higher competitive bids have not been received, payment will be made in accordance with the CMAR's lump sum bid as long as the bid is within the applicable budget. For all self-performed Work, the CMAR acknowledges and declares that the Agreement is sufficient to enable the CMAR to complete the Work as shown in the Agreement or, if not specifically shown, to perform the activities that may be reasonably inferred as necessary for completion of the Work in accordance with the requisite time frame, applicable laws, statutes, building codes, regulations, or as otherwise required by the Agreement

2.1.6.6 The CMAR shall provide subcontractors with applicable portions of the Project Manual emphasizing their respective responsibilities for performance and the relationships of their Work with respect to other subcontractors and Suppliers. The CMAR shall also continue to provide current scheduling information, direction and coordination regarding milestones, and beginning and finishing dates to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall GMP schedule. The schedule shall include all phases of the construction Work, material supplies, long lead procurement, Architect Approval of shop drawings, Agreement Modifications in progress, and schedules for Agreement Modifications,. The CMAR shall review each Subcontractor's construction schedule and conformance with applicable documents to ensure that established completion dates will comply with overall GMP schedule requirements. The CMAR shall review the progress of construction of each Subcontractor, evaluate the percentage completion and compare actual progress to schedule, and determine and implement alternative courses of action that may be necessary to achieve timely and complete contract compliance by the Subcontractor.

The CMAR shall determine the effect on schedules of requested time extensions and require recovery schedules from subcontractors as needed.

2.1.6.7 The CMAR shall be responsible and accountable for the quality control of the Work including quality control testing and inspection. The CMAR shall review and supervise the Work of all subcontractors, safety and security plans, reviewing construction means, methods, techniques, sequences and procedures, shop drawings, and providing instructions to each when their Work does not conform to the requirements of the Construction Documents for the GMP. The CMAR shall continue to exert its influence and control over each Subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the Work. The CMAR shall receive copies of all claims or reports from the Owner relative to the performance or acceptability of the Work. Should disagreement occur between the CMAR and either the Owner or the Architect over acceptability of the Work and its conformance with the requirements of the Construction Documents of the GMP, the Owner and or Architect shall be the final judge of performance and acceptability, and noncompliant Work shall be corrected accordingly. The Owner may employ an independent firm for verification testing of the quality control testing. The CMAR will exercise reasonable care and diligence in discovering and promptly reporting to Owner any defects or deficiencies in the Work.

2.1.6.8 The CMAR shall be the single point of interface with all of its Subcontractors and Suppliers, and there is no requirement that Owner or any of its agents or representatives, including the Architect, interface with such subcontractors and Suppliers. The CMAR shall negotiate all Subcontractor Change Orders, and other subcontract modifications with the affected subcontractors. The CMAR shall review the costs of all proposed Subcontract Change Orders and advise the Owner and Architect of their validity, basis for entitlement and reasonableness, acting in the Owner's best interest prior to requesting Owner and Architect Approval of each Subcontract Change Order from the Owner. Before any Work commences on any Subcontract Change Order, Owner and Architect Approval of the Subcontract Change Order is required. However, when health and safety are threatened, the CMAR shall act immediately to remove the threat to health and safety, seeking input from the Owner and Architect if reasonably possible. The CMAR shall also carefully review all shop drawings, submittals and samples and then, if acceptable, transmit them to the Architect. The Architect will transmit them back to the CMAR who will then issue the shop drawings to the affected Subcontractor for fabrication or revision. The CMAR shall maintain a document control system to promote expeditious handling. The CMAR shall forward to the Architect all requests for the interpretations of the plans or specifications requested by the subcontractors via submission of a Request for Information form (as provided in the Project Procedures Manual). The CMAR shall maintain a document control/correspondence log system to promote expeditious handling of all submittals and Requests for Information. The CMAR shall advise the Owner and Architect when timely response is not occurring on any of the above.

2.1.6.9 REQUIRED SUBCONTRACT PROVISIONS. In addition to subcontract provisions required in other parts of this Agreement, CMAR shall include in its contracts with subcontractors in connection with the Work the following:

1. Subcontractual Relations. By an appropriate written agreement, the CMAR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CMAR and to assume toward the CMAR all the obligations and responsibilities assumed by the CMAR in the Agreement. Said Subcontractor agreements shall preserve and protect the rights of the Owner and Architect under the Agreement with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The Subcontractor agreements shall also require the Subcontractor to assume toward the Owner all obligations and responsibility that the Subcontractor has to the CMAR in the event the Agreement is terminated and the Owner desires to assume the subcontract. Where appropriate, the CMAR shall require each Subcontractor to enter into similar agreements with its sub-subcontractors.

2. The CMAR shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of the Agreement to which the Subcontractor will be bound and identify to the Subcontractor any terms and conditions of the proposed subcontract that may be at variance with the Agreement. Each Subcontractor shall similarly make copies of such documents available to its sub-subcontractors.

2.1.6.10 Subcontract Requirements.

1. All subcontracts shall provide:

a. Limitation of remedy - no damages for delay - The Subcontractor's exclusive remedy for damages for delays in the performance of the subcontract caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or Architect and including claims based on breach of contract or negligence, shall be limited to an extension of the scheduled construction time and actual direct costs allowed by Section 8.2; provided, however, the only delays that will result in a time extension are those that extend the Critical Path of the GMP schedule included in the GMP, unless amendments thereto have been approved by the Owner.

b. In the event of a change in the Work the Subcontractor's claim for adjustments in the subcontract sum are limited exclusively to its actual costs for such changes plus no more than 15% for overhead and profit and bond costs if the Work is self-performed by the Subcontractor.

For all other Work, adjustments in the subcontract sum will be no more than 5% for overhead and profit and bond costs.

c. Each subcontract shall require the Subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedies for delays and changes in the Work and thus eliminate any other remedies for claim for increase in the subcontract price, damages, losses or additional compensation.

d. Each subcontract shall require that any claims by Subcontractor for delay or additional cost must be submitted to CMAR within the time and in the manner in which the CMAR must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

e. Each subcontract shall include an acknowledgement by each Subcontractor and Supplier that the payment bond provided by CMAR pursuant to this Agreement is a substitute for the right to claim a lien on any portion of the Project, and that any claims for nonpayment shall be made against the bond.

f. Such other provisions as set forth in the Agreement to be included in subcontracts.

2. RESPONSIBILITIES FOR ACTS AND OMISSIONS. The CMAR shall be responsible to the Owner for the acts and omissions of its employees and agents and its subcontractors, their agents and employees, and all other persons performing any of the Work or supplying materials under a contract to the CMAR.

3. COPY OF SUBCONTRACTS. The CMAR shall provide, upon request, a copy of each subcontract, including the general and supplementary conditions, to the Owner.

2.1.7 LONG LEAD TIME ITEMS

The Construction Manager shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials and supplies) and shall recommend to the Owner and the Architect a schedule for procurement of long lead time items, which shall constitute part of the Work as required to meet the Project schedule. When each item is identified, the CMAR shall notify the Owner of the required procurement and schedule. Such information shall be included in the bid documents and be made a part of all affected subcontracts. As soon as the Architect has completed plans and technical specifications and the CMAR has obtained approval, the CMAR shall arrange for procurement of such long-lead items, subject to prior Owner Approval. The CMAR shall keep informed of the progress of the respective subcontractors or Suppliers, manufacturing or fabricating such items and advise the Owner, of any problems or prospective delay in delivery

Procurement of long lead time items shall be subject to competitive bidding practices as described at Subparagraph 2.1.6 herein. If such long lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long lead time items.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

2.2.4.1 A list of the Drawings and Specifications, including all addenda thereto, and the Conditions of the Contract that were used in preparation of the Guaranteed Maximum Price proposal.

2.2.4.2 A list of allowances and a statement of their basis.

2.2.4.3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

2.2.4.4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingencies, and other items and the fee that comprise the Guaranteed Maximum Price.

A GMP may include an agreed upon sum as the Construction Contingency. The Owner and CMAR may determine and agree based on the risk in a particular GMP that a special CMAR contingency line item should be included for use related to this particular risk. The Contingency shall be utilized to compensate for the increased Cost of the Project incurred by the CMAR because of Unforeseen Circumstances relating to construction under a GMP, which resulted in an unavoidable increase in costs. Charges to the CMAR's Contingency shall not become due and payable until full documentation is presented to the Owner that demonstrates to the satisfaction of the Owner, through written Owner Approval, that the charges are proper and in compliance with the Agreement

2.2.4.5 An acknowledgment that the proposed Guaranteed Maximum Price is based on a **Substantial Completion Date of TBD, and a Final Completion Date of TBD.**

2.2.5 The Construction Manager shall meet with the Owner and the Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or the Architect discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Owner.

2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1 of this Agreement. The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed upon assumptions and clarifications contained in Amendment No. 1 of this Agreement. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the

Owner, Architect, and Construction Manager. The Construction Manager shall promptly notify the Architect and the Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes that are enacted at the time the Guaranteed Maximum Price is established.

2.2.11 Work stoppage due to inclement weather conditions and other factors must be approved in writing by the Project Manager. Inclement weather shall not otherwise constitute cause for delay. Unless otherwise agreed by the City by Change Order, no damages shall become due to Contractor for City caused delay. A Change Order for delay will generally be accepted for delay so excessive and unreasonable that it is beyond the scope of the Contract or delay attributed to direct, active or willful interference by the City. The Change Order must be based upon actual damages sustained by the Contractor which are directly attributed to the delay.

2.2.12 LIQUIDATED DAMAGES. In the event that Contractor fails to complete all of the work required herein within the time limit set out above, then for each partial or complete day during which the work remains uncompleted thereafter, the Contractor agrees to pay the City One Hundred Dollars (\$100.00), (_____contractors initials) which the parties believe, due to the difficulty of actually assessing the damages the City will suffer in the event of such a delay, is a fair estimate of the loss the City will suffer. The parties agree that the daily liquidated damages provided for herein is reasonable and fair, and is not a penalty.

2.2.13 Time is of the essence in the performance of this Agreement and all GMPs hereunder. The parties acknowledge that the terms of this Agreement and all GMPs have been negotiated based upon the orderly and continuous progress of the services through completion of the Program.

2.2.14 The GMP Proposal shall include a GMP schedule and a GMP Substantial Completion Date, a GMP Final Completion Date and an Owner occupancy date, if different from the above, and may include other mandatory milestone dates for tenant finish-out construction or for completion of the GMP. The CMAR agrees to complete the construction in accordance with the GMP schedule that is included with the approved GMP.

2.2.15 The CMAR acknowledges that failure to complete a GMP within the GMP schedule and the dates set forth in the GMP, or as modified by a GMP Modification, may result in substantial damages to the Owner, for which the CMAR shall be fully liable. The liquidated damages to be assessed for late completion will be set forth in the GMP. If the Owner, in its sole discretion, determines that liquidated damages are due, the amount of liquidated damages shall be subtracted from any remaining retainage on the application for payment. If there is insufficient

retainage to compensate the Owner for the liquidated damages, the CMAR and its Surety shall pay to the Owner the amount due within ten (10) business days of receiving written notification of the shortage. Failure to make the required payment to the Owner will result in the Owner's enforcement of its right to receive the payment in any manner allowed by law and CMAR may be prohibited from bidding on future projects with the Owner as a result. The CMAR's Contingency shall not be used to pay for liquidated damages.

2.2.16 PROGRESS OF THE WORK. The CMAR shall cooperate with the Owner in order to maintain the progress of the Work in accordance with the GMP schedule. or as modified by a GMP Modification. If the Owner determines that the CMAR is failing to maintain the progress of the Work, through no fault of the Owner, the CMAR must, within seventy-two (72) hours of written request of the Owner, submit a written response detailing the CMAR's plan of action to recover lost time in order to maintain the progress of the Work in accordance with the accepted schedule. In such event, the CMAR shall comply with the Owner's written orders to take whatever steps are necessary to recover lost time and maintain the progress of the Work. These steps may include, but are not limited to, re-sequencing the Work activities, increasing the number of shifts, workforce, supervision, work days, overtime operations, equipment resources, or expediting delivery of materials or equipment. Regardless of the manner in which the schedule is recovered, the CMAR shall not be entitled to additional compensation for actions that relate to the recovery of the schedule.

2.2.17 In addition to other remedies available to the Owner, if the CMAR fails to maintain the progress of the Work in accordance with the schedules set forth in the GMP, or as modified by an Agreement Modification, the Owner may, upon seven (7) business days written notice to the CMAR and its Surety, order the CMAR to suspend or cease all or a portion of the Work and the Owner may prosecute the Work at Surety's and CMAR's expense.

2.3 CONSTRUCTION PHASE

2.3.1 The CMAR shall provide, as part of CMAR's construction phase general conditions services, Jobsite administrative functions during construction to assure proper supervision, coordination and documentation of the Work, including but not limited to such things as the following:

1. **Supervision of Work.** Provide full-time representation at the Jobsite to become familiar in detail with the progress and quality of the Work completed, to determine in detail if the Work is proceeding in accordance with all the requirements of the Agreement, to ensure compliance with the Plans and Specifications for the Program and GMP, coordination with other work, and to ensure compliance with all applicable laws, statutes, ordinances, codes, rules, regulations, orders and decrees.

2. Daily Logs. Maintain a log of daily activities for the Program and GMP including, at a minimum, the following information in a bound log: the day, date, weather conditions and how any weather condition affected the progress of the Work; time of commencement of Work for the day; the Work being performed; material, labor, personnel, equipment and subcontractors at the Jobsite; visitors to the Jobsite including representatives of Owner and Architect; any special or unusual conditions or occurrences encountered; and the time of termination of Work for the day. The log and database shall be available to the Owner, the Architect, and the inspectors upon request.
3. Project Rosters. Provide to the Owner and maintain at the Jobsite, a roster of companies on the Project with names and telephone numbers of key personnel, and provide a means of identifying workers on site in accordance with the approved security plan.
4. Job Meetings. Hold weekly progress and coordination meetings with the Owners to provide for an easy flowing Project and orderly progress of the Work, including implementation of procedures, and to assure timely submittals and expeditious processing of approvals and return of shop drawings, samples, etc. The CMAR shall advise the Owner of required participation in any meeting or inspection, giving each approximately one week's notice, unless such notice is made impossible by conditions beyond the CMAR's control. .
5. Project Team Meetings. The CMAR, Owner, and Architect shall meet regularly as the progress of the GMP requires, but in no case less than every two weeks, to review and agree upon the Work performed to date and to establish the controlling items of Work for the next two weeks.
6. Shop Drawing Submittals and Approvals. Work with the Architect to establish and implement procedures for expediting and processing all shop drawings, samples, submittals and detail plans/drawings, and other documents, maximizing the use of electronic plan media to the greatest extent possible for submittal and transmittal to the Architect of such plans for action, and closely monitor their submittal and approval process. The CMAR shall be responsible for the initial review and appropriate circulation of submittals. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the CMAR represents that it has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Agreement.
7. Material and Equipment Expediting. Closely monitor material and equipment deliveries, critically important checking and follow-up procedures on Supplier commitments of all subcontractors.

8. Payments to subcontractors. Review and process invoices from subcontractors and Suppliers and comply with the payment requirements set forth in Article 4.
9. Document Interpretation. Refer all questions for interpretation of the documents prepared by the Architect to the Owner.
10. Reports and Jobsite Documents. Record the progress of the Program and GMP as required by this Agreement or as directed by the Owner. Submit written progress reports to the Owner including information on the Subcontractor's Work, and the percentage of completion. Keep a daily log available to the Owner and the permitting authority inspectors.
11. Subcontractors' Punch List. Prepare periodic Punch lists for each Subcontractor's Work including unsatisfactory or incomplete items and schedules for their completion.
12. Signage. Arrange for all appropriate signage necessary for identification, direction, or control for safety and maintenance of traffic. The layout, need and location of all signage must be approved by the Owner, and the signage shall be prepared by a professional sign maker.
13. Printing. Arrange for the printing and distribution of all required bidding documents and shop drawings, including the sets required by any permitting authority's inspectors.
14. Cleaning. Cause the subcontractors to keep the premises where the Work is underway reasonably free from accumulations of waste material or rubbish. Upon GMP Substantial Completion of portions of the Work, the CMAR shall cause the appropriate subcontractors to remove all rubbish, tools, scaffolding and surplus materials from and about the premises and leave such Work area clean and ready for occupancy.
15. Protection of Property. Take all reasonable precautions for the safety of, and monitor the subcontractors for reasonable protection to prevent damage, injury or loss to all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the CMAR or a Subcontractor, and other property at the site or adjacent thereto, including walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The CMAR shall cause all subcontractors and other agents of CMAR to protect Owner's property from loss or injury that may arise in connection with the Work. The CMAR shall, at its cost, provide proper climate control as required to construct the GMP and protect finished Work until the Substantial Completion date.

16. Agreement Modification Administration. Prepare proposed Agreement Modifications in conjunction with the Owner regarding revised plans or sketches as prepared by the Architect for items of extra Work or changes of scope (as required), and review each requested change in the Work or directed extra Work to compare with the prices quoted by the subcontractors. With Owner Approval, conduct negotiations with Subcontractors and develop subcontract modifications to incorporate the changes or extra Work into the subcontracts and process each contract modification through the respective Subcontractor and submit for Owner Approval prior to any Work being performed. The CMAR shall evaluate the scope of Subcontractor's proposal with respect to the proposed contract modifications and substitutions proposed by the Subcontractor and make recommendations to Owner. Owner shall have the option to reject proposed contract modifications and substitutions and the Architect shall coordinate the revision of the Plans and Specifications accordingly. Any Work performed under a proposed contract modification without prior Owner Approval shall be subject to removal and replacement at the CMAR's cost. The CMAR shall have no authority to authorize changes in the Agreement of any kind or to modify any deadlines for completion of Work.

17. Administration of Claims. The CMAR shall evaluate and administer claims from subcontractors and Suppliers as to their validity under the terms of the subcontracts. Upon being advised of any proposed contract modification, the CMAR shall submit to the Owner the estimated cost of, or savings attributable to, such contract modification, the estimated impact thereof on the GMP Schedule and a detailed statement regarding entitlement. No contract modification shall be effective until the CMAR receives approvals in writing from Owner. Upon Owner Approval and execution by the applicable subcontractors, such contract modification shall become a part of the Agreement, and the CMAR shall promptly cause the performance of the Work so changed to proceed. In the event a contract modification necessitates a change in a GMP Schedule, such schedule and any associated costs shall be changed by a reasonable amount. Agreement on any Agreement modification shall constitute a final settlement on all items covered therein, subject to performance thereof and payment therefore.

18. Subcontractor/Suppliers Disputes. Resolve, in consultation with the Owner, all disputes that may arise with or between subcontractors and/or material Suppliers as a result of the construction.

19. Substitution of Material. If a Subcontractor recommends or proposes substitution of material or other changes in the Work from the material or Work specified in the Construction Documents after bids and/or proposals for that Work have been received, evaluated and awarded, the CMAR shall evaluate such proposal and make a recommendation to the Architect and Owner. After Owner and Architect Approval, the CMAR shall process an Agreement Modification.

20. Substantial Completion. Comply with the GMP Substantial Completion requirements.

21. As-Built Plans and Drawings. Upon completion of the Work, the CMAR shall provide as-built structural drawings. The CMAR shall require all subcontractors to record on their field sets of plans the exact locations, as installed, of all conduit, pipe and duct lines, whether concealed or exposed that were not installed exactly as shown on the plans. The CMAR shall also record all plan revisions that have been authorized by Agreement Modification that affect wall or partition locations, door and window locations and other template changes. Accurate dimensional locations for all items shall be recorded. The exact routing of conduit runs and underground utilities shall be shown on these plans. Each plan shall be noted "As Built" and shall bear the date and name of the subcontractors that performed the Work. Where the Work was installed exactly as shown on the plans, the sheets shall not be disturbed except as noted above.

22. The Owner reserves the right to disapprove any person proposed, and the CMAR shall offer substitutes therefor. It is expressly understood that failure of the Owner to disapprove a person does not confer Owner Approval of such person. At any time, the Owner has the reasonable right to request removal and replacement of any CMAR's personnel. Once in place, the CMAR shall not change any person filling a position listed in the organizational charts without the prior consent of the Owner unless the Owner requests it or unless the person is leaving the employee of the CMAR.

2.3.1.1 PROGRAM and GMP CLOSEOUT. In addition to any other Work to be performed during the construction phase, as requested by Owner, or as set forth in the Project Procedures Manual, the CMAR shall perform the following Program and GMP close-out services:

2.3.1.2 CLEANING UP. The CMAR, on a daily basis, shall keep the premises and surrounding area free from the accumulation of waste materials or rubbish caused by operations under the Agreement. At the completion of the Work, the CMAR shall remove from and about the Jobsite waste materials, rubbish, the tools, construction equipment, machinery and surplus materials caused by operations under the Agreement. The CMAR shall not dispose of debris or waste material on the Owner's property or in waste containers (dumpsters) leased by the Owner without prior Owner Approval. If the CMAR fails to keep the site clean as provided in the Agreement, then, following the Owner's 48 hour written notice to the CMAR, the Owner may take appropriate action to clean the site and charge such costs to the CMAR.

2.3.3.3 GENERAL

The Construction Phase shall commence on the earlier of (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to

Proceed, or (2) the Owner's first authorization to the Construction Manager to (a) award a subcontract, or (b) issue a purchase order for materials or equipment required for the Work.

2.3.2 ADMINISTRATION

2.3.2.1 The Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. In accordance with Utah Code Annotated §§ 11-39-101 to -107 and the Park City Contracting and Purchasing Policy, the Construction Manager shall obtain bids, and, after analyzing such bids, shall deliver such bids to the Owner and the Architect. The Construction Manager may offer a competitive bid for any portion of the Work in the same manner and form as any other Subcontractor or supplier in accordance with subsection 2.1.6.12 above.

2.3.2.2 If the Guaranteed Maximum Price has been established, and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Subparagraphs 6.1.8 and 6.1.9, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager, and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

2.3.2.5 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

2.3.2.6 As-Built Plans and Drawings. The CMAR shall review the completed as-built plans and ascertain that all data furnished on the plans are accurate and truly represent the Work as actually installed. When manholes, boxes, underground conduits, plumbing, hot or chilled water lines,

inverts, etc. are involved as part of the Work, the CMAR shall furnish true elevations and locations, all properly referenced by using the original bench mark used for the institution or for the Project

2.4 PROFESSIONAL SERVICES

The Construction Manager shall not be required to provide professional services that constitute the practice of architecture or engineering, unless such services are specifically required by the Contract Documents for a portion of the Work, or unless the Construction Manager has specifically agreed in writing to provide such services. In such event, the Construction Manager shall cause such services to be performed by appropriately licensed professionals.

2.5 UNSAFE MATERIALS

In addition to the provisions of Paragraph 10.1 of AIA Document A201, as amended, if reasonable precautions shall be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager, upon recognizing the condition, shall immediately stop Work in the affected area and report the condition to the Owner and the Architect in writing. The Owner, Construction Manager, and Architect shall then proceed in the same manner described in Subparagraph 10.1.2 of AIA Document A201, as amended. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Construction Manager and the Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance, or who are to perform the task of removal or safe containment of such material or substance. The Construction Manager and the Architect shall promptly reply to the Owner, in writing, stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Construction Manager and the Architect have no reasonable objection.

2.6 INSPECTION AND TESTING.

All materials and equipment used in the construction shall be subject to inspection by the Project Manager/Engineer. If laws, ordinances, rules or regulations of any public authority having jurisdiction require any work to specifically be inspected, tested or approved by someone other than Project Manager/Engineer, the Contractor shall give the inspecting agency timely notice of readiness. Inspections, tests or approvals by the City or appropriate authorities will not relieve the Contractor from obligations to perform the work in accordance with the requirements of the Contract Documents and/or provisions. The Project Manager/Engineer and other designated

persons will at all times have access to the work. All work shall ultimately be inspected for final acceptance by the Project Manager/Engineer within a reasonable time upon receipt of notice from the Contractor that work is complete and ready for final inspection.

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

2.7 WARRANTY. Contractor warrants that all materials and supplies used in the construction of the Project shall be new, except as otherwise agreed to in writing by the City's Representative. All materials, equipment, parts and labor and any necessary corrections to the Project shall be guaranteed for a period of at least one (1) year following the date of substantial completion of the Project under the terms of the performance bond or as provided in the project specifications and construction documents, whichever is longer.

2.7.1 Warranties from Others. The CMAR shall secure, assemble and deliver to the Owner all required guarantees and warranties, affidavits, releases, bonds and waivers, manuals, record plans, and maintenance books to the Owner in a manner that will facilitate their maximum enforcement and assure their meaningful implementation, including any specific written warranties given by third parties, before submitting the final application for payment. All warranties shall commence upon the Substantial Completion Date of the applicable GMP, unless the warranted Work is not completed or has been rejected, in which case the warranty for the Work shall commence on the completion or acceptance of the Work. The CMAR shall ensure that the warranties are properly issued directly to the Owner as the original purchaser warrantee, executed by the warrantor and that any conditions to warranty coverage, such as close-out inspections, be timely addressed and completed. Any breach of the warranties will be a breach of this Agreement.

2.7.2 CMAR Warranty. The CMAR warrants that all materials and equipment will be new except where indicated otherwise in the Agreement, and that all Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Plans and Specifications and will give proper and continuous service under all conditions of service required by, specified in, or that may be reasonably inferred from the Agreement. With respect to the same Work, the CMAR further agrees to correct all Work found by the Owner to be defective in material and workmanship or not in conformance with the Plans and Specifications for a period of one year from the Substantial Completion Date or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications, as well as any damage to the Work resulting from defective designated or shop drawing design actually performed by the CMAR, materials, equipment, or workmanship that develop during construction or during the Warranty Period. In addition, the CMAR shall

conduct, jointly with the Owner and the Architect, a warranty inspection within twelve (12) months after the date of Owner Occupancy. If required by the Owner, the CMAR shall furnish satisfactory evidence as to the kind and quality of materials and equipment provided in the Work.

2.7.3 Any repair or replacements done under this Warranty shall comply with the requirements of the Agreement, and shall be verified by the performance of CMAR testing as Owner may require. All costs incidental to such repair, replacement, and testing, including the removal, replacement, and reinstallation of equipment and materials necessary to gain access, shall be borne by CMAR. CMAR warrants such repaired or replaced Work against defective designated or shop drawing design, materials, and workmanship for a period of twelve (12) months from and after the Substantial Completion Date or twelve (12) months from the time of such repair or replacement, whichever occurs latest. The CMAR only has redesign responsibility for shop drawings and other CMAR-initiated designs. Should CMAR fail to promptly make the necessary redesign, repair, replacement, and tests, Owner may perform or cause to be performed the same at CMAR's expense. CMAR shall reimburse the expense incurred by Owner for such remedial Work within thirty (30) calendar days from the date of receipt of Owner's invoice therefore. CMAR shall be liable for the satisfaction and full performance of the warranties as set forth herein.

2.7.4 The CMAR acknowledges and understands that the Warranty hereunder is not an exclusive remedy and that the Owner may avail itself of any and all remedies afforded it under this Agreement and applicable law. The CMAR further acknowledges that the Warranty period is not a limitation of liability or a limitation on the period of liability for any other remedy allowed by law.

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

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

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

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

3.1 INFORMATION AND SERVICES

3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program that sets forth the Owner's objectives, constraints, and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

3.1.2 The owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include costs that are the responsibility of the Owner.

3.1.3 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS, AND REPORTS.

The Owner shall furnish the following with reasonable promptness and at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings, and tests described in Subparagraphs 3.1.3.1 through 3.1.3.5 of this Agreement, except to the extent that the Construction Manager knows of any inaccuracy.

3.1.3.1 Reports, surveys, drawings, and tests concerning the conditions of the site which are required by law.

3.1.3.2 Surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

3.1.3.3 The services of geotechnical engineers, when such services are requested by the Construction Manager. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

3.1.3.4 Structural, mechanical, chemical, air, and water pollution tests; tests for hazardous materials; and other laboratory and environmental tests, inspections, and reports that are required by law.

3.1.3.5 The services of other consultants, when such services are reasonably required by the scope of the Project and requested by the Construction Manager.

3.2 OWNER'S DESIGNATED REPRESENTATIVE

Except as otherwise provided herein, Owner shall designate, in writing, a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The representative shall have the authority to make decisions in behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously so as to avoid unreasonable delay in the services or Work of the Construction Manager. The Owner may change the representative at any time by designating such change in writing.

The Parties hereby acknowledge and agree that pursuant to Park City Contracting and Purchasing Policies, accumulated Change Orders which would overall increase the Guaranteed Maximum Price by more than ten percent (10%) cannot be approved by Owner's designated representative and require express approval by the City Council of Park City. Time necessary to obtain such approval[s] from the City Council shall not be considered unreasonable delay in the services or Work of the Construction Manager.

3.3 ARCHITECT

The Owner has retained an Architect to provide the Basic Services, including normal structural, mechanical, and electrical engineering services, described in the Services Provider Agreement between Park City and Method Studios, INC. The Owner shall authorize and cause the Architect to provide those Additional Services described in the Architect Agreement requested by the Construction Manager that must necessarily be provided by the Architect for the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect, and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect. The Architect will provide design documents to the Construction Manager at the various phases of design in a mutually determined format.

ARTICLE 4
COMPENSATION FOR CONSTRUCTION SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

4.1 COMPENSATION

4.1.1 For the Construction Manager's performance of the Work as described in Paragraph 2.3 of this Agreement, the Owner shall pay the Construction Manager, in current funds, the Contract Sum consisting of the Cost of the Work as defined in Article 5 of this Agreement and the Construction Manager's Fee determined as follows:

Preconstruction Services Fee:	\$ 12,000
Construction Fee:	4% of the Cost of the Work

4.2 GUARANTEED MAXIMUM PRICE

The sum of the Cost of the Work and the Construction Manager's Fee is guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1 of this Agreement, subject to additions and deductions by approved changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work and subsequent amendments to the GMP, is referred to in the Contract Documents as the "Guaranteed Maximum Price." Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

4.3 CHANGES IN THE WORK/ CHANGE ORDERS

4.3.1 FOR CMAR CHANGE ORDER REQUEST (COR): A COR shall be utilized by the CMAR to formally present any request for monetary, time, or contractual adjustment to the Agreement or a GMP. The COR shall provide justification for entitlement to the change and shall be substantiated in accordance with Section 4.3

4.3.2 CMAR CHANGE ORDER: A CMAR Change Order shall be utilized to formalize modifications to the Agreement or the GMP that are agreed to by the Owner and CMAR. A CMAR Change Order cannot extend the GMP schedule or change the total GMP price. All changes to the Agreement time or GMP price must be made through a GMP Amendment.

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

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

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

4.4 CONSTRUCTION CHANGE DIRECTIVES

4.4.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may, by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

4.4.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

4.4.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4** As provided in Subparagraph 7.3.7.

4.4.4 **If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.**

4.4.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

4.4.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

4.4.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, The Owner and the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work

attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Clause 7.3.3.3, the Construction Manager shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 4.4.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and compensation insurance;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Construction Manager or others;
- .4 Costs of premiums for all bonds and insurance; permit fees; and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

4.4.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

4.4.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

4.4.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

ARTICLE 5

COST OF THE WORK FOR CONSTRUCTION PHASE

5.1 COSTS TO BE REIMBURSED

The term “Cost of the Work” shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project, except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 5.

5.1.2 LABOR COSTS

5.1.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s agreement. The reimbursable staff and salary structure shall be in accordance with Construction Manager’s General Conditions estimate to be included as part of Amendment No. 1 of this Agreement.

5.1.2.2 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops, or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and approved in advance in writing by Owner.

5.1.2.3 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments, and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 5.1.2.1 through 5.1.2.3.

5.1.3 SUBCONTRACT COSTS

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

5.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

5.1.4.1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

5.1.4.2 Costs of materials described in the preceding Subparagraph 5.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work, or, at the Owner’s option, shall be sold by the Construction Manager. Amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

5.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

5.1.5.1 Costs, including transportation, installation, maintenance, dismantling, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost, less salvage value, on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

5.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling, and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval. In no event shall the rental value of Construction Manager's owned equipment be more than seventy five percent (75%) of the rates established in the current edition of *Rental Rate Blue Book*™.

5.1.5.3 Costs of removal of debris from the site.

5.1.5.4 Reproduction costs; costs of telegrams, facsimile transmissions, and long-distance telephone calls; postage and express delivery charges; telephone service at the site; and reasonable petty cash expenses of the site office.

5.1.5.5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

5.1.6 MISCELLANEOUS COSTS

5.1.6.1 That portion directly attributable to this Contact of premiums for insurance and bonds. Insurance shall be billed at a fixed rate to be included as part of Amendment No. 1 of this Agreement.

5.1.6.2 Sales, use, or similar taxes imposed by a governmental authority, which are related to the Work and for which the Construction Manager is liable.

5.1.6.3 Fees and assessments for the building permit and other permits, licenses, and inspections for which the Construction Manager is required by the Contract Documents to pay.

5.1.6.4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work

5.1.6.5 Royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgments, and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price, and provided that such royalties, fees, and costs are not excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201, as amended, or other provisions of the Contract Documents.

5.1.6.6 Data processing costs at the project site related to the Work .

5.1.6.7 Expenses incurred in accordance with the Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

5.1.7 OTHER COSTS

Other costs incurred in the performance of the Work, if and to the extent approved in advance, in writing, by the Owner.

5.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

Costs incurred because of an emergency affecting the safety of persons and property to the extent they are reasonable and fully documented and supported by appropriate backup documentation, and are not caused by any act or failure to act by CMAR, its employees, agents, Subcontractors or Suppliers of any tier.

5.2 COSTS NOT TO BE REIMBURSED

5.2.1 The Cost of the Work shall not include:

5.2.1.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Subparagraphs 5.1 of this Agreement.

5.2.1.2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Paragraph 5.1 of this Agreement.

5.2.1.3 Overhead and general expenses, except as may be expressly included in Paragraph 5.1 of this Agreement.

5.2.1.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

5.2.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 5.1.5.2 of this Agreement.

5.2.1.6 Any costs because of the fault or negligence of the CMAR, its subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and correcting damage to property not forming part of the Work, or to failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.

5.2.1.7 Except as provided in Subparagraph 5.1.7. of this Agreement, any cost not specifically and expressly described in Paragraph 5.1 of this Agreement.

5.2.1.8 Costs which would cause the Guaranteed Maximum Price to be exceeded.

5.3 DISCOUNTS, REBATES, AND REFUNDS

5.3.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner, if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be secured.

5.3.2 Amounts which accrue to the Owner in accordance with the provisions of Subparagraph 5.3.1 of this Agreement shall be credited to the Owner as a deduction from the Cost of the Work.

5.3.3 All penalties incurred because of the fault of the CMAR or its subcontractors for late payment of cost will be paid by the CMAR and will not be reimbursable as a Cost of the Project.

5.4 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed accounts, and shall exercise such controls as may be necessary for proper financial management under this Contract. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project during normal business hours and upon providing reasonable notice, and the Construction Manager shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

ARTICLE 6 CONSTRUCTION PHASE

6.1 PROGRESS PAYMENTS

6.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

6.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

6.1.3 The City shall pay for services provided hereunder according to and in an aggregate amount not to exceed the GMP and only upon Contractor's request on forms approved by and submitted to the Project Manager. The City shall make payment within thirty (30) days thereafter. Requests for a more rapid payment may be considered if a discount is offered for early payment. At no time shall the aggregate amount of money paid to the Contractor in proportion to the Contract Amount be greater than the proportion of the work performed at that point to the total Project work. No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in whole or part from the Contractor for non-compliance with the provisions of the Contract Documents.

6.1.4 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager and approved by the Owner in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single, separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule,

unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

6.1.5 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work that has actually been completed, or (2) the percentage obtained by dividing (a) the expense which has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

6.1.5.1 Upon request by the Owner, the CMAR shall submit waivers of lien/bond rights and other documentation from subcontractors and Suppliers to evidence the status of payments.

6.1.5.2 Applications for payment may not include requests for payment of amounts the CMAR does not intend to pay to a Subcontractor or material Supplier because of a dispute or other reason.

6.1.5.3 The failure to comply with the requirements of this Article may result in the withholding of approval of the application for payment until compliance is achieved.

6.1.5.4 Within fifteen (15) business days after the Architect's receipt of the application for payment, the Architect shall either (1) approve the application for payment by signing the application in the appropriate places, including obtaining the signature of the Owner in the appropriate place or (2) the Architect shall notify the CMAR in writing of reasons for withholding approval in whole or in part and the action necessary to make the application for payment acceptable.

6.1.5.5 The issuance of the certificate for payment by the Architect and the OWNER will constitute a representation by them to the Owner, based upon their observations at the Jobsite and the data comprising the application for payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Agreement. The CMAR shall not rely upon these representations as the Owner's acceptance of the Work, since they are made for progress payment purposes only and are subject to an evaluation of the Work for conformance with the Agreement upon the GMP Substantial Completion; to results of subsequent tests and inspections; to minor deviations from the Agreement, correctable prior to completion; and to specific qualifications expressed by the Architect or the OWNER. The issuance of the certificate for payment is not a representation that the Architect or the OWNER have (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the

Work (2) reviewed construction means, methods, techniques, sequences or procedures (3) reviewed copies of requisitions received from Subcontractors and material Suppliers and other data requested by the Owner to substantiate the CMAR's right to payment or (4) made examination to ascertain how or for what purpose the CMAR has used money previously paid. The CMAR may not rely upon the certificate of payment as approval and acceptance of the Work reflected thereon.

6.1.5.6 The OWNER and/or Architect may withhold approval of an application for payment, in whole or in part, to the extent reasonably necessary to protect the Owner, if it cannot certify that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Agreement. In addition, notwithstanding anything to the contrary contained in the Agreement, the Owner may withhold any payment, if, and for so long as a good faith dispute exists, which may include the CMAR's failure to perform any of its obligations hereunder; the CMAR's default under the Agreement; or there is reasonable evidence indicating that the Work will not be completed within the GMP completion date(s), as may be adjusted by a GMP Amendment; and the unpaid balance would be insufficient to cover the anticipated liquidated damages; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the CMAR. In addition, if the Owner subsequently discovers that an application for payment was improperly paid, the Owner may withhold payment on any future applications for payment, in whole or in part, to the extent necessary to recover the funds improperly paid. If the Owner determines that the reasons for withholding payment no longer exist, the Owner will so notify the CMAR and will make payment for the amount of the holdback within fifteen (15) business days.

6.1.5.7 Upon notification that an application for payment is not approved, the CMAR and the OWNER shall conduct discussions to determine whether a revised application for payment can be agreed upon. If no agreement is reached within ten (10) business days after notification, the OWNER or Owner will adjust the original application for payment to delete the disputed amounts and will then approve payment for the undisputed amount and send a copy of the adjusted application for payment to the CMAR. If an agreement can be reached on the disputed portions of the application within ten (10) business days, the CMAR will submit a revised and signed application for payment for the agreed amount, if any, to the Architect and Owner for approval. Payment will be made within ten (10) business days after the Owner's Approval of the revised application for payment.

6.1.5.8 The Owner's signature on the application for payment does not constitute approval and acceptance of the Work.

6.1.5.9 At all times during the processing of an application for payment, including resolution of any related disputes, the CMAR shall continue to expeditiously advance the Work.

6.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

6.1.6.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work, as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of AIA Document A201, as amended, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

6.1.6.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.

6.1.6.3 Add the Construction Manager's Fee. The Construction Manager's Fee shall be an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding subparagraphs bears to the GMP.

6.1.6.4 Subtract the aggregate of previous payments made by the Owner.

6.1.6.5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Subparagraph 6.1.4 of this Agreement to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owners accountants in such documentation.

6.1.6.6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201, as amended.

6.1.7 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than five percent (5%). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments, retention, and retention reduction or early release for subcontracts.

6.1.8 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment that have not been delivered and stored at the site.

6.1.9 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and shall not be deemed to represent that the Architect has made a detailed examination, audit, or arithmetic verification of the documentation submitted in accordance with Subparagraph 6.1.4 of this Agreement or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, shall be performed by the Owner's accountants acting in the sole interest of the Owner.

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

6.1.11 No payment shall be made for any service rendered by the Contractor except for services set forth and identified in this Agreement. The City reserves the right to withhold payment in whole or part from the Contractor for non-compliance with the provisions of the Contract Documents

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

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

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

6.1.14 Each application for payment shall be in a form approved by the architect and Owner, which form contains the following:

1. Supporting cost reports required under Section 2.3, which reflect each element of the GMP,
2. The amount of retainage in accordance with Section 11.5.

6.2 FINAL PAYMENT

6.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager, except for the Construction Manager's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of AIA Document A201, as amended, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner; and (3) a final Certificate for Payment has then been issued by the Architect. Such final payment shall be made by the Owner not more than thirty (30) days after the issuance of the Architect's final Certificate for Payment.

6.2.2 The amount of the final payment shall be calculated as follows:

6.2.2.1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.

6.2.2.2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of AIA Document A201, as amended, or other provisions of the Contract Documents.

6.2.2.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

6.2.3 The Owner shall review and report in writing on the Construction Manager's final accounting within thirty (30) days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's report to be

substantiated by the Construction Manager's final accounting, and provided the other conditions of Subparagraph 6.2.1 of this Agreement have been met, the Architect shall, within seven (7) days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment, with a copy to the Construction Manager, or notify the Construction Manager and the Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of AIA Document A201, as amended. The time periods stated in this Paragraph 6.2 supersede those stated in Subparagraph 9.4.1 of AIA Document A201, as amended.

6.2.4 If subsequent to final payment and, at the Owner's request, the Construction Manager incurs costs described in Paragraph 5.1 and not excluded by Paragraph 5.2 of this Agreement (1) to correct nonconforming Work, or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any, related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

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

ARTICLE 7

INSURANCE AND BONDS

7.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

The Construction Manager shall purchase and maintain insurance as set forth in Article 11 of AIA Document A201, as amended, and as set forth below.

7.1.1 The Construction Manager shall maintain, and shall require all subcontractors and other entities or persons who perform work on the project to maintain, Workers' Compensation and Employers' Liability insurance meeting statutory limits mandated by Utah State law and federal law.

7.1.2 Commercial General Liability, including coverage for Premises-Operations, Independent Contractors' Protective, Products Completed Operations, Contractual Liability, Personal Injury,

and Broad Form Property Damage (including coverage for Explosion, Collapse, and Underground hazards and employer's practices), shall be purchased and maintained as follows:

\$ 2,000,000	Each Occurrence
\$ 4,000,000	General Aggregate
\$ 1,000,000	Personal and Advertising Injury
\$ 1,000,000	Products - Completed Operations Aggregate

Workers Compensation insurance limits written as follows:

- Bodily Injury by Accident \$500,000 each accident;
- Bodily Injury by Disease \$500,000 each employee, \$500,000 policy limit

Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage shall be maintained with a minimum limit of liability per occurrence of \$2 million.

7.1.2.1 The limits required in Subparagraph 7.1.2 (the "Policy") shall name Park City Municipal Corporation as additional insured on general liability and auto liability insurance policies and a copy of the endorsement naming the City as an additional insured shall be attached to the Certificate of Insurance. The City reserves the right to request certified copies of any required policies. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.. If, during any phase of the Project, the minimum General Aggregate of the Policy available to cover claims relative to the Project arising under this Agreement is decreased or is in any way compromised such that coverage for the Project, under the Policy is in any manner adversely affected, the following shall occur: (1) the Owner shall be notified within ten (10) days following the occurrence of the event or the receipt of the claim, whichever occurs first; (2) the Construction Manager shall provide alternate coverage, of a scope and nature consistent with the terms of this Agreement, subject to the approval of the Owner, within ten (10) days following the occurrence of the event or the receipt of the claim; and (3) should the Construction Manager fail to provide such alternate coverage within the prescribed time period, the Owner shall be entitled to procure alternate coverage and deduct the cost for such from any monies or payment then due, or in the future due, to the Construction Manager from the Owner.

7.1.2.2 Products and Completed Operations insurance shall be maintained for a minimum period of at least one (1) year either after ninety (90) days following Final Completion, or final payment, whichever is earlier.

7.1.3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations under Paragraph 3.18 of AIA Document A201, as amended.

7.1.4 During the Construction Phase of the Project, the Owner shall purchase and maintain property insurance, including waivers of subrogation, as set forth in Paragraph 11.2 of AIA Document A201, as amended.

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

7.1.6 **HOLD HARMLESS INDEMNIFICATION.** The Contractor clearly and unequivocally agrees to indemnify and to hold the City and its agents, employees, and officers, harmless from and shall process and to defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Agreement and/or the Contractor's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or others; and provided further, that nothing herein shall require the Contractor to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Contractor expressly agrees that the indemnification provided herein constitutes the contractor's waiver of immunity under Utah Code Section 34A-2-105 for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. No liability shall attach to the City by reason of entering into this Agreement except as expressly provided herein.

7.2 PERFORMANCE BOND AND PAYMENT BONDS

7.2.1 The Construction Manager shall provide performance and payment bonds equal to one hundred percent (100%) of the contract amounts. The bonds shall be in a form acceptable to the Owner. The bonds shall name the Owner as a third party obligee and shall be enforceable by the Owner, even if the Construction Manager's services are terminated pursuant to the provisions of this Contract.

7.2.2 The Construction Manager shall deliver the required bonds to the Owner at least seven (7) business days after approval of the GMP. Work shall not start without providing the bonds to the Owner.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 OTHER PROVISIONS

8.1.1 DEFINITIONS

Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in the 2007 Edition of AIA Document A201, as amended, General Conditions of the Contract for Construction.

8.1.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and Construction Manager, and supersedes all prior negotiations, representations, or agreements, either written or oral.

This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

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

8.1.3 OWNERSHIP AND USE OF DOCUMENTS

The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors, Sub-subcontractors, or suppliers on other projects or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and the Architect. The Construction Manager, Subcontractors, Sub-subcontractors, and suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the Architect appropriate to, and for use in, the execution of their Work under the Contract Documents.

8.1.4 GOVERNING LAW

The Contract shall be governed by the laws of the State of Utah. Any action of law, suit in equity, or judicial proceeding for the enforcement of the Agreement, or any provisions thereof,

shall be instituted and maintained only in any of the courts of competent jurisdiction in Summit County, Utah.

8.1.5 ASSIGNMENT

The Owner and Construction Manager respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole, or any portion of the Contract, without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

8.1.6 Although this Contract has been drafted by the City, the Contractor expressly agrees that any ambiguity herein shall be resolved in favor of the City.

8.2 DISPUTES

Except as otherwise provided in this Agreement, any disputes concerning a question of fact arising under this Agreement which is not disposed of by Agreement shall be decided by the City. The decision of the City shall be final and conclusive unless, within thirty (30) days from the date of receipt of such decision, the Contractor shall mail or otherwise furnish the City a written signed appeal addressed to the Project Manager/Engineer. In connection with any appeal proceeding under this clause, the Contractor will be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor will proceed diligently with the performance of the contract and in accordance with the City's decision. The decision of the City shall be final and conclusive, but shall not be arbitrary or unreasonable

8.2.1 CMAR and Subcontractor shall carry on its work and maintain its progress during any dispute, arbitration or legal proceedings.

8.2.2 Unless agreed to otherwise, a demand for mediation or arbitration of any disputed payment amount shall be made by the Construction Manager within sixty (60) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within the sixty (60)-day period shall result in the substantiated amount's, as reported by the Owner's accountants, becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

ARTICLE 9
TERMINATION OR SUSPENSION

**9.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED
MAXIMUM PRICE**

9.1.1 Prior to execution by both parties of Amendment No. 1 of this Agreement establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Subparagraph 14.1.1 of AIA Document A201, as amended.

9.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Paragraph 9.1, the Construction Manager shall be paid an amount calculated as follows:

9.1.2.1 Take the Cost of the Work incurred by the Construction Manager.

9.1.2.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate of percent (%).

9.1.2.3 Subtract the aggregate of previous payments made by the Owner on account of the Construction Phase.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental, at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 9.1.2.1 of this Agreement.

Subcontracts, purchase orders, and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 of this Agreement shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order, or rental agreement, except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order, or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order, or rental agreement, and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

9.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED

MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1 of this Agreement, the Contract may be terminated as provided in Article 14 of AIA Document A201, as amended.

9.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Subparagraph 14.1.2 of AIA Document A201, as amended, shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Subparagraph 9.1.2 of this Agreement.

9.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Subparagraph 14.1.2 of AIA Document A201, as amended, shall not exceed the amount the Construction Manager would be entitled to receive under Subparagraph 9.1.2 above.

9.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201, as amended. In such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201, as amended, except that the term “cost of performance of the Contract” in that subparagraph shall be understood to mean the Cost of the Work, and the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Subparagraphs 4.1.1 of this Agreement.

ARTICLE 10 OTHER CONDITIONS AND SERVICES

10.1 CONSTRUCTION MANAGER DUTIES. The Construction Manager shall competitively bid each portion of the Work who were prequalified as described in Subparagraph 2.1.6 of this Agreement. The Construction Manager shall review each bid, and, shall obtain the Owner’s written approval before making an award for that item of Work. The Construction Manager shall enter into agreements with each successful subcontractor and supplier, using its standard subcontract and purchase order forms.

10.2 REPRESENTATIVE DESIGNATION. In accordance with Paragraph 3.2 of this Agreement, the Owner hereby designates Matt Twombly as its Representative.

10.3 UTILITIES. The right is reserved to the owners of public utilities and franchises to enter upon the street or work site for the purpose of making repairs or changes of their property

that may become necessary by the work. The City shall also have the privilege of entering upon the street or work site for the purpose of repairing culverts, storm drains, water system repairs or adjustments and any and all other necessary City work.

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

10.4 HOURS AND DAYS OF WORK. All work performed by the Contractor, its subcontractors, material men, agents and employees shall be performed during work hours of 7:00 a.m. to 9:00 p.m. Monday through Saturday and 9:00 a.m. to 6:00 p.m. Sunday unless otherwise specified in a Conditional Use Permit or Construction Mitigation Plan. In individual Construction Mitigation Plans, the Building Official may further reduce the hours or days of work for Special Events or as other circumstances may reasonably warrant. When work is prohibited, no exterior construction, excavation or delivery of supplies and concrete are allowed. Interior work, however, may be allowed Monday through Sunday, with no limitation on hours for the following types of construction:

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

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

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

10.5. CONSTRUCTION MANAGEMENT PLANS. Contractor shall submit a Construction Mitigation Plan to be approved by the Building Official or his designee, for all building permits. The Community Development Department may waive this requirement for minor remodels, additions and interior construction where the impact on adjacent property is minimal. This plan shall be written and shall address, to the satisfaction of the Building Official or his designee.

A. Hours and Days of Operation. The Construction Mitigation Plan shall specify the daily construction start and finish times. Construction activity occurring outside of the times specified in Section 11-14-6 of the Park City Municipal Code may only be allowed by Special Permit issued by the Building Official or the City Engineer.

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

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

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

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

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

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

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

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

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

No additional fee is required for this sign.

10.6 TOILET FACILITIES AND CONTAINERIZED TRASH SERVICE REQUIRED.

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

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

10.7 NONDISCRIMINATION.

A. The City is an equal opportunity employer.

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

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

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

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

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

10.10 NOTICE For purposes of notice required or desired by the parties, or communication involving the services under this Agreement, such notice or communication shall be deemed to have been given when personally delivered or mailed, or sent by facsimile transmission certified mail, postage pre-paid, to the parties at the addresses listed on the first day of this Agreement to the attention of the Project Manager for Park City and to the Project Manager for Construction Manager.

THIS AGREEMENT entered into as of the day and year first written above.

OWNER:

PARK CITY MUNICIPAL CORPORATION

Diane Foster, City Manager

ATTEST:

City Recorder

Approved as to form:

City Attorney

CONSTRUCTION MANAGER:
ASCENT CONSTRUCTION
310 West Park Lane
Farmington, UT 84025

License #

By: _____

Title: _____

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____ of _____, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors or its bylaws, and he/she acknowledged to me that said corporation executed the same.

Notary Public

EXHIBIT "A"
AMENDMENT NO. 1
TO STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER

Pursuant to Paragraph 2.2 of the Standard Form of Agreement between Owner (Park City Municipal Corporation) and Construction Manager (_____), dated _____, 2019, for construction of the _____, the Owner and the Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below:

ARTICLE I
GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 5 of the Agreement and the Construction Manager's Fee as defined in Article 4 of the Agreement, is

_____ Dollars (\$_____).

Included in the Guaranteed Maximum Price is the Construction Manager's fee of \$_____.

This Price is for the performance of the Work in accordance with the "Guaranteed Maximum Price Proposal" dated _____, 2018, from _____, and incorporated herein by this reference (the "GMP").

ARTICLE II
CONTRACT TIME

The Construction Manager acknowledges that the Substantial Completion Date is _____, and the Final Completion Date _____.

PARK CITY MUNICIPAL CORPORATION

Diane Foster, City Manager

ATTEST:

City Recorder's Office

APPROVED AS TO FORM:

City Attorney's Office

OWNER
ADDRESS

Signature

Printed name

Title

STATE OF UTAH)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2018, personally appeared before me _____, whose identity is personally known to me/or proved to me on the basis of satisfactory evidence and who by me duly sworn/affirmed, did say that he/she is the _____ (*title or office*) of _____ Corporation by Authority of its Bylaws/Resolution of the Board of Directors, and acknowledged that he/she signed it voluntarily for its stated purpose as _____ (*title*) for _____, a Utah corporation.

EXHIBIT "B"
PRECONSTRUCTION SCOPE OF SERVICES

1. Evaluation and Reviews

Immediately upon award of Pre-construction services contract, perform a review of the design development drawings, survey, geotechnical investigation, cost estimates and any current drawings or documents for constructability, document clarity and scope, impact of design on (1) means, methods, and practices (2) construction logistics, and (3) construction execution planning; correlate the design review with CM's observations and investigations of the site; and provide PCMC and the architect with critical input and recommendations concerning the above.

As design documents are developed for design development and construction documents, perform ongoing design reviews of drawings and specifications and provide PCMC and the architect with recommendations on constructability, document clarity, and scope.

2. Value Management Assistance

Conduct value engineering process for both design development and construction documents; identify potential alternatives and processes that are cost effective or add value or decrease cost to the project; and consider alternative construction methods to promote historic value and increase the energy efficiency of the project.

3. Project Schedule

During the pre-construction services, develop with input from PCMC, the architect, and others, develop a preliminary schedule for construction that includes all preconstruction tasks and milestones as well as summary construction durations and activities; throughout the preconstruction phase revise, update, and track preconstruction activity; concurrently, develop the detailed construction phase schedule, including all procurement requirements, remaining design activities, construction phasing and detailed construction tasks; and through use of the project schedule, advise the team in identifying any long lead time items and oversee necessary procurement efforts. CM shall utilize scheduling software products. In coordination with the project team, the CM will need to look at phasing the construction in order to bid and procure key components and provide for early mobilization.

4. Cost Estimating

Construction Manager during pre-construction services will be required to provide independent cost estimates once at 30% completion, again at 60% completion,

and final cost estimates at approximately 90% complete construction documents. The CM will be required to establish and maintain a cost trend program, in a format satisfactory to PCMC, that accurately tracks changes in estimated cost prepared by the CM.

It is the intent to have the CM prepare a GMP at 100% construction documents or other mutually agreed design milestone.

5. Estimating Records

PCMC will require an estimate format, which will be regularly updated, documenting all aspects of the estimate including project scope, the basis for the estimate, exclusions and qualifications, allowance for contingencies and escalation. A PCMC approved code of accounts must be used. Quantity take-off's including calculation sheets, sketches, and marked up drawings must be organized for reference during the construction of the project. Unit costs must be fully documented with sub-contractor or vendor quotations for project elements, or substantiated historical figures, with any other pertinent information.

6. Budget Control

The CM shall provide a system of developing and managing the project construction budget from early design phase in pre-construction to the fixed contract amounts in the GMP. As construction begins, the CM shall integrate the preconstruction budgetary system into a comprehensive job cost tracking system acceptable to PCMC.

7. Procurement Plan

The CM shall develop, for PCMC review, a plan to obtain goods and services consistent with the scope, schedule, and budget of the project. The work shall be organized into logical divisions of trades to minimize the effects of multiple tier mark-ups and to maximize coordination efficiencies unless otherwise authorized in advance by PCMC. All procurement will be in accordance with the State of Utah and Park City Municipal Corporation policies and rules and procedures.

8. Sub-Contractor Pre-qualification

During the GMP preparations, the CM will be responsible to identify trade contractors and/or subcontractors and suppliers who are adequately qualified, suitable, and able to provide professional, quality construction services for the project. The CM shall submit a list of prospective bidders for PCMC review for the project.

9. Long Lead Items

During pre-construction, the CM will identify and develop a schedule for the procurement of long lead time items, if any, assist PCMC in the procurement of

long lead items, and monitor and expedite the delivery of such items on behalf of PCMC.

10. Bid Process Management

During the GMP preparations, the CM will work with the Design team to notify bidders, conduct pre-bid meetings, conduct site visits and/or walk-throughs, and receive trade contractor bids. Upon receipt of bids, the CM will analyze all bids to verify that bids are complete and that no unacceptable qualifications are made. The CM's bid analysis, together with the CM's recommendation for award, shall be reviewed with PCMC and the architect prior to award of trade contracts or purchase orders.

11. Guaranteed Maximum Price (GMP) Proposal

When the Drawings and Specifications are complete, the CM shall propose a GMP for the project to PCMC, which shall include the cost of the work, the CM's fee, general conditions, and any other project related costs.

12. Progress Reporting

During preconstruction, the CM will prepare and submit to PCMC and the architect a monthly progress report, in a form acceptable to PCMC. The report will address the status of design and construction schedule, identify outstanding issues, problems, delays, etc., and highlight cost and schedule trends.