

**WORK SESSION:** A work session will be held at 6:00 p.m. in Conference Room #3, Second Floor, of the Farmington City Hall, 160 South Main Street. The work session will be to answer any questions the City Council may have on agenda items. The public is welcome to attend.

## **FARMINGTON CITY COUNCIL MEETING NOTICE AND AGENDA**

Notice is hereby given that the City Council of **Farmington City** will hold a regular City Council meeting on **Tuesday, April 14, 2015, at 7:00 p.m.** The meeting will be held at the Farmington City Hall, 160 South Main Street, Farmington, Utah.

*Meetings of the City Council of Farmington City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.*

The agenda for the meeting shall be as follows:

### **CALL TO ORDER:**

7:00 Roll Call (Opening Comments/Invocation) Pledge of Allegiance

### **PUBLIC HEARINGS:**

7:05 Pheasant Hollow Schematic Plan

### **NEW BUSINESS:**

7:30 Consideration of a Resolution as to whether or not to Study the Annexation of approx. 20 acres east of the City Limits Between 100 North and 400 North Streets and Affidavit and other items

7:45 Culinary Water Restrictions

8:00 Park Lane Commons Pylon Signs

### **REPORTS OF COMITTEES/MUNICIPAL OFFICERS**

8:15 Annual Progress Report of the Farmington Trails Committee and Nomination of Amy Shumway to Farmington Trails Committee

### **SUMMARY ACTION:**

8:30 Minute Motion Approving Summary Action List

1. Contract with Hogan Construction to be the Construction Manager/General Contractor for the Park and Gym
2. Contract with VCBO to be the Architect of the Park and Gym

3. Parkwalk Downs Extension Agreement
4. Encroachment License and Permit for Farmington Creek Estates Lot 314
5. Brentwood Estates Subdivision Improvements Agreement
6. Agreement with Davis County regarding Elections
7. UTA Shuttle Agreement
8. Letter of Concurrence and Match Agreement
9. Approval of Minutes from City Council meeting held March 17, 2015
10. Approval of Minutes from City Council meeting held March 24, 2015
11. Proclamation for Congenital Diaphragmatic Hernia Awareness
12. Ratification and Approval of the Storm Water Bond Log

**GOVERNING BODY REPORTS:**

8:35 City Manager Report

1. Executive Summary for Planning Commission held on March 19, 2015
2. Fire Monthly Activity Report for February
3. Building Activity Report for March

8:40 Mayor Talbot & City Council Reports

1. Greg Wall Appointment to Historic Preservation Commission

**ADJOURN**

**CLOSED SESSION**

Minute motion adjourning to closed session for property acquisition.

DATED this 9th day of April, 2015.

**FARMINGTON CITY CORPORATION**

By:   
Holly Gadd, City Recorder

**\*PLEASE NOTE:** Times listed for each agenda item are estimates only and should not be construed to be binding on the City Council.

*In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting, should notify Holly Gadd, City Recorder, 451-2383 x 205, at least 24 hours prior to the meeting.*

CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

**S U B J E C T: Roll Call (Opening Comments/Invocation) Pledge of Allegiance**

It is requested that City Manager Dave Millheim give the invocation to the meeting and it is requested that City Councilmember Cory Ritz lead the audience in the Pledge of Allegiance.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.

## CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

### **PUBLIC HEARING: Pheasant Hollow Schematic Plan**

### **ACTION TO BE CONSIDERED:**

1. Hold the public hearing.
2. See enclosed staff report for recommendation.

### **GENERAL INFORMATION:**

See enclosed staff report prepared by Eric Anderson.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.

# FARMINGTON CITY



H. JAMES TALBOT  
MAYOR  
DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL  
DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council  
From: Eric Anderson, Associate City Planner  
Date: April 1, 2015  
SUBJECT: **PHEASANT HOLLOW SCHEMATIC PLAN - APPROVAL**  
Applicant: **Russell Wilson – Symphony Homes**

### RECOMMENDATION

- A. Hold a Public Hearing, and;
- B. Move that the City Council approve the proposed schematic plan A (as recommended by the Planning Commission) for the Pheasant Hollow Subdivision, subject to all applicable Farmington City ordinances and development standards and the following conditions:
  1. The City Manager determines what just compensation is for the 5 lot TDR transaction, and the City Council approves the TDR valuation prior to preliminary plat;
  2. The applicant must receive City Council approval to modify the street cross-section for the cul-de-sac prior to preliminary plat;
  3. The applicant must bring the flag lot in compliance to Section 12-7-030(10) and the City Council must approve the flag lot as part of their review of the schematic plan;
  4. Any outstanding issues raised by the DRC at schematic plan that have not been addressed, must be addressed at preliminary plat;
  5. The applicant will provide an updated wetland delineation approved by the US Army Corp prior to preliminary plat consideration;
  6. In addition to the soils report previously submitted, the applicant must update and provide a soils report for each individual lot where the lot configuration has changed, and an independent geotech engineer, working for the City must also review the updated report.

### Findings for Approval:

1. The proposed subdivision conforms to all of the development standards as set forth in Section 11-11-050.

2. The proposed Schematic Plan creates a needed east-west connection from 200 East to the Frontage Road.
3. The fully improved pocket park that would be provided to the City would preserve wetlands, and provide the City and surrounding residents with open space and recreational opportunities.
4. The applicant has performed a geotech report above and beyond the normal requirements as a way to address potential soil issues in the development.

## **BACKGROUND**

The applicant, Symphony Homes, is requesting Schematic Plan approval for a 15-lot subdivision on property located at approximately 700 South and 50 East. The subdivision as proposed would consist of fifteen lots on 4.55 acres of property. The underlying zone for this property is an R zone.

Currently, 700 South has an unfinished gap between 200 East and 50 West. The proposed development would bridge this gap and create a local road connector between these two segments. The finished road would add to the connectivity between 200 East and the Frontage Road, particularly, it would alleviate some of the east to west traffic of 620 South.

There are delineated wetlands over a significant portion of the property, and these wetlands are constrained land that will either have to be mitigated or not built on. The yield plan shows that 10 lots can be constructed, in spite of the limitations caused by the wetlands. The R zone requires a minimum lot size of 16,000 s.f. in the yield plan, or the same requirements of a conventional subdivision.

Previously, the applicant received schematic plan approval from the City Council on May 6, 2014. The previous schematic plan was for a conservation subdivision and had 12 lots with a 10% open space provision. However, the applicant has since revised their plan under the new alternative lot size provision in Chapter 11 of the Zoning Ordinance. The applicant will need to complete a transfer of development rights (TDR) transaction with the City for 5 additional lots. The applicant is proposing that the designated wetlands on the western portion of the property be preserved, and that lots 12 and 15 be conveyed to the City as park space. The applicant is also proposing to improve the approximate .88 acre park on behalf of the City. This notwithstanding, the applicant will need approval of the TDR from City Council, and approval of the improved park space as part of the TDR transaction.

There is also some question as to the necessity for a flag lot (lot 10) in the corner of this property. Section 12-7-030(10) states:

*“Flag lots may be approved by the Planning Commission in any residential zone where, due to unusual parcel dimension, configuration, or topographic conditions, traditional lot design is not feasible. Approval of flag lots shall not be permitted solely on the basis of economic benefit.”*

The City Council is tasked with determining whether the flag lot meets these criteria for approval, however, these criteria may be better evaluated at preliminary plat.

The road that runs through the center of the subdivision (the cul-de-sac) does not have side treatments on both sides of the street, including sidewalk or park strip, as is required of a local road. The applicant is requesting flexibility on the design of the road. However, the applicant will need to receive City Council approval to modify the street-cross section and remove the requirement to provide sidewalk and park strip; the approval of the subdivision as it is currently configured is a *de facto* approval of the street cross-section modification.

At the Planning Commission meeting on April 3, 2014 and again at the City Council on May 6, 2014, some neighbors expressed concerns with soils within the development and foundation settling of homes within the Continental Estates Phase I. In response to this concern, the City Council added a condition that in addition to the geotech report that is already required at preliminary plat, the applicant must provide individual soils reports on a lot-by-lot basis to more fully address any potential issues related to poor soils in conjunction with the issuance of a building permit for each lot. The applicant did perform a geotech report for each lot (of the original schematic plan) and that report was reviewed by the City's geotech engineer (a consultant for the City). However, because the applicant has altered the lot layout from that original approved schematic plan, additional soils testing may be required, if the City Council deems it necessary.

The Planning Commission discussed whether the flag lot is justified when considered under Section 12-7-030(10) which dictates that flag lots shall not be permitted solely on the basis of economic benefit, among other things. Also, the commission discussed the proposed cul-de-sac in the subdivision not having parkstrip or sidewalk, and felt that there needs to be sidewalk on at least one side of the street, especially if the cul-de-sac leads to a city park. Lastly, there was some question whether a 16,000 s.f. park would really benefit the City in this location. The applicant was directed to create some alternate plans addressing the issues the commission raised.

The applicant has provided these alternative plans and they are before you tonight as follows:

Alternative A: The flag lot stem will be revised to be 28' wide. A five foot wide sidewalk has been added against the curb in the cul-de-sac, but not in the bulb. The sidewalk is in an easement and the front set-back will be measured 25' from the back of curb. Lastly, building envelopes are shown on all of the lots except for the two lots being donated to the City.

Alternative B: The new plan does not have a flag lot and the park location/layout is different. This plan shows a five foot sidewalk against the curb in the cul-de-sac (not in the bulb) and the 25' front set-back measured from back of curb. Building envelopes are shown on all of the lots except for the two lots to be donated.

Since the March 5<sup>th</sup> PC meeting, staff discussed the flag lot at DRC and Jill Houston, the representative of Central Davis Sewer District stated that the proposed flag lot would allow the CDSD to relocate the sewer line that runs to the north of the proposed flag lot, and the flag lot would help CDSD in accessing and maintaining that line.

In the motion recommended above, the Planning Commission determined that the flag lot meets the criteria for approval, and they were alright with the sidewalk at back of curb on both sides of the street and stopping short at the turn-around portion of the cul-de-sac, and they like the park layout as originally depicted in Alternative A.

Supplemental Information

1. Vicinity Map
2. Existing Pheasant Hollow Schematic Plan (Approved May 6, 2014)
3. Alternative Schematic Plan A
4. Alternative Schematic Plan B
5. Proposed Pheasant Hollow Schematic Plan With Park Illustrated
6. Section 12-7-030(10) – Flag Lots
7. Draft Planning Commission minutes from March 19, 2015

Applicable Ordinances

1. Title 12, Chapter 3 – Schematic Plan
2. Title 12, Chapter 6 – Major Subdivisions
3. Title 12, Chapter 7 – General Requirements for All Subdivisions
4. Title 11, Chapter 11 – Single Family Residential Zones

Respectfully Submitted



Eric Anderson  
Associate City Planner

Concur



Dave Milheim  
City Manager

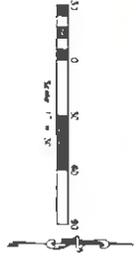
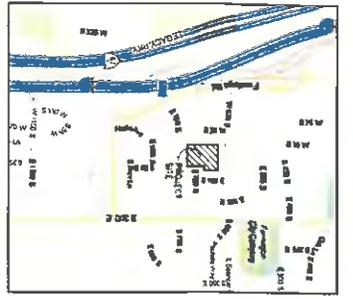
FOR

# Farmington City









**Notes:**

1. ALL UTILITIES SHOWN ARE BASED ON THE MOST RECENT RECORD DRAWINGS AND FIELD SURVEY DATA. THE DEVELOPER AND ENGINEER ASSUME NO LIABILITY FOR THE ACCURACY OF THE UTILITIES SHOWN. THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE UTILITIES SHOWN AND HAS FOUND THEM TO BE IN ACCORD WITH THE RECORD DRAWINGS AND FIELD SURVEY DATA.
2. THERE IS A 10' BUFFER ZONE AROUND ALL UTILITIES SHOWN. THE BUFFER ZONE IS TO BE MAINTAINED CLEAR OF ALL OBSTRUCTIONS AND OBSTRUCTIONS ARE TO BE REMOVED OR RELOCATED TO THE BUFFER ZONE.
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4. THE PROPERTY IS CURRENTLY ZONED R-1 AND CONTAINS 4.55 ACRES.
5. THE PROPERTY WILL BE SUBDIVIDED AND LOTS WILL BE CREATED BY THE ENGINEER.
6. THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE UTILITIES SHOWN AND HAS FOUND THEM TO BE IN ACCORD WITH THE RECORD DRAWINGS AND FIELD SURVEY DATA.
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**LEGEND**

	Proposed Wetland Area
	Existing Wetland Area
	Proposed Right-of-Way
	Existing Right-of-Way

**EXISTING DIMENSIONS**

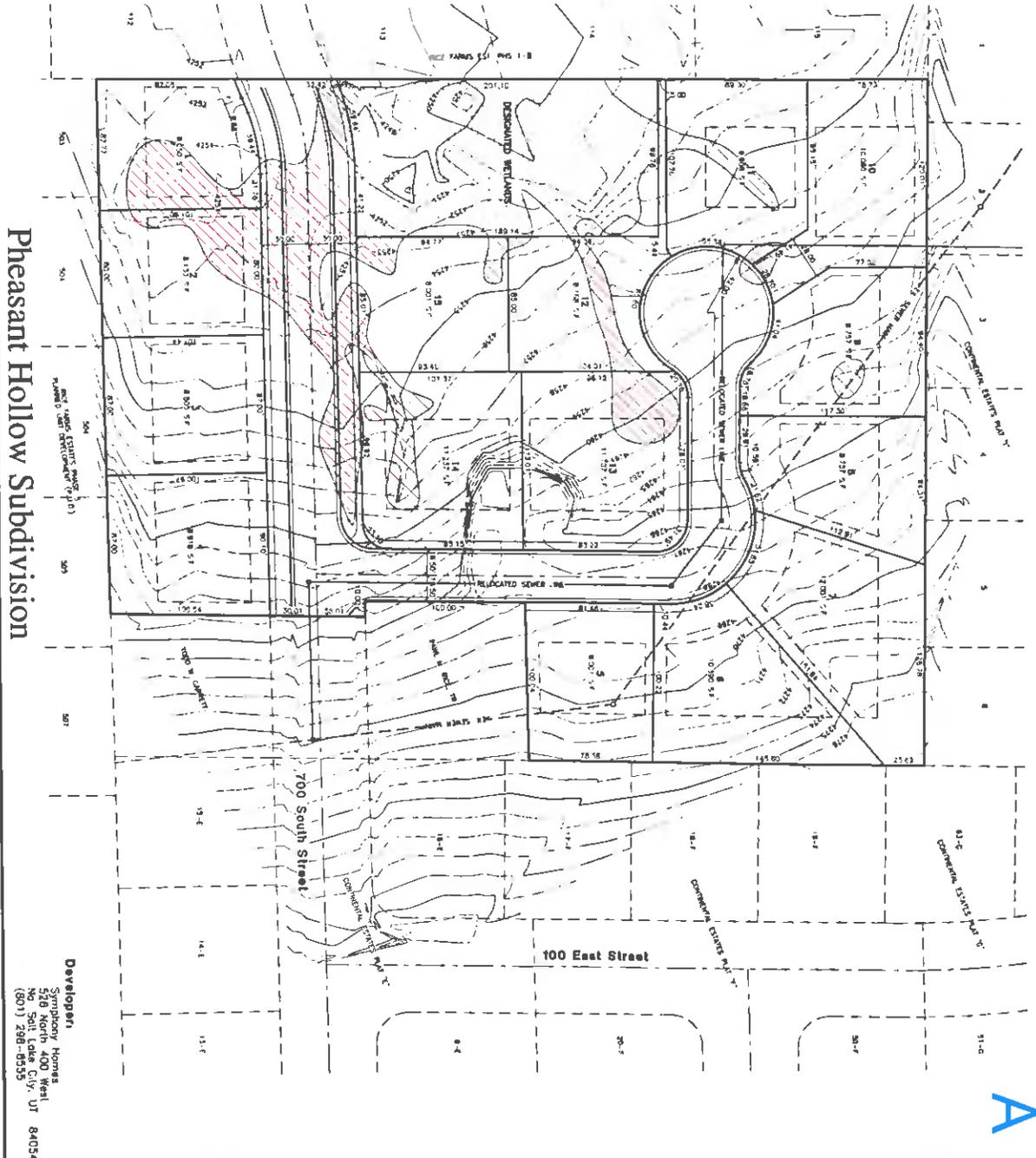
Under 100' Widths

WETLAND WIDTH	0.21 ACRES
WETLAND LENGTH	0.21 ACRES
TOTAL WETLAND AREA	0.42 ACRES
WETLAND PERCENTAGE	0.42 ACRES

**EXISTING UTILITIES**

Utility: 10" WATER MAIN (10' COVER DEPTH)

Utility: 10" SANITARY SEWER (10' COVER DEPTH)



**Pheasant Hollow Subdivision**

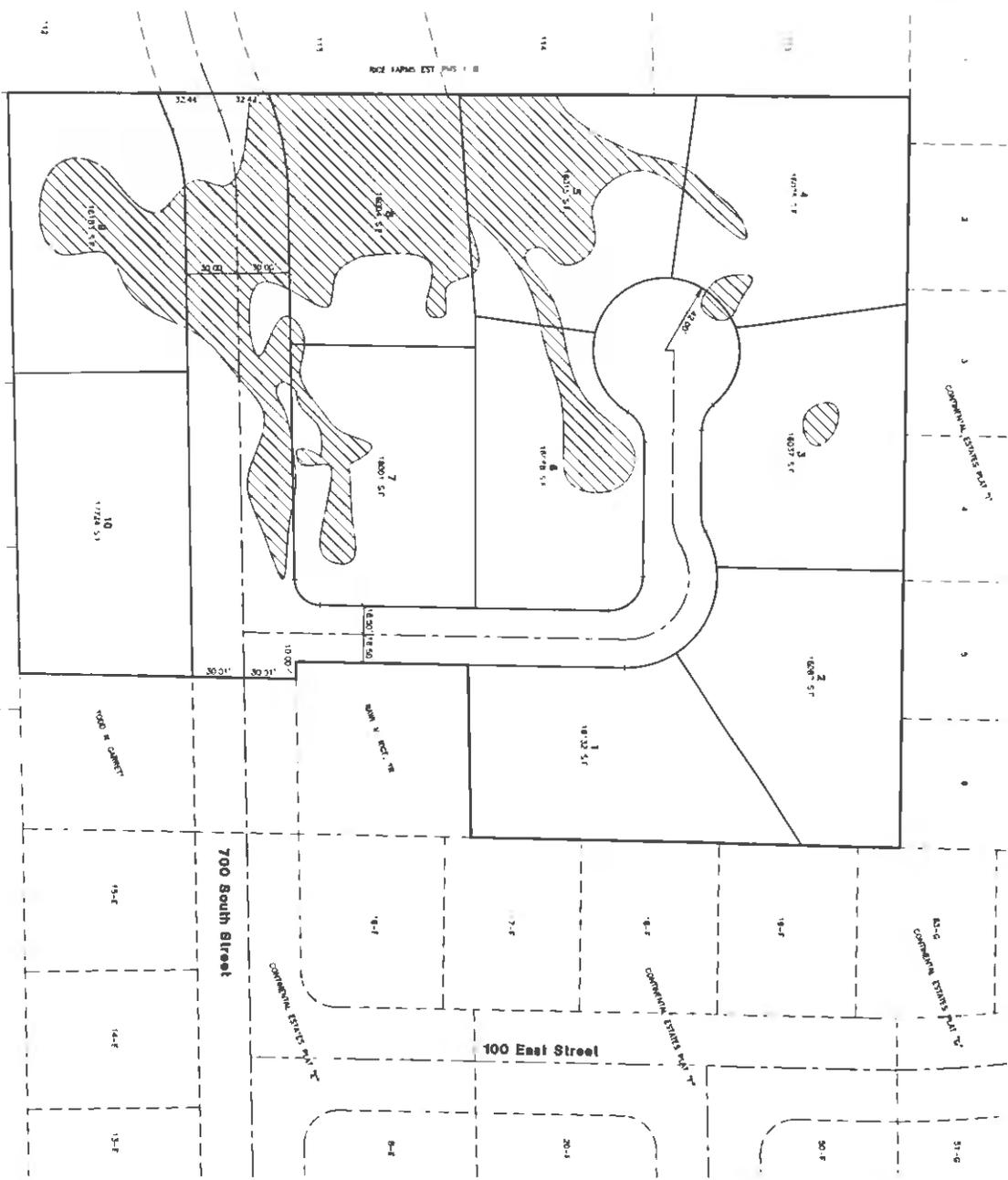
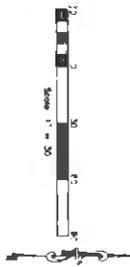
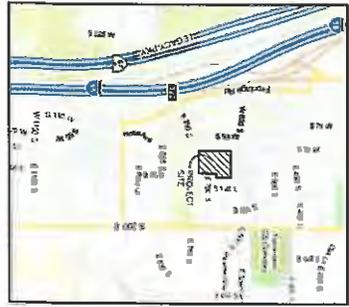
Farmington City, Davis County, Utah

**Developer:**  
Symphony Homes  
526 North 400 West  
No. Salt Lake City, UT 84034  
(801) 288-8535

Revised: March 12, 2015

<p>Project Info:</p> <p>Project Name: Pheasant Hollow Subdivision</p> <p>Client: Symphony Homes</p> <p>Address: 526 North 400 West, No. Salt Lake City, UT 84034</p> <p>Phone: (801) 288-8535</p>	<p>DATE: _____</p> <p>DESCRIPTION: _____</p>	<p><b>Reeve &amp; Associates, Inc.</b></p> <p>Professional Engineer License No. 12345</p> <p>Professional Surveyor License No. 67890</p>
	<p><b>Pheasant Hollow Subdivision</b></p> <p>PART OF THE 100' x 40' OF SECTION 30, T4N, 37E, R10E IN U.S. SURVEY</p> <p>BEHAVIOR COUNTY, UTAH</p> <p><b>Schematic Plan One</b></p>	





# Pheasant Hollow Subdivision

Farmington City, Davis County, Utah

**Developer:**  
 Sampson, Holmes  
 Russell Wilson  
 No. 501 North 400 West  
 Farmington, UT 84403  
 (801) 298-8555

Revised: March 5, 2015

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<p>1 1</p>	<p><b>Project Info</b>          Project Name: Pheasant Hollow Subdivision          City: Farmington, UT          Date: 3/5/2015          Drawn By: [Name]          Checked By: [Name]</p>	<p align="center"><b>Pheasant Hollow Subdivision</b>          PART OF THE SW 1/4 OF SECTION 30, T34N, R12E, S13E &amp; W. 401 SURVEY          FARMINGTON CITY, DAVIS COUNTY, UTAH</p> <p align="center"><b>Yield Plan</b></p>	<p><b>REVISIONS</b></p> <table border="1"> <thead> <tr> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	DATE	DESCRIPTION							 <p><b>Reeve &amp; Associates, Inc.</b>          1000 North 1000 West, Suite 100          Farmington, UT 84403          Phone: (801) 298-8555          Fax: (801) 298-8556          Email: info@reeveandassociates.com</p>
DATE	DESCRIPTION											

example, phase two would be numbered 201, 202, 203, etc.

(9) Except for group dwellings and planned unit developments, as specifically authorized by this Title and the Zoning Ordinance, not more than one dwelling unit shall occupy any one lot.

(10) Flag lots may be approved by the Planning Commission in any residential zone where, due to unusual parcel dimension, configuration, or topographic conditions, traditional lot design is not feasible. Approval of flag lots shall not be permitted solely on the basis of economic benefit. Such lots shall meet the following criteria:

- (a) The stem of the lot shall be not less than twenty feet (20') in width and shall not exceed one hundred fifty feet (150') in length;
- (b) The stem of the lot shall serve one lot only and shall have direct access to a dedicated and improved street;
- (c) The nearest fire hydrant shall be located no further than one hundred fifty feet (150') from the nearest corner of the proposed building on the lot; and
- (d) The body of the lot shall meet the lot size and dimensional requirements of the applicable zone. The stem area shall not be used in computing lot size. Proposed buildings shall comply with the minimum setbacks required for the zone. Determinations as to which are the front, side, and rear setbacks shall be made by the Zoning Administrator at the time a building permit is requested and shall be based on the orientation of the proposed home on the lot.
- (e) The number of flag lots shall not exceed ten percent (10%) of the total lots in the subdivision unless it is determined by the City that the property could not reasonably be developed otherwise.

(11) On lots with available access only onto a Major Arterial, Minor Arterial or Major Collector Street, a circular drive or some other type of vehicular maneuvering area shall be provided to enable vehicles to enter traffic moving forward rather than backing. The minimum depth of such lots shall be not less than one hundred ten feet (110').

#### **12-7-040 Streets.**

(1) All streets shall be designated and constructed with the appropriate street classification requirements specified herein:

#### **STREET CLASSIFICATION**

**Alex Leeman** made a motion that the Planning Commission recommend that the City Council approve the Final Plat for the Park Lane Commons Phase II, subject to all applicable Farmington City ordinances and development standards and obtaining final site plan or development design approval from staff and the following conditions:

1. No building permit shall be issued until the plat is recorded and until a bond is posted for public improvements related to the site;
2. The “Cabela’s Drive” ROW shall be amended to reflect the cross-section will be considered by City Council for approval.

**Val Halford** seconded the motion which was unanimously approved.

Finding:

The proposed subdivision will ensure compliance by the applicant with City Ordinance in conjunction with concurrent approval for the Cabela’s site plan and allow for lot 1 to be owned and maintained by Cabela’s.

**Item #4. Russell Wilson/Symphony Homes (Public Hearing) – Applicant is requesting a recommendation for Schematic Plan approval for the proposed Pheasant Hollow Subdivision consisting of 15 lots on 4.55 acres located at approximately 700 South and 50 East in an R zone. (S-2-14)**

**Eric Anderson** said this item was a continuation from the public hearing held at the last Planning Commission meeting on March 5, 2015. At the last meeting, the Commission requested the applicant provide alternate Schematic Plans that would include sidewalks along the inner road and options with and without the flag lot. The applicant provided option A that includes a flag lot, sidewalks along the curb and a park in lots 12 and 15. Option B does not include a flag lot, but does include sidewalks along the curb and a park in lots 11 and 12. **David Petersen** pointed out that if the Commission were to choose option A, a sidewalk through the park may be included so the park may be entered from two access points, one from the cul-de-sac and the other from 700 S.

**Bruce Robinson**, representative from Symphony Homes, said he is available to answer questions. He said that they provided the plans as the Commission had requested; however, the initial Schematic Plan they submitted yielded the best park configuration. He also pointed out that the flag lot is necessary for the sewer line and allows for a manhole in the driveway so the line may be easily accessed.

**Alex Leeman** asked why the home on Lot 15 on option B was pushed to the right side of the lot. **Bruce Robinson** said there must be a buffer from the wetlands so pushing the home to the far side of the lot provides for that buffer.

**Brett Anderson** reopened the public hearing at 7:29 p.m.

**Jeff Holman**, 22 Virginia Cir., said he lives immediately west of the proposed flag lot. He expressed concern that flag lots should not be approved based on economic purposes. Based on the plans he reviewed, he does not feel the sewer line necessitates the flag lot. He feels the flag lot is a result of the current lot number and configuration. He feels option B is the best choice, but that the park could be slightly adapted to work better. He is appreciative of the park and feels the development will help the community, but would prefer not to have a flag lot.

**Brett Anderson closed the public hearing at 7:31 p.m.**

**Eric Anderson** explained the Central Davis Sewer District (CDS) would like to bring the sewer line/trunk line down from the north and into the cul-de-sac. Having the flag lot allows for access to the trunk with a man hole. Without the flag lot, the amount of access to the sewer line would be greatly reduced. **David Petersen** also added that in the event a truck needs to service the line through the man hole, the path must be paved. **Eric Anderson** continued that CDS feels strongly that the flag lot remains. He also stated that the ordinance controls the width of the driveway for the flag lot so there is specific placement for the sewer line to go.

**Alex Leeman** asked if the delineated wetlands must be fenced off from the park. **Bruce Robinson** said there does need to be a fence, but it can be a smaller one. It will be included as it is part of the building permit.

or a split rail fence.

**Brett Anderson** appreciated seeing both options, one with the flag lot and one without; however, he did not anticipate that CDS would be so highly in favor of the flag lot which he feels is a significant factor. He also asked if the sewer line will come straight down the driveway and will not cross onto another property as he was not clear based on the provided plans. **Bruce Robinson** explained what was provided was simply concept plans; they will work with CDS to finalize the sewer line placement. **David Petersen** said the placement will be more definitive at Preliminary Plat. **Brett Anderson** feels it is important to weigh in CDS's recommendation.

**Alex Leeman** also feels option A is the better option. He likes that the park will be more easily accessible for the public by having two access points, one from the cul-de-sac and one from 700 S. He also added he does not like the flag lot, but feels it is the better option.

**Heather Barnum** said based on the ordinance, a flag lot should only be allowed in circumstances that are not just for economic benefit. Now that CDS has weighed in for the need of the flag lot for the sewer line, she feels the flag lot is now in compliance with the ordinance.

**Val Halford** also agreed. He appreciated the effort Symphony Homes made to provide option B; however, he feels Lot 11 on option B is compromised and would greatly restrict the placement and size of the home. He prefers option A as well.

**Motion:**

**Heather Barnum** made a motion that the Planning Commission recommend that the City Council approve the proposed Schematic Plan Option A for the Pheasant Hollow Subdivision, subject to all applicable Farmington City ordinances and development standards and the following conditions:

1. The City Manager determines what just compensation is for the 5 lot TDR transaction, and the City Council approves the TDR prior to Preliminary Plat;
2. The applicant must receive City Council approval to modify the street cross-section for the cul-de-sac prior to Preliminary Plat;
3. The applicant must bring the flag lot in compliance to Section 12-7-030(10) and the City Council must approve the flag lot as part of their review of the Schematic Plan;
4. Any outstanding issues raised by the DRC at Schematic Plan that have not been addressed, must be addressed at Preliminary Plat;
5. The applicant will provide an updated wetland delineation approved by the US Army Corp;

6. In addition to the soils report previously submitted, the applicant must update and provide a soils for each individual lot where the lot configurations has changed, and an independent geotech engineer, working for the City, must also review the updated report.

**Val Halford** seconded the motion which was unanimously approved.

The Commission also wanted to note that Condition #6 still requires that each lot will obtain an independent geotech report. Since lot lines and lot numbers have changed since the first proposal, the Commission wanted to ensure each lot, under the proposed Schematic Plan Option A, will have its own report.

Findings for Approval:

1. The proposed subdivision conforms to all of the development standards as set forth in Section 11-11-050.
2. The proposed Schematic Plan creates a needed east-west connection from 200 East to the Frontage Road.
3. The fully improved pocket park that would be provided to the City would preserve wetlands, and provide the City and surrounding residents with open space and recreational opportunities.
4. The applicant has performed a geotech report above and beyond the normal requirements as a way to address the soil issues.

**OTHER BUSINESS**

**Item #5. Scott Harwood/The Haws Companies – Applicant is requesting approval to relocate a pylon sign related to the Park Lane Commons Project, and city staff is requesting input regarding a possible substantial amendment to the Supplemental Development Agreement related to the project.**

**David Petersen** passed out visuals of the locations of the previously approved pylon signs as well as the approved 5.1.1 Signage Plan as found in Project Specific Development Standards of the Development Agreement. The applicant is requesting to move the southerly sign north by approximately 150'; however, the provided Signage Plan states that if unforeseen circumstances result in the relocation of the sign, it must be presented before the Planning Commission for approval.

**Heather Barnum** asked if the Development Agreement stated a set distance between the two signs that must remain. **David Petersen** said no, a distance was not agreed upon.

**David Petersen** also stated the applicant is requesting an increase to the top cabinet of the sign by 4' in width and 1' in height. He asked for the Commission's input as to whether that is determined a substantial amendment or not. If the Commission deems the changes as "substantial," a noticed public hearing and recommendation by the Planning Commission and a noticed public hearing and decision by City Council must take place.

The Commissioners and staff discussed the new location of the sign. **David Petersen** said the placement of the sign will be approximately 150' to the north and will be more even with the red barn.

## CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

**S U B J E C T:** Consideration of a Resolution as to whether or not to Study the Annexation of approx. 20 acres east of the City Limits Between 100 North and 400 North Streets and Affidavit and other items

### ACTION TO BE CONSIDERED:

1. Approve the enclosed resolution accepting the proposed Preston Annexation petition for further study/consideration.
2. If the City Recorder certifies the petition, direct the City Manager to meet with the applicant about inclusion of City property as part of larger subdivision, which included the proposed annexation area, and also allow the developer to pursue a recommendation regarding a schematic plan for the subdivision and zone designation from the Planning Commission.

### GENERAL INFORMATION:

See attached staff report prepared by David Petersen.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



# FARMINGTON CITY

H. JAMES TALBOT  
MAYOR

DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council

From: David E. Petersen, Community Development Director

Date: April 14, 2015

SUBJECT: **CONSIDERATION OF A RESOLUTION AS TO WHETHER OR NOT TO STUDY THE ANNEXATION OF APPROX. 20 ACRES EAST OF THE CITY LIMITS BETWEEN 100 NORTH AND 400 NORTH STREETS AND AFFIDAVIT AND OTHER ITEMS (#A-1-15)**

### RECOMMENDATIONS

1. Approve the enclosed resolution accepting the proposed Preston Annexation petition for further study/consideration.
2. If the City Recorder certifies the petition, direct the City Manager to meet with the applicant about inclusion of City property as part of larger subdivision, which includes the proposed annexation area, and also allow the developer to pursue a recommendation regarding a schematic plan for the subdivision and zone designation from the Planning Commission.

### BACKGROUND

The Community Development Department received a petition from Jerry Preston (et. al.), Mary P. Fisher, Doris A. Moss, Robert Margetts, and James L. Stewart requesting the annexation of approximately 20 acres of property located east of 200 East between 200 North and 400 North into the corporate limits of Farmington City. To start the annexation process, a municipality must accept by resolution a petition for further study [note: a city may also reject such petitions]; if the City Recorder certifies the petition, which must be done within 30 days of acceptance, a public notice and hearing process begin as set forth in State Law.

The purpose of the annexation is to accommodate a subdivision, which annexation and subdivision consist of a proposal to include City property. The City Council must determine whether or not it agrees with this proposal. The second motion will help enable the Council to make this determination.

Supplemental Information

1. Vicinity Map.
2. Resolution.
3. Schematic Plan.

Respectively Submitted



David Petersen  
Community Development Director

Review and Concur



Dave Millheim  
City Manager

RESOLUTION NO. 2015 - \_\_\_\_\_

**A RESOLUTION RECEIVING AN ANNEXATION PETITION FROM  
JERRY PRESTON AND OTHERS FOR CONSIDERATION BY  
FARMINGTON CITY.**

WHEREAS, Farmington City has received a petition from Jerry Preston, Mary P. Fisher, Doris A. Moss, Robert Margetts, and James L. Stewart collectively hereinafter referred to as the "Petitioner", requesting the annexation of 19.99 acres of unincorporated territory in Davis County, which would extend the existing corporate limits of Farmington City, hereinafter referred to as the "Petition", a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the Petition is signed by the owners of a majority of the private land area within the area proposed for annexation, and said owners' property is equal in value to at least one-third (1/3) of the value of all private real property within the area proposed for annexation as shown by the last assessment rolls of Davis County; and

WHEREAS, Petitioners have submitted to the City a plat for the territory proposed to be annexed; and

WHEREAS, the territory described in the Petition lies contiguous to the corporate limits of Farmington City and is a contiguous area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FARMINGTON, STATE OF UTAH, AS FOLLOWS:

Section 1. Petition Received for Consideration. The City Council hereby receives the Petition for Annexation filed by Jerry Preston, Mary P. Fisher, Doris A. Moss, Robert Margetts, and James L. Stewart for consideration.

Section 2. Decision to Certify. The City Recorder of Farmington City is hereby directed, with the assistance of the City Attorney and the Davis County Clerk, Davis County Surveyor, and Davis County Recorder, to determine whether the Petition meets the requirements of subsections 10-2-403(2), (3) and (4), of the Utah Code Annotated. If the City Recorder determines that the Petition meets those requirements, the City Recorder is further directed to certify the Petition and to send notice of that certification in writing to the City Council and the contact sponsor of the Petition. If the City Recorder determines that the Petition does not meet those requirements, the City Recorder is further directed to reject the Petition and notify the City Council and the contact sponsor in writing of the rejection and the reasons for the rejection. In the event the petition is certified, the City Recorder is also directed to refer the Petition to the Farmington City Planning Commission for consideration and recommendation of the proposed Zoning Designation of the area to be annexed.

Section 3. No Vested Rights. Nothing in this Resolution or in any other act, omission or representation of the City shall be construed to vest Petitioners with rights to compel annexation of the said property, to bind the City Council to finally approve the Petitioners'

annexation, to vest the Petitioners with rights to develop under particular zoning, subdivision or development ordinances, or to require Farmington City to provide any municipal services or to exercise jurisdiction over the area, until such time as decisions to annex and extend the corporate limits have been made and all annexation formalities and documentation have been completed, including the preparation of the final annexation plat according to the City Engineer's specification, appropriate ordinances, annexation agreements, and documentation verifying the sufficiency of the Petition.

Section 4. Severability. If any section, clause or portion of this Resolution is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

Section 5. Effective Date. This Resolution shall become effective immediately upon passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY,  
STATE OF UTAH, ON THIS 14th DAY OF APRIL, 2015.

FARMINGTON CITY CORPORATION

---

H. James Talbot  
Mayor

ATTEST:

---

Holly Gadd  
City Recorder

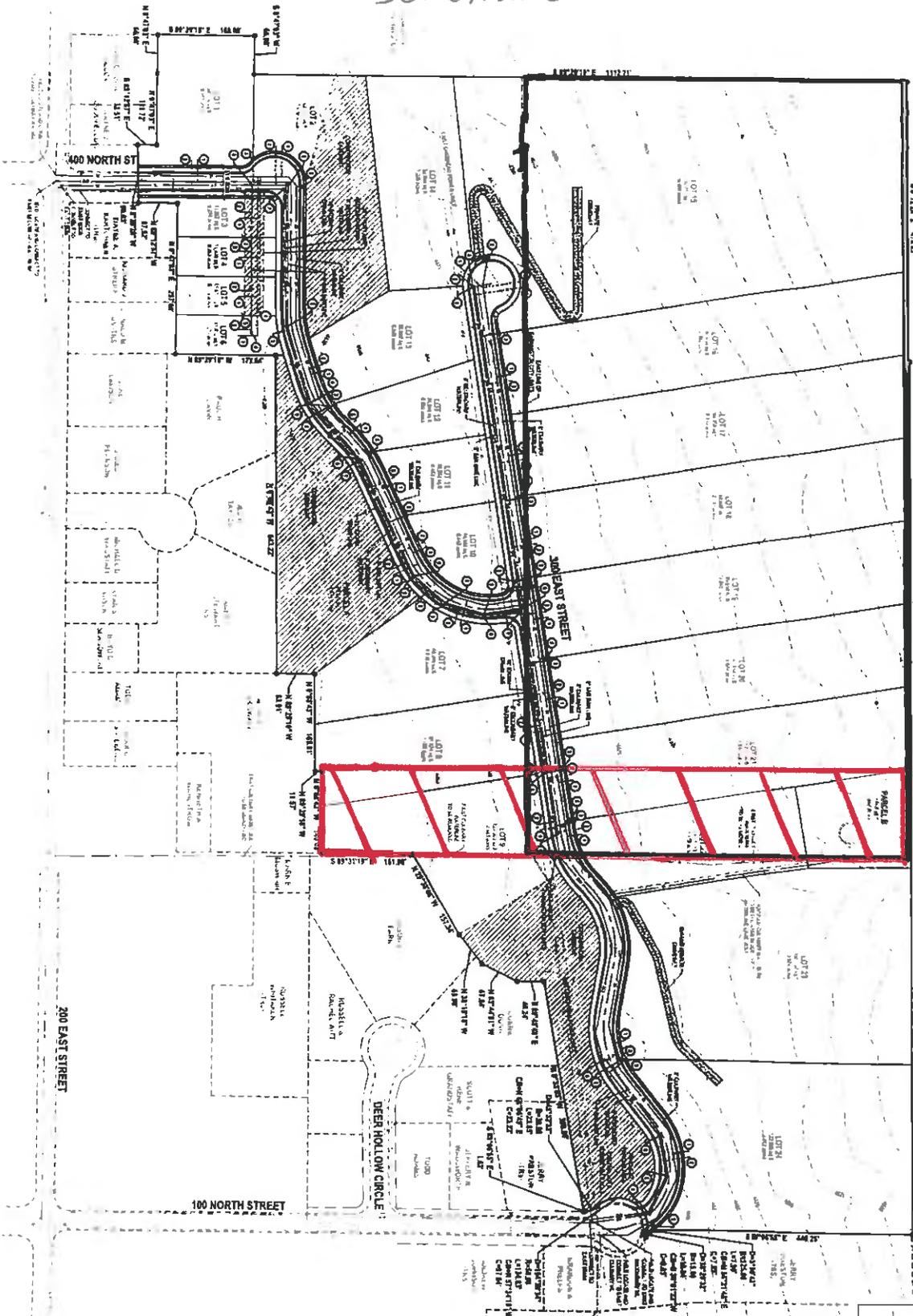
# Schematic Plan



Proposed Annexation Area



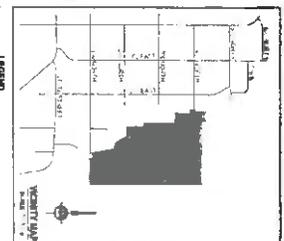
City Property



1 TYPICAL 50' STREET CROSS SECTION



- REVISIONS**
- 1. REVISED TO SHOW PROPOSED CITY LOT
  - 2. REVISED TO SHOW PROPOSED CITY LOT
  - 3. REVISED TO SHOW PROPOSED CITY LOT
  - 4. REVISED TO SHOW PROPOSED CITY LOT
  - 5. REVISED TO SHOW PROPOSED CITY LOT
  - 6. REVISED TO SHOW PROPOSED CITY LOT
  - 7. REVISED TO SHOW PROPOSED CITY LOT
  - 8. REVISED TO SHOW PROPOSED CITY LOT
  - 9. REVISED TO SHOW PROPOSED CITY LOT
  - 10. REVISED TO SHOW PROPOSED CITY LOT



**SITE IMPROVEMENT TABLE**

ITEM	QUANTITY	UNIT	REMARKS
1. 4" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
2. 6" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
3. 8" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
4. 12" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
5. 18" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
6. 24" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
7. 30" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
8. 36" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
9. 42" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST
10. 48" DIA. WATER MAIN	100	LINEAL FEET	FROM 400 NORTH ST TO 100 NORTH ST



## FARMINGTON HILLS SUBDIVISION

400 NORTH TO 100 NORTH



**ENSIG**  
 LATTON  
 10000 W. 100th St.  
 Overland Park, KS 66210  
 Phone: 913.597.1100  
 Fax: 913.597.0555  
 Email: info@ensig.com  
 WWW.ENSIG.COM

**COLGARD SP-811**  
 P.O. Box 718, 216th St  
 Overland Park, KS 66210  
 Phone: 913.597.1100  
 Fax: 913.597.0555  
 Email: info@colgard.com  
 WWW.COLGARD.COM



SCHEMATIC PLAN



A-1-15  
Proposed  
Annexation  
Area

City  
Property

CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

**S U B J E C T: Culinary Water Restrictions**

**ACTION TO BE CONSIDERED:**

See enclosed staff report for recommendations.

**GENERAL INFORMATION:**

See attached staff report prepared by Walt Hokanson.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



# FARMINGTON CITY

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MAYOR

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DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council  
From: Walt Hokanson, Public Works Director  
Date: April 1, 2015

**SUBJECT: CULINARY WATER RESTRICTIONS**

### RECOMMENDATION

Request that the City Council approve a policy that would permit us to enforce the following penalties for using culinary water for outside use if and when the irrigation water is restricted in any way:

1<sup>st</sup> Violation - Notice – Warning tag

2<sup>nd</sup> Violation - \$100.00 fine and disconnection of water. Fine shall be paid during business hours and prior to reconnection.

3<sup>rd</sup> Violation - Additional fine of \$200.00 and disconnection of water for 2 days. Fine shall be paid during business hours and prior to reconnection.

### BACKGROUND

Due to very low projections of at least 30% less allotment we will have a shortage of irrigation water this summer. We want to be prepared in the event the irrigation water is restricted or shut off earlier than normal. We do not have the capability to provide enough culinary water for residents to use outside of their homes. Our daily water usage is about 2 million gallons per day. Benchland Water District uses an average of 10 to 12 million gallons a day and on 100+ degree days they use up to 15 million gallons. We do not have the exact amount that Weber Basin uses per day but we estimate it to be 2 to 3 million gallons in Farmington. We feel it is necessary to enforce restrictions on outside use to ensure we can provide culinary water to all our residents. These restrictions and fines once they are approved, shall be enforced when Benchland or Weber Basin has water restrictions. These restrictions may also be put in place at any time the Public Works Director deems it necessary, such as if a well goes down or we have a problem with a reservoir. Over use of culinary water can cause problems with fire flow and other public health

and safety issues. We will be using the allotment we purchase from Weber Basin Water this year. The connection is in the north end of town so residents in that area may notice a difference in their culinary water.

Respectfully Submitted,

*Brenda Hokanson*

Walt Hokanson *For*  
Public Works Director

Review and Concur,

*Holly Gadd*  
*FOR*

Dave Millheim  
City Manager

CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

**SUBJECT: Park Lane Commons Pylon Signs**

**ACTION TO BE CONSIDERED:**

Discussion only

**GENERAL INFORMATION:**

See attached staff report prepared by David Petersen.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



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## City Council Staff Report

To: Honorable Mayor and City Council

From: David E. Petersen, Community Development Director

Date: April 14, 2015

SUBJECT: **PARK LANE COMMONS PYLON SIGNS (PMP-3-13)**

### DISCUSSION ITEM ONLY

Staff is seeking guidance from the Mayor and City Council as to whether or not the changes proposed by THC to the sign cabinet are substantial or administrative amendments to the Development Agreement.

This staff report also provides a summary of a recent Planning Commission action to approve a pylon sign relocation proposed by THC.

### BACKGROUND

#### Substantial versus Administrative Amendment

The Haws Companies (THC) are seeking to modify the size (and dimensions) of the top most sign cabinet of their approved pylon signs. In an email to Farmington City, Scott Harwood wrote:

Top Cabinet that shows Park Lane Commons - After consulting with YESCO we increased the height of this panel by 1' and the width by approx. 4' in order to make sure the visibility from I-15 is seen. I definitely see this as an "Administrative Amendment" rather than a "Substantial Amendment" as per the Development Agreement. The wording, font, look & feel is exactly the same just a slight increase in size for this top panel.

Sections 11.2.1 and 11.2.2 of the Agreement include the following criteria related to "Substantial Amendments" and "Administrative Amendments":

[Substantial Amendments] Any amendment to this Agreement that alters or modifies the Term of this Agreement, the permitted uses, the approved density or intensity of use, the text of the Agreement itself, the requirement of any

amenity described herein that is available to the public, or provisions of the Agreement or any approved mechanism that imposes financial obligations on Developer or property owners within the Property shall be deemed a “Substantial Amendment” and shall require a noticed public hearing and recommendation by the Planning Commission and a noticed public hearing and decision by the City Council prior to the execution of such an amendment.

[Administrative Amendments] Unless otherwise provided by law, all amendments to this Agreement that are not Substantial Amendments shall be deemed “Administrative Amendments” . . .

The Planning Commission discussed this matter on March 19, 2015, and 3 of the 4 Commissioners presents suggested that the THC proposal was not a substantial amendment.

#### Pylon Sign Relocation

As per the Supplemental Development Agreement for the Park Lane Commons Project dated June 23, 2014, between Farmington City and Farmington Square LLC (or THC (The Haws Companies)), the applicant received approval for two large pylon signs adjacent to the UP Tracks/I-15. THC now desires to change the location of the southerly most sign. In an email to Farmington City, dated March 9, 2015, the applicant states:

Now that we have solidified what is happening in the area where we originally showed the sign, and looking at the improvements within the Red Barn Farms Recovery Campus - the original location we had shown creates some location challenges and we would like to request the location be moved further north. The original location puts this sign right in front of the Greenhouse door and will be in the middle of kids coming back and forth from their residences into the Greenhouse to work. There will be alot of activity and happenings with gatherings in this area for the Recovery Facility, and this sign after meeting and consulting with YESCO will be better suited pushed a little north into the corner where we have shown it so that it is on the back side of the fencing for the Recovery Facility and out of the way of everything happening in this area. I feel now that we have context of what is happening in this area we can work with the Planning Commission on a request to move this further north.

Section 5.5.1 of the Development Agreement states:

Signage Plan. A full signage plan for the Project shall be submitted by the Developer as part of the development plan review process in compliance with Section 11-18-109 of the Ordinance. However, as part of this Agreement, two (2) pylon signs are approved for the Project along the frontage of I-15 at a height not to exceed fifty-five (55) feet from the freeway grade and twenty (20) feet in width as depicted in Exhibit C subject to the following conditions: (a) one sign needs to filled before the second sign is erected; and (b) if due to easements or some other unforeseen circumstances either of the signs needs to

relocated to a different site than what is depicted as part of Exhibit C, the proposed relocation will be required to be presented to the Planning Commission for their review and approval.

On March 19, 2015, the Planning approved the sign relocation proposed by THC, which proposal is presented in the supplemental information to this staff report.

Supplemental Information:

1. Proposed Sign Elevation.
2. Redline mark up of the sign elevation by City staff.
3. Sign relocation site plan (the attached redlined drawing shows the approximate location of sign as per the development Agreement).
4. Renderings of the sign as viewed by southbound and northbound I-15 traffic.
5. Exhibit "C" to the Development Agreement.

Respectively Submitted



David Petersen  
Community Development Director

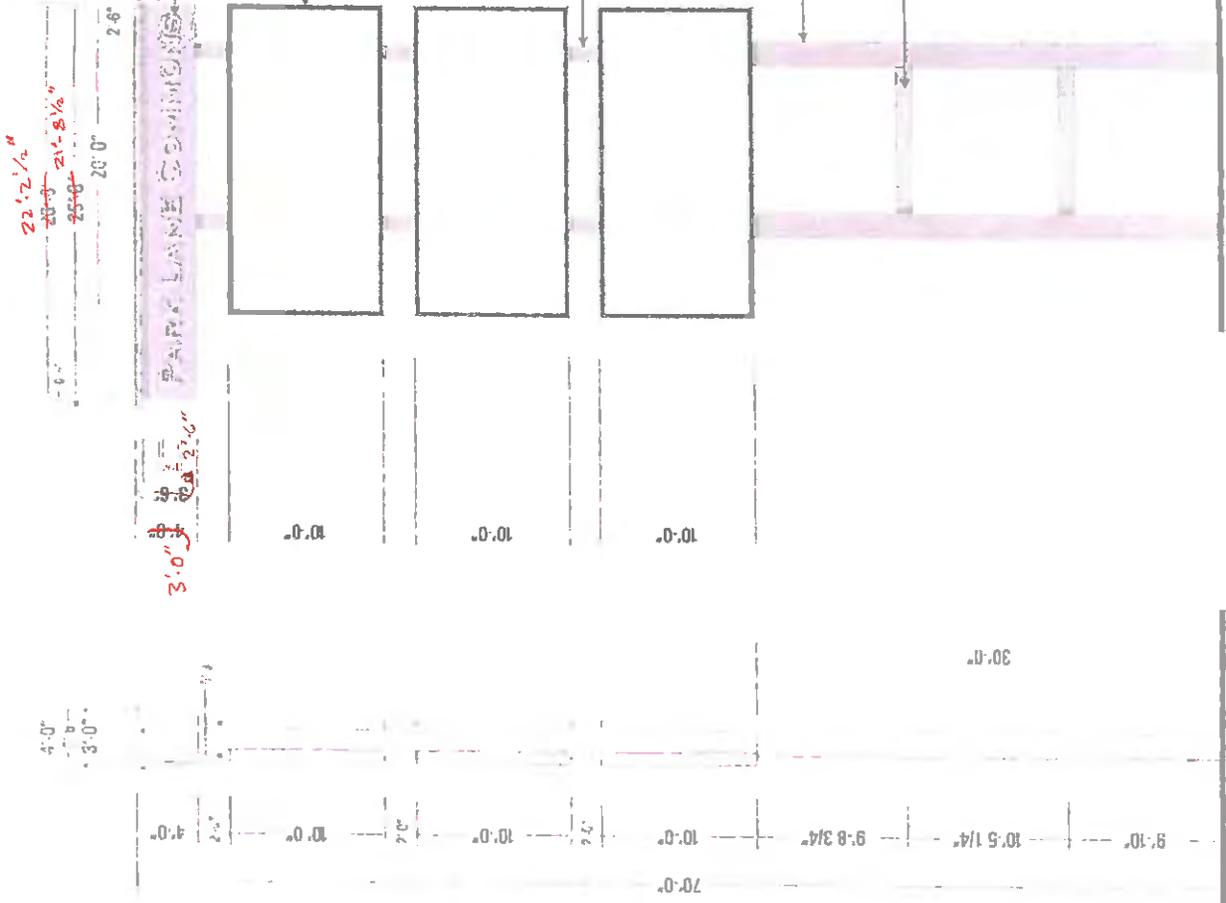
Review and Concur



Dave Millheim  
City Manager



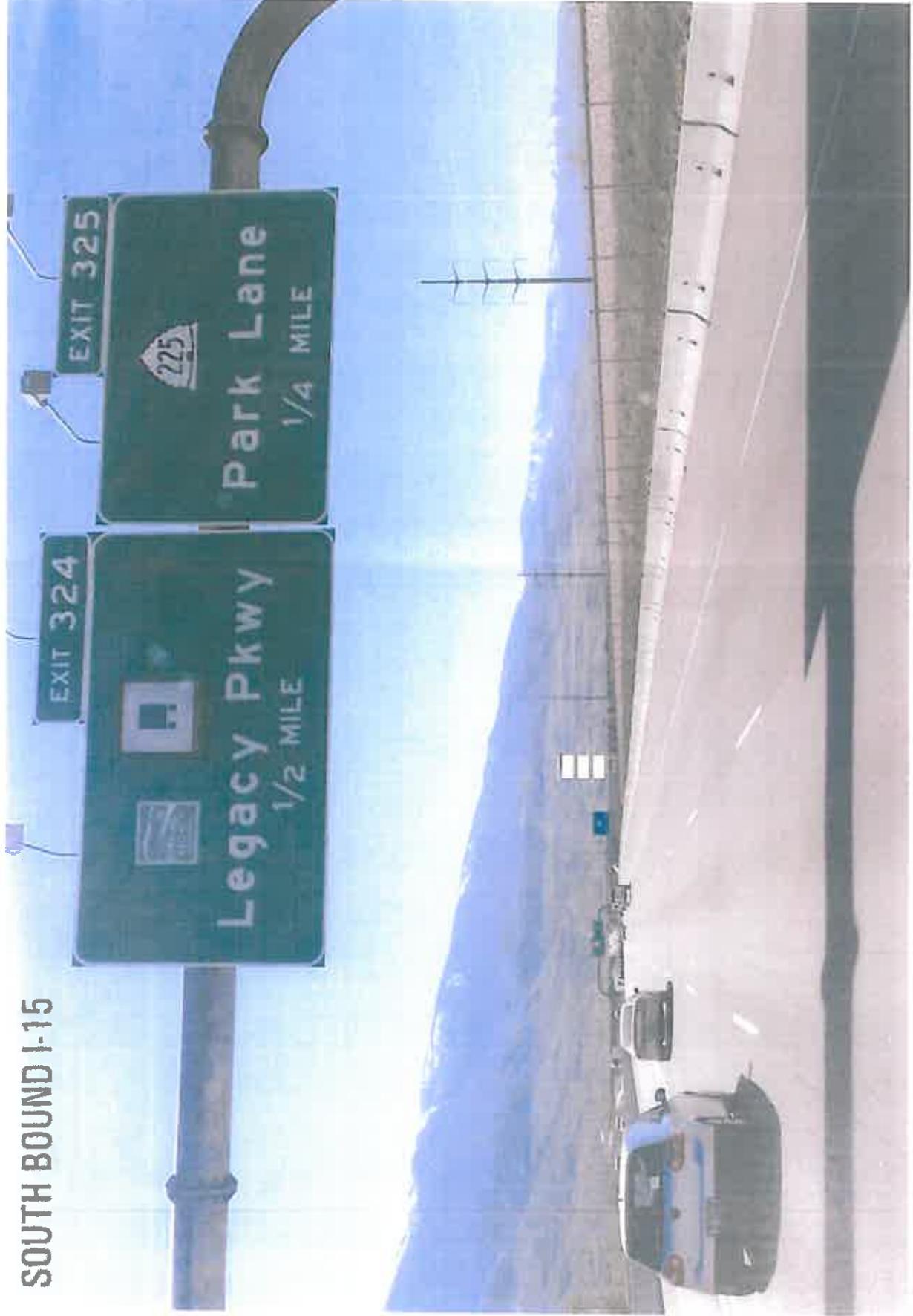
PROJECT: ...  
 DRAWING: ...  
 DATE: ...



- Show that sign will not exceed 55 feet from fire wall grade as per the agreement
- No building permit shall be issued prior to a building permit being issued for a permit
- Site plan needed for review and approval



# SOUTH BOUND I-15



## DESIGN

1100 South Ogdenway Hill  
Salt Lake City, UT 84104  
801.487.5401

[www.yesco.com](http://www.yesco.com)

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## Revisions

## Approval

## Project Info.

PARKING R11

Date 11-12-2012

PARK LANE COMMONS  
42107 R11

# ART 4.0

# NORTH BOUND I-15

**YESCO.**  
DESIGN  
11259 South Economy Rd.  
San Jose, CA 95138  
760.407.8401  
[www.yescodesign.com](http://www.yescodesign.com)  
YESCO DESIGN is a registered professional engineering firm in the State of California. The project shown herein was completed in 2012. All information is subject to change without notice. YESCO DESIGN is not responsible for any errors or omissions in this drawing. All work is subject to the approval of the client. All work is subject to the approval of the client. All work is subject to the approval of the client.

## REVISIONS

Approval

Project Info

7/15/2014

Date: 11-12-2014

PARK LANE COMMONS  
42107 R11

# ART 3.0









## CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

**SUBJECT: Annual Progress Report of the Farmington Trails Committee and  
Nomination of Amy Shumway to Farmington Trails Committee**

### ACTION TO BE CONSIDERED:

1. Nominate Amy Shumway to Farmington Trails committee.
2. Approve the continued tradition of water-spraying entry in Festival Days parade.

### GENERAL INFORMATION:

See attached staff report prepared by George Chipman.

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



# FARMINGTON CITY

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DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council

From: George G. Chipman, Farmington Trails Committee Chair

Date: February 26, 2015

**SUBJECT: ANNUAL PROGRESS REPORT OF THE FARMINGTON TRAILS COMMITTEE**

### RECOMMENDATIONS

Grant ten minutes on the next available City Council agenda for George Chipman to present the annual progress report of the Farmington Trails Committee.

### BACKGROUND

The Farmington Trails Committee (FTC) is a great asset to the City whose members diligently serve on behalf of our residents without compensation. The FTC By-Laws require an annual progress report be given by the FTC Chair to the City Council of the activities and accomplishments of the FTC in the previous year. This is a useful exercise to report on the service completed and to prepare for the year to come.

The FTC acknowledges the City Council as our governing body and desires to keep them informed of our activities and hence to better coordinate our service in the future for the most benefit to our fellow citizens.

The report is attached. Please put a copy in the packet going out to the members of the City Council.

Respectfully submitted,

George G. Chipman  
FTC Chair

Attachment: Staff Report February 2015

## CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

### **S U B J E C T: Minute Motion Approving Summary Action List**

1. Contract with Hogan Construction to be the Construction Manager/General Contractor for the Park and Gym
2. Contract with VCBO to be the Architect of the Park and Gym
3. Parkwalk Downs Extension Agreement
4. Encroachment License and Permit for Farmington Creek Estates Lot 314
5. Brentwood Estates Subdivision Improvements Agreement
6. Agreement with Davis County regarding Elections
7. UTA Shuttle Agreement
8. Letter of Concurrence and Match Agreement
9. Approval of Minutes from City Council meeting held March 17, 2015
10. Approval of Minutes from City Council meeting held March 24, 2015
11. Proclamation for Congenital Diaphragmatic Hernia Awareness
12. Ratification and Approval of the Storm Water Bond Log

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.

# FARMINGTON CITY



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MAYOR  
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JAMES YOUNG  
CITY COUNCIL  
DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Mayor and City Council

From: Keith Johnson, Assistant City Manager

Date: April 2, 2015

Subject: **APPROVE THE CONTRACT WITH HOGAN CONSTRUCTION TO BE THE CONSTRUCTION MANAGER / GENERAL CONTRACTOR FOR THE PARK AND GYM.**

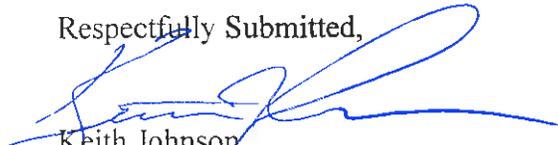
### RECOMMENDATIONS

Approve the enclosed contract with Hogan Construction to be the Construction Manager / General Contractor CM/GC for the park and gym.

### BACKGROUND

The Council already awarded Hogan Construction as the CM/GC from the bids that the City had received. This is now to approve the enclosed contract with them for the park and gym.

Respectfully Submitted,



Keith Johnson,  
Assistant City Manager

Review and Concur,



Dave Millheim,  
City Manager



# AIA® Document A133™ – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the 26 day of February in the year 2015  
*(In words, indicate day, month and year.)*

BETWEEN the Owner:  
*(Name, legal status and address)*

Farmington City Corporation  
160 S. Main Street  
Farmington, UT 84025

and the Construction Manager:  
*(Name, legal status and address)*

Hogan & Associates Construction, Inc.  
940 N. 1250 W.  
Centerville, UT 84014

for the following Project:  
*(Name and address or location)*

Farmington City Gymnasium and Park

The Architect:  
*(Name, legal status and address)*

VCBO Architecture

The Owner's Designated Representative:  
*(Name, address and other information)*

Neil Miller, Parks Director

The Construction Manager's Designated Representative:  
*(Name, address and other information)*

Dave Andersen

The Architect's Designated Representative:  
*(Name, address and other information)*

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

| Brent Tippetts

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 MISCELLANEOUS PROVISIONS
- 12 SCOPE OF THE AGREEMENT

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

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

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall

Init.

procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

**§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 2.1.9 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development 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.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

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

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (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, then the Construction Manager may require that a Change Order 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 and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 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 and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a 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; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect 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 the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

\$9,500 per Exhibit A, attached

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six ( 6 ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

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§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty-five ( 45 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

8 % per annum

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Per Exhibit A, attached:

Construction Management Fee of One Hundred Thousand Dollars (\$100,000) based on project value of \$8 million at 1.25%

Construction Supervision cost: Lump Sum Fee of One Hundred and Two Thousand Dollars (\$102,000)

Self-performed Work Mark-up: Seven and one-half Percent (7.5%)

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

Change Order Mark-up – Five Percent (5%)

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Sub-Contractor mark-up shall be limited to Fifteen Percent (15.0%) of the proposed changes up to \$5,000.00; Ten Percent (10.0%) of the proposed changes between \$5,000.00 and \$10,000.00; and Five Percent (5.0%) for all proposed changes over \$10,000.00.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent ( 100 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>none</u>		

**§ 5.2 Guaranteed Maximum Price**

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

It is NOT the intent of this contract to have reimbursable accounts outside the scope of the GMP. All costs listed in Article 6 shall be included in the GMP. The Construction Manager will provide lump sum amounts for all work to be self performed per Section 2.3.2.

In the event that items of work are not covered by a specific subcontract or supplier bid, the CM/GC shall include in the GMP the fixed cost of his compensation to perform said work, to the extent that the work can be identified at the time. Any changes to the original scope of work after establishment of the GMP will be handled through the normal Change Order process.

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 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 the standard 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 Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 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.

§ 6.2.4 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 such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

### § 6.3 Subcontract Costs

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

### § 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** 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 rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

**§ 6.6.7** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 6.6.8** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 6.6.9** Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

**§ 6.7 Other Costs and Emergencies**

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

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

**§ 6.8 Costs Not To Be Reimbursed**

**§ 6.8.1** The Cost of the Work shall not include the items listed below:

- .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 Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 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 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 obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 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.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the First day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager 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, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that 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.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of 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 shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .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;
- .3 Add the Construction Manager's Fee, less retainage of Five percent (5.00 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of Five percent (5.00 %) from that portion of the Work that the Construction Manager self-performs;

- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 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 Section 7.1.4 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, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 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 auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors 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.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable 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 as provided in Section 5.2.1, 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.

**ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
<u>Insurance coverage and limits shall be per attached certificate, Exhibit B</u>	
<u>Payment &amp; Performance Bonds</u>	<u>100% of Contract Sum</u>

**ARTICLE 9 DISPUTE RESOLUTION**

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

**§ 9.3 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

**ARTICLE 10 TERMINATION OR SUSPENSION**

**§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

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§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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 which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept 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 will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

## § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201-2007.

**§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**

Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole 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.

**§ 11.5 Other provisions:**

The Owner, the design team and the Construction Manager agree to work together to keep the cost of construction, as represented in the design, within the budget.

After the project is bid to sub-contractors, a Guaranteed Maximum Price will be established per Section 2.2.6 and attached as a future Exhibit C, amending this Agreement. This will be done jointly by the Owner, Architect, and Construction Manager. The Guaranteed Maximum Price will then be approved by Farmington City Corporation prior to the commencement of the construction.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the 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 Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- ~~.3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:~~
  
- ~~.4 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~
  
- ~~.5 Other documents:  
(List other documents, if any, forming part of the Agreement.)~~

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
Dave Andersen Vice President  
(Printed name and title)

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# AIA<sup>®</sup> Document A201™ – 2007

## **General Conditions of the Contract for Construction**

for the following PROJECT:

*(Name and location or address)*

| Farmington City Gymnasium and Park

THE OWNER:

*(Name, legal status and address)*

| Farmington City Corporation

THE ARCHITECT:

*(Name, legal status and address)*

| VCBO Architecture

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The 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. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the

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portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### ARTICLE 3 CONTRACTOR

#### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

## § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

## § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

## § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### § 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

**§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

**§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor 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 Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and

completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### ARTICLE 4 ARCHITECT

##### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

##### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

##### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### **§ 6.2 MUTUAL RESPONSIBILITY**

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 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.

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

§ 7.3.3 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 Section 7.3.7.

§ 7.3.4 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.

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, 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 Section 7.3.3.3, the Contractor 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 7.3.7 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 workers' 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 Contractor 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.

§ 7.3.8 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.

§ 7.3.9 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.

§ 7.3.10 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.

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and 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, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or

encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (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 Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 HAZARDOUS MATERIALS**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and 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 Contractor and the Architect will 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 Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

**§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 11.2 OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole 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.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by

such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

**§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### § 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

# Exhibit (A)

## COST PROPOSAL FORM

NAME OF PROPOSER Hogan & Associates Construction, Inc. DATE 12-18-2014

The undersigned, responsive to the "Notice to General Contractors/Construction Managers" and in accordance with the "Request for Proposals" for the Farmington City Gymnasium and Park, propose a pre-construction fee at the price stated below. This price is to cover all expenses incurred in performing the pre-construction services as outlined in our proposal of which this proposal is a part:

I/We acknowledge receipt of the following Addenda: 1, 2, 3

- A. **Preconstruction Fee** - For all work during the pre-construction period, I/we agree to perform for the lump sum of:

Nine thousand five hundred DOLLARS (\$9,500)  
(In case of discrepancy, written amount shall govern)

- B. **Construction Management Fee (including overhead and profit)** - For all work during the construction phase of the contract for the management of the project, I/we agree to perform for the lump sum of:

One hundred thousand DOLLARS (\$100,000) (1.25%)  
(In case of discrepancy, written amount shall govern)

- C. **Contractors Modification Factor** - The contractors insurance modification factor as currently rated is: 0.84

- D. **Cost of Bonds** - The cost of Payment and Performance bonds based on the amount of the FLCC.

Fifty thousand, One Hundred and Seventy-Five DOLLARS (\$50,175)  
(In case of discrepancy, written amount shall govern)

- E. **Construction Supervision Cost** - For project supervision and support team costs not covered in the above management fee, I/we agree to perform for the sum of \$8,500 per month x 12 (total months) = 102,000 (total NTE Construction Supervision Cost)

F. **Self Performed Work Markup** - For all self performed work, I/we agree to add no more than 7.5 % to our labor and material costs to perform the work.

**Contractor Change Order Markup** - For all work added to the contract by change order above and beyond the FLCC, I/we agree to add not more than 5 % to the subcontractor/supplier costs for the additional work. (For clarification, please review Section 5.2 of the CM/GC Agreement.)

I/We guarantee that the Work will be Complete, including punch list items, within the negotiated time frame after receipt of the Notice to Proceed, should I/we be the successful proposer.

The FLCC for this project is \$8,000,000. Enclosed is a bid bond in the amount of 5% of the FLCC.

With the cooperation of Farmington City and their consultants, the undersigned will continue to work with due diligence to provide a Guaranteed Maximum Price (GMP) within the FLCC.

The undersigned Contractor's License Number for Utah is 316293-5501.

This bid shall be good for 45 days after bid submission.

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within fifteen (15) days, unless a shorter time is specified in the Contract Documents, and deliver acceptable Performance and Payment bonds in the prescribed form in the amount of 100% of the Contract Sum for faithful performance of the contract upon final agreement of the GMP. The Bid Bond attached, in the amount not less than five percent (5%) of the FLCC shall become the property of the Division of Facilities Construction and Management as liquidated damages for delay and additional expense caused thereby in the event that the contract is not executed and/or acceptable 100% Performance and Payment bonds are not delivered within the time set forth.

Type of Organization:

Corporation

(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

None

Respectfully submitted,

**Dave Andersen, Vice President**

Name of Proposer

**Hogan & Associates Construction, Inc.**

Company

**940 North 1250 West**

**Centerville, UT 84014**

Address

**801-951-7000**

Phone Number

**dandersen@hoganconstruction.com**

Email



Authorized Signature



# Exhibit B

HOGA&amp;AS-01

VKOONTZ

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
7/1/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> The Presidio Group, Inc. P O Box 57100 Salt Lake City, UT 84157	<b>CONTACT NAME:</b> Vicki Koontz	
	<b>PHONE (A/C No. Ext):</b> (801) 924-1400	<b>FAX (A/C No.):</b> (801) 924-1441
<b>E-MAIL ADDRESS:</b> vkoontz@presidio-group.com		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Nat'l Union Fire Ins. Co. PA		19445
<b>INSURER B:</b> Starr Indemnity & Liability Co		38318
<b>INSURER C:</b> New Hampshire Insurance Co.		23841
<b>INSURER D:</b> Travelers		36161
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**INSURED**  
  
 Hogan & Associates Construction Inc  
 940 N 1250 W  
 Centerville, UT 84014-1356

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		7267127	07/01/2014	07/01/2015	EACH OCCURRENCE	\$ 1,000,000
						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
						MED EXP (Any one person)	\$ 10,000
						PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS - COMP/OP AGG	\$ 2,000,000
							\$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		3500705	07/01/2014	07/01/2015	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
						BODILY INJURY (Per person)	\$
						BODILY INJURY (Per accident)	\$
						PROPERTY DAMAGE (Per accident)	\$
							\$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		1000021002	07/01/2014	07/01/2015	EACH OCCURRENCE	\$ 9,000,000
						AGGREGATE	\$ 9,000,000
							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N/A	086476542	07/01/2014	07/01/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
						E.L. EACH ACCIDENT	\$ 1,000,000
						E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
D	Leased/Rented Equip		QT6305895N501TIL14	07/01/2014	07/01/2015	Limit	750,000
D	Leased/Rented Equip		QT6305895N501TIL14	07/01/2014	07/01/2015	Deductible	5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Verification of insurance subject to the terms and conditions of the policy

## CERTIFICATE HOLDER

## CANCELLATION

To Whom It May Concern

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

John D. Schlicka

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# FARMINGTON CITY



H. JAMES TALBOT  
MAYOR

DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Mayor and City Council

From: Keith Johnson, Assistant City Manager

Date: April 2, 2015

Subject: **APPROVE THE CONTRACT WITH VCBO TO BE THE ARCHITECT OF THE PARK AND GYM.**

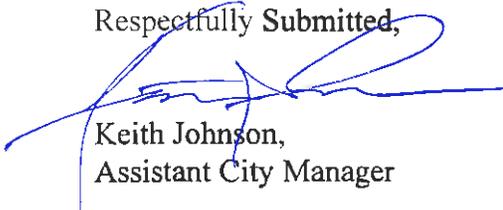
### RECOMMENDATIONS

Approve the enclosed contract with VCBO to be the architect for the park and gym.

### BACKGROUND

This is the contract for the architect for the park and gym. The Council already awarded VCBO as the architect from the bids that the City had received. This is now to approve the enclosed contract with them.

Respectfully Submitted,

  
Keith Johnson,  
Assistant City Manager

Review and Concur,



Dave Millheim,  
City Manager



**AIA**<sup>®</sup>

# Document B132™ – 2009

## *Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition*

**AGREEMENT** made as of the \_\_\_\_\_ day of March in the year 2015.  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:

The City of Farmington  
160 South Main  
P.O. Box 160  
Farmington, UT 84025  
Telephone Number: (801) 451-2383  
Fax Number: (801) 451-2747

and the Architect:

VCBO Architecture LLC, Limited Liability Company  
524 South 600 East  
Salt Lake City, UT 84102  
Telephone Number: (801) 575-8800  
Fax Number: (801) 531-9850

for the following Project:

Farmington Gymnasium and Recreation Sports Park  
650 West 150 South  
Farmington, Utah 84025

Master Plan of 43 acre site, 30,000 S.F. Gymnasium and a Sports Park that includes grass open space for soccer and football fields, trail system, baseball fourplex, picnic bowery, basketball and pickleball courts and play structure.

The Construction Manager:  
*(Name, legal status, address and other information)*

Hogan & Associates Construction  
940 N. 1250 West  
Centerville, Utah 84104

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

AIA Document A232™–2009 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and per VCBO's proposal to provide Architectural Services dated January 20, 2015 (Exhibit "A") and The City of Farmington RFP (see Exhibit "B"):

*(Paragraphs deleted)*

§ 1.1.2 The Owner's budget for the Cost of the Work, as defined in Section 6.1:  
*(Provide total and, if known, a line item breakdown.)*

Eight Million Nine Hundred Thousand and Zero Cents (\$8,900,000.00).

§ 1.1.3 The Owner's anticipated design and construction schedule:

- .1
- .2 Commencement of construction:  
February 11, 2015
- .3 Substantial Completion date or milestone dates:  
December 31, 2016

*(Paragraphs deleted)*

§ 1.1.5 The Owner intends to retain a Construction Manager adviser and:

- One Contractor
- Multiple Prime Contractors

[ ] Unknown at time of execution

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

§ 1.1.7 Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)*

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

*(List name, address and other information.)*

Niel Miller  
720 West 100 North  
Farmington, Utah 84025

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

*(List name, address and other information.)*

§ 1.1.10 The Owner will retain the following consultants:

*(List name, legal status, address and other information.)*

- .1 Construction Manager: The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention:
- .2 Cost Consultant (if in addition to the Construction Manager):  
*(If a Cost Consultant is retained, appropriate references to the Cost Consultant should be inserted in Sections 3.2.6, 3.2.7, 3.3.2, 3.3.3, 3.4.5, 3.4.6, 5.4, 6.3, 6.3.1, 6.4 and 11.6.)*

*(Paragraphs deleted)*

- .4 Geotechnical Engineer:

- .6 Other consultants:

*(List any other consultants retained by the Owner, such as a Project or Program Manager, or scheduling consultant.)*

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:  
(List name, address and other information.)

John Oderda  
VCBO Architecture, L.L.C.  
524 South 600 East  
Salt Lake City, Utah 84102  
Telephone: 801-575-8800

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
(List name, legal status, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Brent White  
ARW

.2 Mechanical Engineer:

Win Packer  
WHW

.3 Electrical Engineer:

Akbar Matinkhah  
ECE Engineering

§ 1.1.12.2 Consultants retained under Additional Services:

Blake Wright and Dustin Hislop, Design West (Landscape); Coury Morris, Great Basin Engineering (Civil)

§ 1.1.13 Other Initial Information on which the Agreement is based:

VCBO's proposal to provide architectural services, dated January 20, 2015 (Exhibit "A") and The City of Farmington RFP (Exhibit "B").

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in AIA Document C132™-2009, Standard Form of Agreement Between Owner and Construction Manager. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

Init.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.6 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than One Million Dollars (\$1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

§ 2.6.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than Five Hundred Thousand (\$500,000.00).

§ 2.6.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than One Millions/Two Million Dollars (\$1,000,000.00/\$2,000,000.00) per claim and in the aggregate.

§ 2.6.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager and the Owner's other consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Construction Manager, and the Owner's other consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Construction Manager a schedule of the Architect's services for inclusion in the Project schedule prepared by the Construction Manager. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review, (2) for the Construction Manager's review, (3) for the performance of the Owner's consultants, and (4) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

Init.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, in coordination with the Construction Manager, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and the Construction Manager's review. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

### § 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval and the Construction Manager's review. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval and the Construction Manager's review. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and the Construction Manager in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions); and (4) compile a project manual that includes the Conditions of the Contract for Construction and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

### § 3.5 Bidding or Negotiation Phase Services

#### § 3.5.1 General

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and

Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.

### § 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements, and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by

- .1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall consult with the Construction Manager and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 Construction Phase Services

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A232™–2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232–2009, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager, or the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On

the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and the Construction Manager (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall notify the Construction Manager about the rejection. Whenever the Architect considers it necessary or advisable, the Architect, upon written authorization from the Owner and notification to the Construction Manager, shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

| *(Paragraph deleted)*

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

| *(Paragraph deleted)*

### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify an application for payment not more frequently than monthly. Within seven days after the Architect receives an application for payment forwarded from the Construction Manager, the Architect shall review and certify the application as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Architect shall review the Contractor's Application and Certificate for Payment that the Construction Manager has previously reviewed and certified. The Architect shall certify the amount due the Contractor and shall issue a Certificate for Payment in such amount.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Architect shall review a Project Application and Project Certificate for Payment, with a Summary of Contractors' Applications for Payment, that the Construction Manager has previously prepared, reviewed and certified. The Architect shall certify the amounts due the Contractors and shall issue a Project Certificate for Payment in the total of such amounts.

§ 3.6.3.2 The Architect's certification for payment shall constitute a representation to the Owner, based on (1) the Architect's evaluation of the Work as provided in Section 3.6.2, (2) the data comprising the Contractor's Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.3 The issuance of a Certificate for Payment or a Project Certificate for Payment shall not be a representation that the Architect has (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 Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.4 The Architect shall maintain a record of the applications and certificates for payment.

#### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's Project submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals transmitted by the Construction Manager shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved Project submittal schedule, and after the Construction Manager reviews, approves and transmits the submittals, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 After receipt of the Construction Manager's recommendations, and subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect, in consultation with the Construction Manager, shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals transmitted by the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order issued by the Architect through the Construction Manager.

§ 3.6.5.3 The Architect shall maintain records relative to changes in the Work.

#### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect, assisted by the Construction Manager, shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion prepared by the Construction Manager; receive from the Construction Manager and review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and, after receipt of a final Contractor's Application and Certificate for Payment or a final Project Application and Project Certificate for

Payment from the Construction Manager, issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner and Construction Manager to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager and Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete by the Construction Manager and Architect, and after certification by the Construction Manager and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Program Verification <i>(Row deleted)</i>	Architect	The architect will meet with the owner and verify the program requirements established by the owner.
§ 4.1.2 Multiple preliminary designs <i>(Row deleted)</i>	Architect	The architect will develop up to 3 preliminary design concepts.
§ 4.1.3 Existing facilities surveys <i>(Row deleted)</i>	Architect	The architect will provide a site survey of the project site..
§ 4.1.4 Site Evaluation and Planning (B203™-2007) <i>(Row deleted)</i>	Architect	The architect will develop a site Master Plan that will be utilized for this project as well as future phasing.
§ 4.1.5 Building information modeling <i>(Row deleted)</i>	Not Provided	The architect will develop level 1 BIM drawings in Revit.
§ 4.1.6 Civil engineering	Architect	
§ 4.1.7 Landscape design <i>(Row deleted)</i>	Architect	The architect will provide landscape planning and design of the playfields and the developed green spaces that are to be included in the project.
§ 4.1.8 Architectural Interior Design (B252™-2007)	Not Provided	

(Row deleted)

§ 4.1.9 Value Analysis (B204™-2007)	CM/GC	The architect will assist the CM/GC in any value analysis.
(Row deleted)		
§ 4.1.10 Detailed cost estimating	CM/GC	
(Rows deleted)		
§ 4.1.11 As-Designed Record drawings	Not Provided	
(Rows deleted)		
§ 4.1.12 Coordination of Owner's consultants	Not Provided	
§ 4.1.13 Telecommunications/data design	Owner	
(Row deleted)		
§ 4.1.14 Commissioning (B211™-2007)	Not Provided	
§ 4.1.15 Extensive environmentally responsible design	Not Provided	
§ 4.1.16 LEED Certification	Not Provided	
§ 4.1.17 Fast Track Design Services	Architect	The architect will develop up to 2 bid packages.
§ 4.1.18 Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.19 Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	Can be provided upon request for an additional fee.

(Rows deleted)

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, building systems, the Owner's schedule or budget for Cost of the Work, constructability considerations, procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes or equipment;
- .3 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .4 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner, Construction Manager or the Owner's other consultants or contractors;
- .6 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;

Init.

- .8 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .9 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Evaluation of the qualifications of bidders or persons providing proposals;
- .11 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .12 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner, Construction Manager or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion, identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .3 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twenty Four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties and responsibilities as described in AIA Document C132-2009, Standard Form of Agreement Between Owner and Construction Manager. The Owner shall provide the Architect a copy of the executed agreement between the Owner and the Construction Manager, and any further modifications to the agreement.

§ 5.3 The Owner shall furnish the services of a Construction Manager that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.4 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and the Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.4.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.6 The Owner shall furnish surveys to describe 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; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect 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 the information on the survey shall be referenced to a Project benchmark.

§ 5.7 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement.

The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager and Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's consultants during the Construction Phase only, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.4 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing detailed cost estimating services as an Additional Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Construction Manager, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232-2009, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this

Agreement. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement.

## § 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

## § 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, unless the parties mutually agree otherwise. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.4 Consolidation or Joinder**

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common issues of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

**ARTICLE 9 TERMINATION OR SUSPENSION**

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

**§ 9.7**

Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

#### ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

Architect will be paid a fixed fee of \$3,000.00 for a Master Plan, six and one quarter percent (6.25%) of the total construction costs of the Gymnasium and Five and one half percent (5.5%) of the total construction costs of the Play Fields. Construction Costs at the time of this agreement are estimated to be approximately \$8,900,000.00. Architect's fee will be adjusted based on the construction costs provided at the time of bid. The work to be performed under this contract and the fees associated with the contract amount, do not include LEED services.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

Additional Services will be provided as requested and approved by Owner in advance on an hourly basis as follows:

Principal	\$245/hour
Project Manager	\$175/hour
Graphic Designer	\$150/hour
Project Architect	\$132/hour
Project Coordinator	\$120/hour
Senior Drafter	\$100/hour

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10%), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<hr/>				
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
Section Hourly rates listed in Section 11.3 above.	

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1

*(Paragraphs deleted)*

- Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, standard form documents;
- .3 Postage, handling and delivery;
- .4 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .5 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

*(Paragraph deleted)*

- .6 All taxes levied on professional services and on reimbursable expenses;
- .7 Site office expenses; and
- .8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Fifteen percent (15%) of the expenses incurred.

#### § 11.9 Compensation for Use of Architect's Instruments of Service

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

N/A

#### § 11.10 Payments to the Architect

§ 11.10.1 An initial payment of Zero (\$0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

Eight Percent 8%

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

### ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B132™-2009, Standard Form Agreement Between Owner and Architect, Construction Manager as Adviser Edition

*(Paragraphs deleted)*

- .2 Other documents:

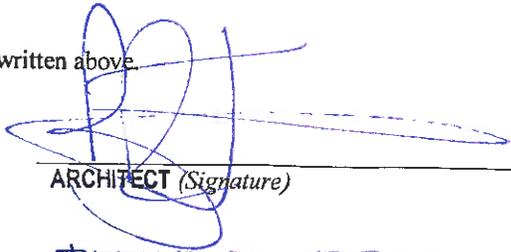
Init.

*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

- Exhibit "A" – VCBO Project Proposal
- Exhibit "B" – The City of Farmington RFP
- Exhibit "C" – Certificate of Liability Insurance

This Agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

  
\_\_\_\_\_  
ARCHITECT (Signature)

\_\_\_\_\_  
(Printed name and title)

FRANK R. TIPPETS  
\_\_\_\_\_  
(Printed name and title)

# Exhibit "A"



PRINCIPALS

Neil E. Valentiner, AIA  
Steve H. Crane, FAIA  
Peter R. Brunjes, AIA  
Sean Oryon, AIA  
Brent R. Tippets, AIA  
Boyd McAllister, AIA  
Jeanne Jackson, FAIA  
Derek T. Payne, AIA  
Vern Latham, AIA  
Jeffery L. Pnagar, AIA  
Sean Thompson, AIA

ASSOCIATE PRINCIPALS

David S. Coz, AIA  
Celestia R. Carson, AIA  
Whitney M. Ward, AIA  
Philip M. Madonia, AIA  
Nathan H. Leavitt

ASSOCIATES

Dan A. Nelson  
Karen M. Ferguson  
Gloria H. Kummer  
Ganette Bowen  
Justin Haeppler, AIA  
John Oderda, AIA  
Dan Hagerman, RA, CCS  
Breanna Bonsavage  
Alex Booth, AIA  
Todd Braun  
Brian Peterson  
Marilee Smith  
Joseph Votshovich

DIRECTOR OF OPERATIONS

Meissa Wood

CONTROLLER

Elizabeth Stencil, DM

January 20, 2015

Farmington City Parks and Recreation Department  
Attn: Neil Miller  
720 West 100 North  
Farmington, Utah 84725

Dear Neil & Members of the Selection Committee:

VCBO Architecture is pleased to submit our qualifications to you for the Farmington Gym Facility and Recreation Sports Park. I have committed the majority of my architectural profession to the planning and design of sports and recreation facilities throughout the Western United States. I am passionate about recreation and I am committed to assisting the recreation community in achieving the goals of healthy lifestyles and pride of place. VCBO has been a major sponsor of URPA for more than 20 years.

Our experience is unprecedented; we have designed 190 basketball courts, 38 indoor running trackings, and some of the most notable playfields throughout the State of Utah. Currently we are starting construction of a four court gymnasium in Carson City, Nevada with a suspended running track and incorporated future recreation center. This facility is almost identical in program to the Farmington Gym project. We were also the designers of Centennial Park in West Valley City that has two quad baseball and softball fields and several soccer fields. I will serve as the Principal in Charge with John Oderda as Project Manager. John has been involved in the Gym project through DCSD for some time and brings a unique skill set to the project.

In addition to the expertise that VCBO offers, we are very pleased to include the Design West Landscape team of Blake Wright and Dustin Hislop to our lineup of consultants. They will be responsible for the Master Plan and the Play Field design. Their capabilities in the park planning effort will be of major benefit to an overall successful project.

Collectively as a team, we wish to emphasize our understanding that this project is the largest project in Farmington City's history and we appreciate how sensitive it is that the end product comes across in a positive light to the community. We understand that the bond passed by a narrow margin and that we need to develop a strategy that will bring both sides together. We commit our best effort towards not only developing a quality design but also to engaging with the community through public meetings, social media and graphic content that will encourage buy in and support.

Another unique qualifier that we provide to the City is our relationship with Davis County School District and the fact that we are designing the new high school that will displace your existing play fields. Because of this connection we believe that we can combine our planning efforts to assist the City in achieving the necessary time frames to get the new fields up and running before you have to vacate the existing fields.

In the brief pages that follow I hope that you can sense our passion for recreation and the unprecedented qualifications that are offered by our team. We welcome the opportunity to make a more detailed presentation to the selection committee in a short list interview.

Respectfully,

Brent R. Tippets, A.I.A.  
Principal In Charge

## PROJECT TEAM

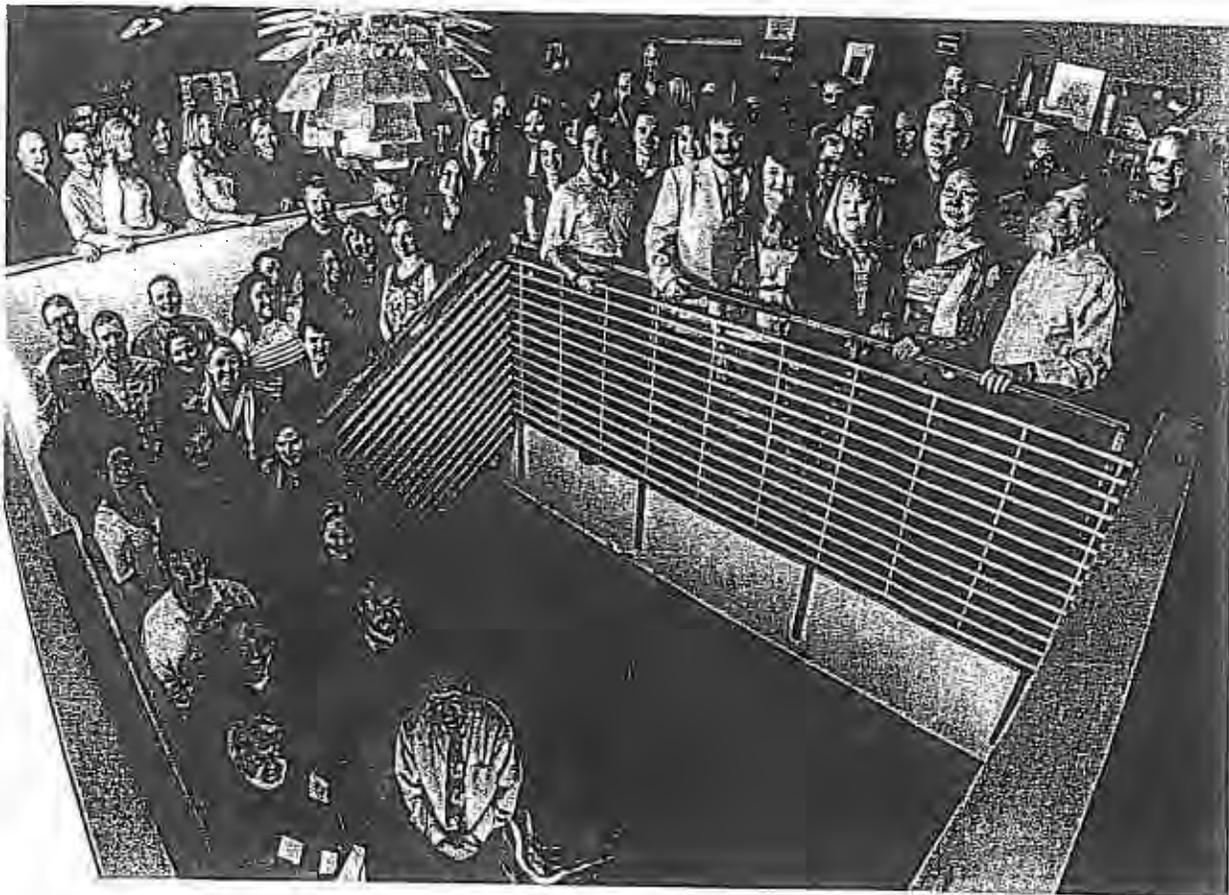
VCBO Architecture is distinguished by a passion for impeccable design, performance, innovation, and dedication to client services. Recognized for integrity not only in design, but in professional relationships, our firm has practiced architecture, planning and interior design throughout the Intermountain West, the United States, and abroad since 1973. As we celebrate our 41st year, VCBO is proud to be a key contributor to our built environment, through active participation in important, meaningful projects.

VCBO's 10 experienced principals, who are involved on every project from the beginning through punch list and project close out, are known for their creative expression, and respected as successful collaborations. Our focus on people extends from the heart of our offices to the spaces we create; places where people gather to live, learn, work, and play.

We are committed to upholding our reputation as the firm that brings projects in on-time and on-budget. Whether world-class landmark or contextually-appropriate local structures, VCBO Architecture's leadership on design projects results in solutions that are efficient, effective, environmentally appropriate, and elegant.

VCBO Architecture  
524 South 600 East  
Salt Lake City, Utah 84102  
p: 801.575.8800  
f: 801.531.9850  
www.vcbo.com

With a staff of 85+ skilled and talented professionals over the past five years, VCBO Architecture is ready to assist you with all of your design and planning needs.





**BRENT TIPPETS, AIA**  
PRINCIPAL IN CHARGE



With more than 34 years of experience, Brent Tippets, a Principal at VOBO Architecture since 1993, possesses a wealth of sports, recreation and aquatic facility expertise. He is also a leading designer in court and justice design facilities. He has overseen the design and construction of projects such as the Provo Recreation Center and the Ogden Juvenile Courthouse. Brent serves on the Emigration Township Planning Commission and is an active member of the National Recreation and Parks Association.

Architectural Study, University of Utah

Principal

Architecture Utah, Arizona, Wyoming

Principal in Charge

Brigham Young University

- Athletic Complex
- Miller Field Softball/Baseball Stadium
- Richards Building Competition Pools
- Sports Facilities

Piñon Unified School District No. 4, Gymnasium and Auditorium Remodel & Addition

Sublette County School District #1, Pinedale Aquatic Center  
University of Utah

- Eccles Football Center
- Huntsman Center
- Recreation, Athletics & Health Facilities Feasibility Study & Master Plan

Weber State University

- East Stadium Upgrades
- Wildcat Center for Health Education & Wellness

Westminster College, Payne Gymnasium Renovation

American Fork Recreation Center

Apache Junction Multi-Generational / Recreation Center

Austin Aquatic and Sports Complex

Bullhead City Recreation & Aquatic Center Feasibility Study

Carson City Recreation Center

Casper Aquatics and Recreation Center

Clearfield Recreation Center

Cody Recreation Center

Cokeville Gymnasium

Dimple Dell Recreation Center

Eagle Mountain Recreation Center Feasibility Study & Master Plan

FootHills Recreation Center

Freestone Recreation Center

Ganado Aquatic Center

Hill Air Force Base Recreation Center

Holbrook Community Recreation Center Feasibility Study

Kaysville Recreation Center

Principal in Charge

Member — American Institute Of Architects

Member — Emigration Township Planning Commission, SLCO

Member — National Recreation and Parks Association

Member — Utah Recreation and Parks Association

Lehi Outdoor Pool Feasibility Study

Leigh Pratt Aquatic Center

Lindon City Pool

Lindon Recreation Feasibility Study

Logan City Municipal Pool Feasibility Study

Monticello Pool

Nephi Recreation Center Feasibility Study

Northwest Recreation Center Feasibility Study, Master Plan & Program

Oquirrh Park Fitness Center Remodel & Addition

Orem City Public Pool Feasibility Study

Park City Municipal Athletic & Recreation Center

Park City Racquet Club Renovation

Paul Stock Aquatics and Recreation Center

Payson City Pool

Payson City Recreation Center Feasibility Study

Price City Pool | Recreation Center Feasibility Study

Provo Community Recreation Center

South Davis Recreation Center

South Summit Aquatic & Fitness Center

South Summit School District Football Field and Track

South Weber Recreation Center

Springville Recreation Center

Springville Recreation Center Feasibility Study

Uintah Recreation District Master Plan

Utah Winter Sports Park — Day Lodge, Ski Jump Center

West Valley City Family Fitness & Recreation Center



**BLAKE WRIGHT, ASLA**  
PRINCIPAL LANDSCAPE ARCHITECT

Principal and CEO of Design West Architects, Blake Wright has 30 years of experience providing professional land use planning and landscape architectural services for municipal clients. Serving the last two decades on City Councils and City Planning Commissions has taught him the value of balancing community needs while being fiscally responsible. As Principal Landscape Architect, Blake will lead the landscape architecture team in providing quality park designs for Farmington City which are able to be implemented in phases as funding is available. Blake will lead the landscape architecture team in providing quality park master planning and design for Farmington City.

North Logan High Sports Facilities, North Logan Utah  
Mendon Sports Park, Mendon, Utah  
Millard County Baseball Field, Fillmore, Utah  
Logan High School Sports Facilities, Logan, Utah  
Millville High School Sports Facilities, Millville, Utah  
Bountiful High School Sports Facilities, Bountiful, Utah  
Clearfield High School Sports Facilities, Clearfield, Utah  
Sky View High School Sports Facilities, Smithfield, Utah  
Mountain Crest High School Sports Facilities, Hyrum, Utah  
Woods Cross High School, Woods Cross, Utah  
Highland High School Soccer Field, Salt Lake City, Utah

West High School Tennis Courts, Salt Lake City Utah  
Colorado Mesa University Grand Junction, Colorado  
Utah State University Tennis Courts, Logan, Utah  
Nibley Community Sports Facilities, Nibley, Utah  
Logan City Skatepark, Logan, Utah  
Logan City Boulevard Trail System, Logan, Utah  
Sugar House Park Soccer Field, Salt Lake City, Utah  
Heber Olson Park Restrooms Facility, River Heights, Utah  
Providence City Soccer Complex at Spring Creek MS  
Snow College, Ephraim, Utah



**DUSTIN HISLOP, ASLA**  
LANDSCAPE DESIGNER

Dustin Hislop, Landscape Designer, has been active in parks and recreation design since 2009 and is a member of the National Recreation and Parks Association (NRPA). He has worked with community representatives to develop a variety of park master plans, utilizing his talented graphic hand to produce high quality renderings to share with the community. Dustin will be the lead production designer and project manager for the landscape design, working closely with staff and consultants to deliver detailed master plan and construction documents.

**SELECTED EXPERIENCE**

North Logan High School, North Logan Utah  
Millville High School, Millville, Utah  
Clearfield High School, Clearfield, Utah  
Colorado Mesa University, Grand Junction, Colorado  
Mendon Sports Park, Mendon, Utah  
Canyon Gates Park, North Logan Utah\*  
Snow College, Ephraim, Utah  
Elk Ridge Park, North Logan, Utah\*  
Oak Hills Park, Salt Lake City, Utah\*  
Midvale City Park, Midvale, Utah\*

Pioneer Cemetery Memorial Park, Midvale, Utah\*  
Bingham Junction Park, Midvale, Utah\*  
Glendale Park, Glendale, Utah\*  
McKellips & Ellsworth Park, Mesa, Arizona\*  
FCD Hohokam Area, Maricopa County, Arizona\*  
Liberty Park, Salt Lake City, Utah\*  
Redwood Meadows Park, Salt Lake City, Utah\*

\* Prior to joining Design West Architects



**WIN PACKER, P.E. LEED®**  
**PRINCIPAL MECHANICAL ENGINEER**

Win is currently the President of W/W Engineering, Inc. and serves as the Principal Engineer. Win's career has focused on providing mechanical engineering services for various publicly funded entities. This effort has allowed him to complete numerous publicly funded state and municipality projects throughout the State of Utah. Win enjoys collaborating with public officials and employees to deliver building systems that meet sustainability goals, functionality concepts, and fixed budget requirements. He has an extensive feel on organizing the different areas of the design process to output a complete and accurate mechanical design.

**Selected Experience**

- Carson City M.A.C. Gymnasium
- Park City Racquet Club Addition and Renovation
- Park City Outdoor Tennis Courts
- Utah Valley University Intramural Soccer Fields
- Lincoln County School District Sports Field Complex
- Weber State University
  - Dee Event Center Boiler System Renovation
  - Swensen Building Swimming Pool Hot Water Boilers
  - Stadium Locker Room Piping Study
  - New Track & Field Locker Room
- College of Eastern Utah BD Athletic Center Mechanical System Renovation
- State Hospital Swimming Pool Heat Exchanger Replacement

- University of Utah Huntsman
  - Men's Basketball Locker Room Renovation
  - HYPER Building Locker Room Renovations
  - Athletic Center Performance Specification
- Dixie State College Burns Arena / Recreation Center Chiller System Replacement
- Snow College Activities / Recreation Center Renovation
- Kearns Multi-purpose Center Addition and Renovation
- Farmington Courts
  - Boiler and Chiller System
  - Air Balance and Pump Replacement
- West Valley City Family Recreation Center
- Larry Miller Baseball / Softball Complex at BYU
- Provo City / Utah County Ice Arena at Seven Peaks
- Bridgerland Ice Arena



**COURY MORRIS, P.E.**  
**PRINCIPAL CIVIL ENGINEER**

Mr. Morris has been responsible for various disciplines in his professional career. At Great Basin Engineering Mr. Morris acts as a Principal In Charge and is responsible for overseeing all phases of design. He has experience in the field of commercial, industrial and federal design. He also has a background in computer applications including database management, infrastructure modeling, cad drafting and design, 3D modeling, and geographic information systems.

**Selected Experience**

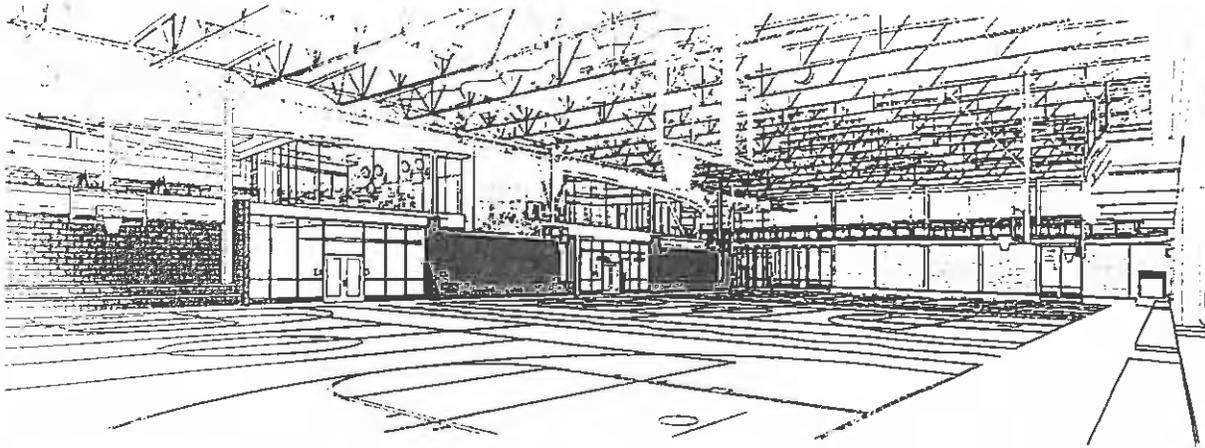
**Farmington City Project Experience**

- Park Lane Commons Parcel A & B – Currently Under Construction
- Legacy Village @ Park Lane Commons – Currently Under Design
- Cabela's Next Generation Retail Store – Currently Under Design
- Farmington Fields Office Buildings – Currently Under Design
- North Station Office Park – Due Diligence

**Related Project Experience**

- Browning Park Elementary – Ogden, Utah
- Odyssey Elementary – Ogden, Utah

- Ben Lomond High School Replacement – Ogden, Utah
- Ogden High School Redevelopment – Ogden, Utah
- Orem High School Replacement – Ogden, Utah
- North Lehi High School – Lehi, Utah
- Utah Performing Arts Center – Salt Lake City, Utah (\$80M)
- 111 South Main Office Tower – Salt Lake City, Utah (>\$90M)
- Downtown Hammons - Grocery Store & Parking Garage; Salt Lake City, Utah (\$35M)
- Park Lane Commons Master Planning – Farmington, Utah
- U of U Women's Softball Complex – Salt Lake City, Utah
- U of U Student Life Center – Salt Lake City, Utah



Provo Community Recreation Center

LIABILITY INSURANCE

The following information summarizes VCBO's Professional Liability Insurance:

Professional Liability:	DPIC	\$2,000,000 aggregate
		\$1,000,000 per occurrence
General Liability:	St. Paul	\$2,000,000
Per Project Available:		\$5,000,000 - \$10,000,000

BALANCE SHEET

As of Period 01/15/2015

Assets

Accounts Receivable - Short Term	2,460,914.86
Operating Account	2,759,484.22
Office Equipment/Furniture/Fixtures/Lease Hold Improvements	2,437,770.31
Automobile	12,745.04
<b>TOTAL ASSETS</b>	<b>7,670,914.43</b>

Liabilities

A/P - Consultants/Vendors	2,414,141.73
Employee Benefits (Cafeteria Plan, Insurance Plans, 401K Contribution)	128,456.97
Tax Withholdings (FICA, Federal, State)	-3,000.73
<b>TOTAL LIABILITIES</b>	<b>2,539,597.97</b>

Net Worth

<b>TOTAL NET WORTH</b>	<b>5,131,316.46</b>
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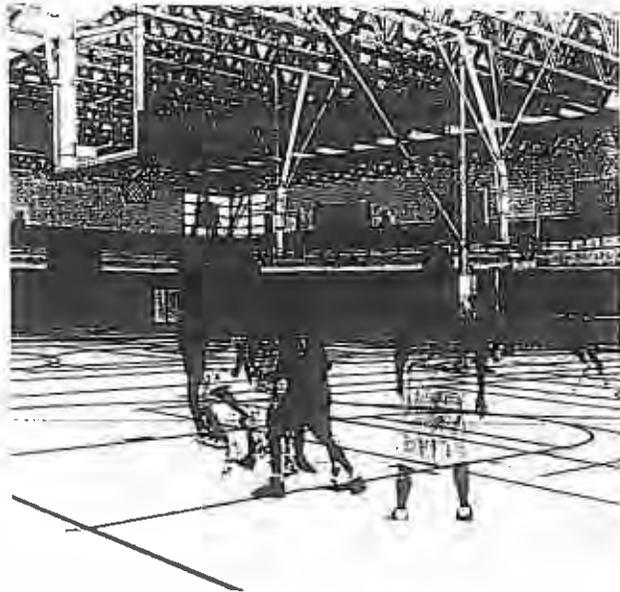
## CARSON CITY RECREATION CENTER CARSON CITY, NEVADA

Client: City of Carson | project size: 33,500 SF | project completion: estimated 2016

The first phase of a full on community recreation center, the project consists of four high school size basketball courts. The courts can be subdivided delivering four tournament volleyball courts with drop downs nests are also incorporated. A suspended 3-lane running track is also provided.

### Relevant features:

- Future Recreation Center
- Walking/Jogging Track
- 8 Jr. Jazz Basketball Courts
- 4 High School Basketball Courts
- Spectacular Seating
- Locker Rooms
- 4 Volleyball Courts
- Outdoor Soccer Fields



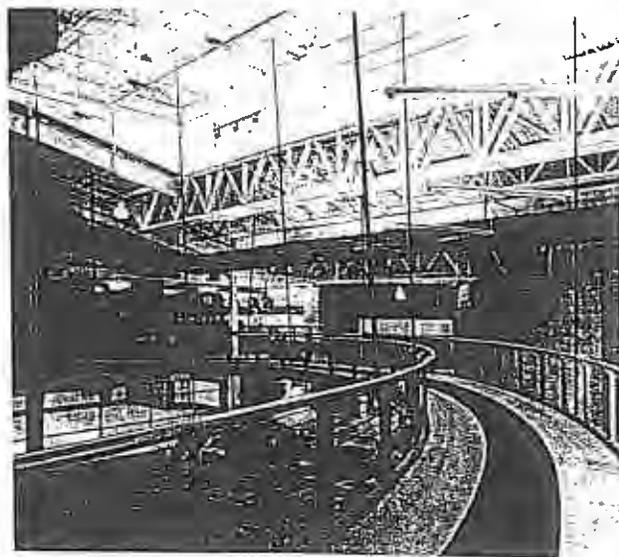
## FREESTONE RECREATION CENTER GILBERT, ARIZONA

Client: City of Gilbert | project size: 51,000 SF | project completion: 2002

The suspended second level running track circulates throughout the facility and becomes a connection of all the fitness components housed within the building. The climbing wall is a focal point with all activities rotating around this central node. Locker facilities are designed with two entrances that allow for good circulation for incoming patrons to enter the locker room areas without conflicting with those exiting to the activity areas.

### Relevant features

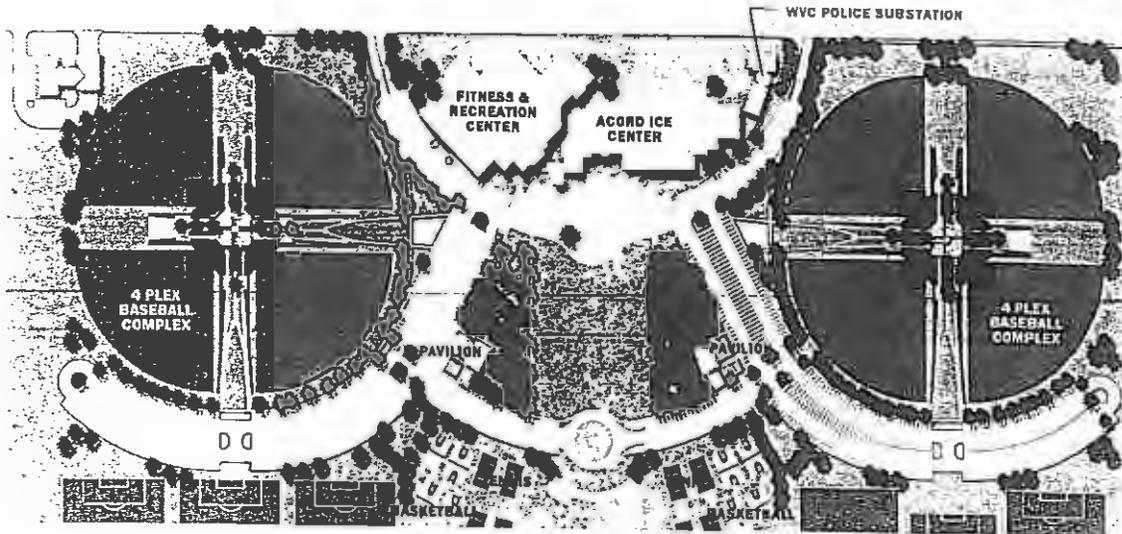
- Programming/Design
- Gymnasium
- Running Track
- Locker Rooms
- Future Phasing
- Iconic Entry



# CENTENNIAL PARK WEST VALLEY CITY, UTAH

client: West Valley City

- 8 Softball / Baseball Fields
- 6 Soccer Fields
- Gymnasium Combined with
- Outdoor Playfields
- Master Planning
- Outdoor Basketball and Tennis
- Courts
- Site Design



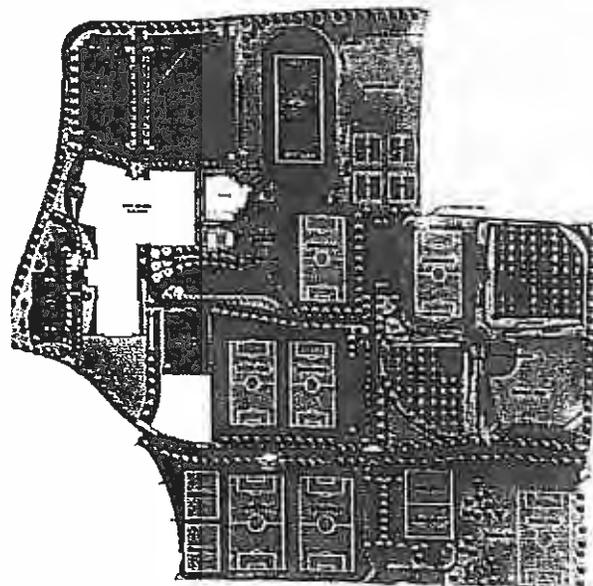
# NORTH LOGAN HIGH SCHOOL SPORTS FACILITIES LOGAN, UTAH

client: Cache County School District | project size: 56 acres | anticipated project completion: Summer 2017

This sports facility involved several shared components between North Logan City and the school district. Through extensive planning and coordination the finished project will result in a shared, multi-use shared recreation park with a variety of events that can take place at the same time.

### Relevant features

- Multi-purpose playing fields
- Pickleball / tennis
- Baseball/softball/soccer fourplex with dugouts, storage, score boards and lighting
- Restrooms/concessions building with score keeping and observation room above
- Trail system around perimeter of fields and looped trail around site
- Water supply / automated sprinkler system
- Parking



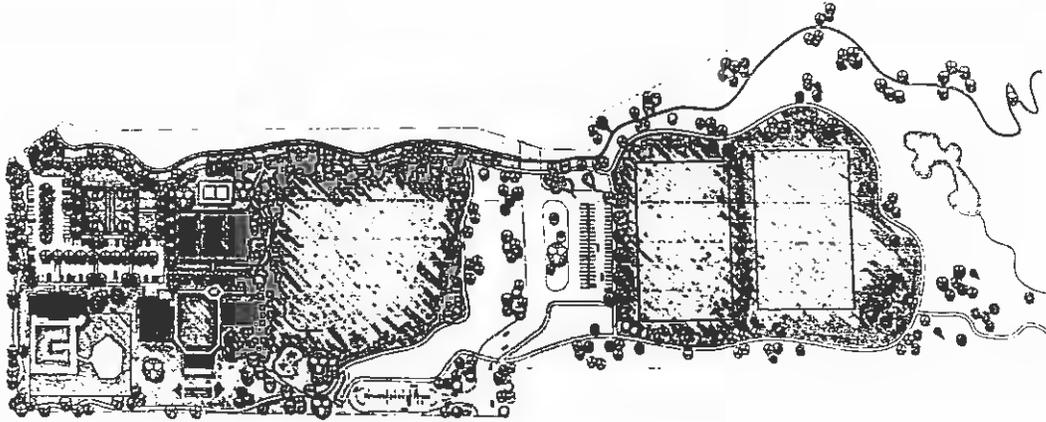
## CANYON GATES PARK\*

NORTH LOGAN, UTAH

Client: North Logan City | project size: 37 acres | project completion: conceptual master planning (awaiting funding)

### Relevant features

- Multi-purpose playing fields
- Internal trail system
- Restroom facilities
- Picnic boweries - 1 large, 4 small
- Basketball courts
- Pickleball / tennis courts
- Baseball/softball field
- Sand volleyball court
- Community center
- Amphitheater
- Outdoor pool/splash pad with
- restrooms/storage building
- Equestrian trail
- Play structure
- Automated sprinkler system
- Parking



\* Completed by Dustin Hsiao prior to joining Design West

## CLEARFIELD HIGH SCHOOL SPORTS FACILITIES

CLEARFIELD, UTAH

Client: Davis School District | project completion: 2013

### Relevant features

- Multi-purpose playing fields
- Running track around perimeter of fields
- Grand entry / community gathering space
- Water supply / automated sprinkler system



## CONTRACTOR SELECTION

We were happy to learn that you were proceeding with a Construction Manager (CM) contractor selection process. We support your direction as we feel that this will provide you the best value and allow for a team partnership between owner, contractor and architect. Approximately 50% of our work utilizes this selection method. We look forward to the prospect of working together with the rest of the team. Also to let you know we have worked successfully with all of your short listed contractors.

## COMMUNICATION

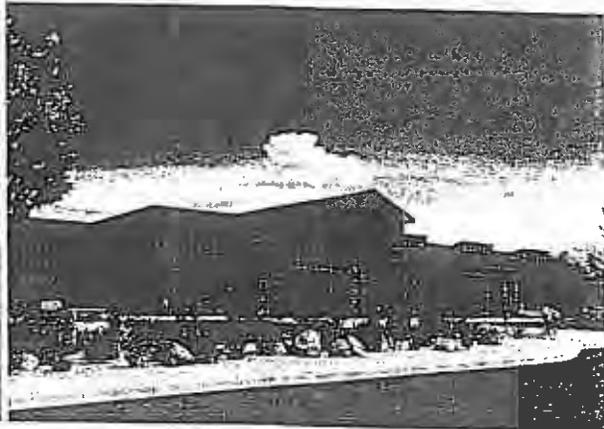
Effective communication is the key to successfully working with Farmington City to produce a building that outlines your vision for a new gym facility and recreation sports park. We would recommend that a project steering committee be formed that meets weekly to discuss a series of predetermined topics that need decisions. The steering committee would be comprised of the VCBO team and the Farmington City stakeholder group.

An element that may seem trivial but provides great impact to you is the use of BIM. Our team uses Building Information Modeling (BIM) from the earliest phases of the design. All information is developed 3-dimensionally and will allow you to visualize the spaces by 3-D walkthroughs. When renderings are needed, we provide 3-D drawings to our graphics team who turn these technical drawings into accurate and realistic architectural renderings that provide a photo realistic view of how the build will look.

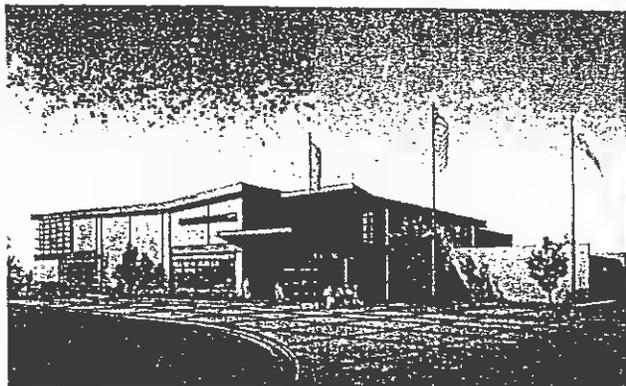
This level of visualization will allow the stakeholders to see the proposed spaces in three dimensions, thereby eliminating opportunities for misunderstanding key features about the space. Staff can literally move around the facility and see the specifics of proposed spaces. This will become valuable for posting images and walk-throughs of the facility to a project web site that the community can view and experience the project.



*Farchild Air Force Base Recreation Center*



*Park City Municipal Activity Recreation Center*



*Carson City Recreation Center*



*Provo Community Recreation Center*

# Exhibit "B"



## REQUEST FOR STATEMENT OF INTEREST AND QUALIFICATIONS FOR ARCHITECTURAL SERVICES

### I. DESCRIPTION OF PROJECT

The City of Farmington seeks a statement of interest and qualifications from qualified architectural firms for architectural services for the following project.

Project: **Gym Facility and Recreation Sports Park**  
Location: **650 West 150 South**  
**Farmington, Utah 84025**

Farmington City (the City) recently passed a general obligation (G.O.) bond and recreation, arts and parks (R.A.P.) tax to build a new gym facility and a recreation sports park. In anticipation of a successful G.O. bond and R.A.P. tax election, the City purchased about 43 acres of property at the project location. The source of funding for this project is Farmington City Corporation.

Farmington City reserves the right and intends to select one architectural firm to provide full design services required for the gym facility and park components of the project.

#### Scope of Work

The Architectural firm is required to demonstrate in its proposal that the design team can accomplish the following:

- A. Design a 210 ft. x 140 ft. (approximately 30,000 sq. ft.) gym facility that includes:
  1. Courts to be used for at least the following sports: basketball, volleyball, soccer, pickleball and tennis.
  2. A gym area with at least the following components, but not limited to:
    - a. Three (3) 84 ft. x 50 ft. high school basketball courts with fold-up ceiling-mounted hoops. Electronic scoreboards will be included in the design.
    - b. Three (3) 60 ft. x 30 ft. high school-sized volleyball courts with removable volleyball standards marked on the basketball courts.
    - c. Six (6) 75 ft. x 45 ft. youth-sized basketball courts with fold-up ceiling-mounted adjustable hoops.
    - d. Two (2) drop-down divider curtains to separate courts one from another.
    - e. Line colors on the floor to be determined by the City.
    - f. Bleachers around the perimeter of the gym.
    - g. Suspended walking track around the top of the gym perimeter.
  3. A reception and front desk area.
  4. Men's and women's restrooms placed so they are accessible from inside and outside the facility.
  5. A custodial closet near the restrooms.
  6. One family restroom.
  7. A mechanical room.
  8. Storage space.
  9. Public meetings
  10. Site Plan

- B. Design sports park site that includes:
1. Grass open space for soccer and football fields
  2. A trail system around the perimeter of the property.
  3. A softball/baseball fourplex with restrooms, concession stand, scorekeeping room on top, dugouts, fencing, score boards and lighting.
  4. Additional restrooms with storage for the remaining use of the park.
  5. A picnic bowery, basketball court, pickleball court and play structure.
  6. Water supply and automated sprinkler system.
  7. Civil engineering that includes:
    - a. Site grading.
    - b. Coordination with surveying functions prior to and during construction.
    - c. Coordination with the Contractor on drainage.
    - d. Coordination with the City Engineer on street drainage and site drainage.
    - e. Design of parking lots, walkways, storm drains.
    - f. Design surveying
  8. Adequate parking for the size of the complex, with curb gutter and sidewalks.
  9. Development of a phasing plan if the park needs to be built in phases.
  10. Provide as builds

#### Special Design Considerations

- A. The gym will need to be designed so that it can be added on to in the future.
- B. The site has existing land drains that need to remain in place.
- C. The property has four (4) gas lines running through it; special permits must be obtained.
- D. The property has drainage issues that must be addressed.
- E. Existing houses to be demolished by the City.
- F. City has potential fill material.

#### Fee Determination

Farmington City has \$8 million to construct both the gym facility and park components of the project. The gym facility and its associated site improvements will be built in its entirety. The recreation sports park will be built to the greatest extent possible with available funds.

The City requests architectural firms to submit as part of their proposals the percentage of the cost of a master plan of the park site and separate construction of the components that can be done within the city budget which they would like to base their full-service design fees.

Farmington City reserves the right to negotiate all fees according to the Utah Procurement Code as outlined in the applicable rules found in R33-15 Architect-Engineer Services. Fees will be negotiated at the time the City presents the opportunity to the firm deemed most qualified by the City. If fair and reasonable compensation, contract requirements, and/or contract documents cannot be agreed upon with the selected, most-qualified firm, the City shall advise that firm of the termination of negotiations. Upon failure of negotiations, the City will enter into negotiations with the next most qualified firm.

#### Standard Contract Terms and Conditions

Any contract with any qualified architectural firm resulting from this request for SOIQ will be subject to AIA Document B101 with Farmington City modified terms and conditions.

#### Payments

Payment for Architectural services shall be made on a monthly basis for actual and invoiced costs incurred during the billing period. Final payment, including any retainage with interest, will not be made until deliverables required of the Architect have been submitted to the City.

Project Management Responsibility

Neil Miller, Farmington City Parks & Recreation Director, will have technical responsibility and be the City's project manager for the work described in this request for SOIQ. Mr. Miller will be the primary contact for the Architect.

Miscellaneous

The City reserves the right to waive minor informalities in the selection process and to reject any and all proposals.

**II. SELECTION PROCESS**

Except as authorized by the City or as otherwise stated in this request for SOIQ or in any pre-proposal meeting, communication during the selection process including questions, interpretations or clarifications of this request for SOIQ shall only be directed to:

Neil Miller, Parks & Recreation Director  
720 West 100 North  
Farmington, Utah 84025  
Tel (801) 451-0953 / Fax (801) 451-7063 / Email [nmiller@farmington.utah.gov](mailto:nmiller@farmington.utah.gov)

The Farmington City Architect-Engineer Professional Services Evaluation Committee will be composed of individuals from the City Parks and Recreation Department, Mayor, City Manager and others as may be deemed appropriate by the City.

Of the architectural firms that submit a SOIQ response, selection of the firm deemed most qualified will be made through an evaluation process based on the evaluation criteria described below.

SOIQ submittals will be screened and scored. If determined necessary for final selection, a limited number of firms will be short listed and invited to participate in oral interviews. The City will attempt to negotiate a contract with the highest-ranked firm. Following is additional information relative to the selection process:

- A. Mandatory Pre-proposal Meeting: To ensure sufficient information is available to firms preparing SOIQs, a mandatory pre-proposal meeting has been scheduled. The intent of this meeting is to show the site and have City staff available to discuss the project. Firms preparing SOIQs must attend and sign-in in order to have their submittals accepted. The pre-proposal meeting will be held:

Wednesday, January 7, 2015, 10:00 a.m.  
Farmington City Hall  
160 South Main Street  
Farmington, Utah

- B. Architect's SOIQ Submittal: Specific requirements for submittals and scoring criteria are detailed in IV. SUBMITTAL REQUIREMENTS below. In order to facilitate review, six (6) copies of the submittal must be provided with a maximum of 20 pages limited to one side. Sealed submittals must be received at:

Farmington City Parks and Recreation Department  
Attn: Neil Miller  
720 West 100 North  
Farmington, Utah 84025  
Tel (801) 451-0953 / Fax (801) 451-7063

Deadline for delivery (whether mailed or hand delivered) is: 3:00 p.m. on Tuesday, January 20, 2015.

Late submittals will be rejected without consideration. Farmington City assumes no responsibility for costs of the architectural team for the pre-proposal meeting, the preparation or delivery of submittals or any part of the selection process.

Proposals become the property of Farmington City Corporation, are treated as privileged documents, and are disposed of according to City policies. The proposal of the successful Architect shall be open to public inspection. Proposals of Architects who are not awarded contracts shall not be open to public inspection. If the Architect selected for award has required in writing the non-disclosure of trade secrets and other proprietary data so identified, the City shall examine the request in the proposal to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of the data in the contract, the City shall inform the Architect in writing what portion of the proposal will be disclosed and that, unless the Architect withdraws the proposal, it will be disclosed.

- C. Screening Panel/Short List: Submittals will be evaluated by the Farmington City Architect-Engineer Professional Services Evaluation Committee. The evaluation committee will review and score the submittals. If deemed necessary, firms ranked the highest will be invited to an oral interview. It is anticipated that no more than five (5) firms may be interviewed.
- D. Oral Interviews. Any oral interviews held will be conducted on January 29, 2015. The time and venue for interviews will be determined by the evaluation committee and the information will be provided upon notification of selection for oral interviews. Key personnel from the firm and major consultants who will be directly involved with the project should attend the interview. The selection committee will, in particular, be interested in knowing about the project approach proposed and in meeting the individuals who will act as the primary contacts with the City.
- E. Selection Criteria Weighting. SOIQs will be evaluated and scored by the Professional Services Evaluation Committee based on the following criteria.
  - 20% Project Team
  - 20% Firm Capabilities
  - 25% Prior Experience/Performance
  - 20% Management Plan
  - 15% Fee
- F. Final Determination. The evaluation committee will make a recommendation to the city council which will make the final determination.

### III. SCHEDULE

Following is a detailed schedule of events for the SOIQ process of the project.

Event	Day & Date	Time	Place
Advertisement	Wednesday, December 17, 2014		
SOIQ Document Available	Wednesday, December 17, 2014	3:00 PM	City website*
Mandatory Pre-proposal Meeting	Wednesday, January 7, 2015	10:00 AM	City Hall**
Last Day to Submit Questions	Friday, January 9, 2015	4:00 PM	Neil Miller***
Addendum Deadline	Tuesday, January 13, 2015	3:00 PM	City website*
SOIQ Submittal Due	Tuesday, January 20, 2015	3:00 PM	P&R Dept. ****
A/E Interview List Released	Friday, January 23, 2015	(TBD)	City notification

A/E Oral Interviews (if necessary)	Thursday, January 29, 2015	(TBD)	(TBD)
Announcement of Firm Selected	Tuesday, February 3, 2015	(TBD)	
Anticipated Notice to Proceed	Wednesday, February 4, 2015	(TBD)	

- \* Farmington City Website: [www.farmington.utah.gov](http://www.farmington.utah.gov)
- \*\* City Hall Address: 160 South Main Street, Farmington, Utah
- \*\*\* Neil Miller Email Address: [nmiller@farmington.utah.gov](mailto:nmiller@farmington.utah.gov)
- \*\*\*\* Farmington City Parks & Recreation: 720 West 100 North, Farmington, Utah 84025

#### IV. SUBMITTAL REQUIREMENTS

Firms will be judged not only on their past experience for the type of work involved, but also on their ability to address issues critical to the success of the project requirements outlined in this request for SOIQ. The evaluation committee is interested in receiving SOIQ submittals that are clear and concise. Following are elements that will be used to evaluate each firm's qualifications:

##### A. PROJECT TEAM

Identify the project principal, the project manager, key staff and sub-consultants. Present a brief discussion regarding how the team's qualifications and experience relate to the specific project.

- Name, location and size of the firm.
- Qualifications, certifications, licenses and unique knowledge of key team members relating to the project including key sub-consultants.
- Key staff involvement in project management and on-site presence.

Note: Architectural firms and their employees, representatives, agents, consultants, subcontractors and sub-consultants shall comply with the license laws of the State of Utah. **The principal in charge on the project must be a licensed Architect in the State of Utah.** The principal in charge must be available at whatever time and at whatever level of consultation the project requires. All key personnel identified by the Architect shall not change during the project without the approval of the City.

##### B. FIRM CAPABILITIES

- Clearly identify the lines of authority and coordination.
- Identify essential management functions and how they are effectively integrated, e.g., sub-consultants' roles delineated.
- Indicate present professional liability insurance coverage (minimum of \$1,000,000 annual aggregate limit required.)
- Provide financial statements of the firm.

Note: Organization charts and graphs depicting the team's capabilities may be included.

##### C. PRIOR EXPERIENCE

Use this portion of the submittal to describe relevant experiences with the project type and the various services to be provided as described in this request for SOIQ.

- Demonstrate experience of the firm and key staff with projects of similar scope and complexity. Include renderings/photographs or other information that would aid in the evaluation of the designs, such as cost, durability, energy efficiency, etc.
- Demonstrate specific experience in designing multi-use gym facilities and recreation turf complexes of similar size and use.
- Provide references.

#### **D. MANAGEMENT PLAN**

The Management Plan should be concise yet contain sufficient information for evaluation by the evaluation committee. For the project and services outlined in this request SOIQ, describe how you plan to accomplish the following project control and management issues:

- Describe the team's collaborative approach
- Address how the team will manage:
  - Budget/Cost Control
  - Quality Control
  - Meet Project Deadline/ Schedule Construction
- Describe your experience with the Construction Management/General Contractor (CM/GC) Delivery Method.
- Time Line of Project
  - Site plan for park/ Building Layout.
  - Design of Building.
  - Parking.
  - Landscaping/ Fields.
  - Fourplex.
  - Other Fields for Park.

#### **E. FEES**

- Submit a percentage of the cost of a master plan of the park site separately.
- Submit the components that could be completed within the City's budget.
- Provide full service design fees on a percentage of construction cost basis.

# Exhibit "C"



VALECRA-01

SBARKER

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/25/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> American Insurance & Investment Corp. 448 South 400 East Salt Lake City, UT 84111	<b>CONTACT NAME:</b> Shauna Barker <b>PHONE (A/C No, Ext):</b> (801) 364-3434 <b>FAX (A/C No):</b> (801) 355-5234 <b>E-MAIL ADDRESS:</b> Shauna.Barker@american-ins.com												
INSURER(S) AFFORDING COVERAGE													
<b>INSURED</b>  Valentiner Crane Brunjes Onyon Architects, LLC 524 South 600 East Salt Lake City, UT 84102	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A : Travelers Indemnity Company</td> <td style="width: 20%;">25658</td> </tr> <tr> <td>INSURER B : Travelers Ind Company of Conn.</td> <td>25682</td> </tr> <tr> <td>INSURER C : The Standard Fire Ins Co</td> <td></td> </tr> <tr> <td>INSURER D : XL Specialty Insurance Company</td> <td>37885</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER A : Travelers Indemnity Company	25658	INSURER B : Travelers Ind Company of Conn.	25682	INSURER C : The Standard Fire Ins Co		INSURER D : XL Specialty Insurance Company	37885	INSURER E :		INSURER F :	
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INSURER C : The Standard Fire Ins Co													
INSURER D : XL Specialty Insurance Company	37885												
INSURER E :													
INSURER F :													

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER		6801723L284	05/15/2014	05/15/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		BA1725L068	05/15/2014	05/15/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		CUP6317Y764	05/15/2014	05/15/2015	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input checked="" type="checkbox"/> Y N/A		UB0605T677	09/17/2014	09/17/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E L EACH ACCIDENT \$ 500,000 E L DISEASE - EA EMPLOYEE \$ 500,000 E L DISEASE - POLICY LIMIT \$ 500,000
D	Prof Liab Claim Made		DPR9717445	08/03/2014	08/03/2015	Per Claim 2,000,000
D	Retro Date 01/01/73		DPR9717445	08/03/2014	08/03/2015	Aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

Insurance Verification Only

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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# FARMINGTON CITY

H. JAMES TALBOT  
MAYOR

DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council

From: David E. Petersen, Community Development Director

Date: April 14, 2015

SUBJECT: **PARKWALK DOWNS EXTENSION AGREEMENT (S-17-14)**

### RECOMMENDATION

Approve the enclosed Extension Agreement for the Parkwalk Downs Subdivision.

### BACKGROUND

Recently, the City Council approved the Parkwalk Downs subdivision consisting of 4 lots encompassing 2 acres at the southwest corner of 650 West and 500 South streets. Said approval was subject to, among other things, that the property owner enter into an extension agreement with the City for the future public improvements on 650 West and 500 South. This agreement fulfills that requirement.

Respectively Submitted

David Petersen  
Community Development Director

Review and Concur

Dave Millheim  
City Manager



THIS AGREEMENT, made and executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between FARMINGTON CITY, a municipal corporation, hereinafter referred to as "City" and Don and Laurie Sides Family Trust of 520 South 650 West, Farmington, UT 84025, hereinafter referred to as "owner."

In consideration of the mutual covenants and agreements herein contained, the adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. The City hereby grants Owner a temporary extension of time with respect to the City's requirement for installation of the following specific Improvements (the "Improvements") consisting of, but not limited to, construction and funding regarding future public curb and gutter, asphalt, road base, sub-grade, sidewalk, and underground utilities (including storm drain) abutting and/or pertaining to the real property owned by Owner located at 520 S. 650 W. in Farmington City, Davis County, Utah, including the 500 South frontage running the entire length of the property from east to west, and the 650 West frontage running the entire length of the property from north to south, and more particularly described as follows:

See attached legal description

It is expressly understood and agreed that the City is granting this temporary extension of time conditioned upon and subject to the Owner's agreement herein to install the Improvements in strict accordance with the specifications, rules, and regulations promulgated therefore by City and which are in effect at the time the Improvements are installed.

2. Owner hereby covenants that Owner will hereafter, upon written request by the City, immediately install the aforesaid Improvements at no cost to the City.

3. If, for any reason, Owner does not install and complete the Improvements within 90 days after having been requested in writing by City to do so, the City is hereby authorized to install and complete the Improvements at the sole expense of the Owner at that time and to charge the Owner and/or the above-described property with the cost of said installation and completion. The cost incurred by the City to install and complete the Improvements upon the failure of Owner to do so, together with interest thereon at ten percent (10%) per annum

compounded annually and all costs and reasonable attorney's fees incurred by the City shall be a charge on the land described hereinabove and shall be a continuing lien upon the above-described property and shall be promptly paid by the Owner. The City may commence an action against the Owner to collect the foregoing charges and to foreclose the lien against the above-described property. Upon foreclosure of the lien provided herein by the City, should any deficiency remain, Owner shall remain liable for payment of the deficiency.

4. Owner hereby represents and warrants that Owner owns fee title interest to the above-described property and further hereby confesses judgment for Owner, Owner's heirs, representatives, and successors in interest for the total of any and all amounts expended by City for the installation and completion of the Improvements and any expenses related thereto.

5. The foregoing covenants in each and every particular are and shall be construed as real covenants and shall run with the land, and the same are hereby made binding upon their heirs, representatives, devisees, assigns and successors in interest of the parties hereto. To this end, the parties agree that this document shall be recorded in the office of the Davis County Recorder.

6. The parties herein each agree that should they default in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee which may arise or accrue from enforcing this agreement, or in pursuing any remedy provided hereunder or by the statutes or other laws of the State of Utah, whether such remedy is pursued by filing suit or otherwise, and whether such costs and expenses are incurred with or without suit or before or after judgment.

7. Every provision of this Agreement is intended to be several. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first hereinabove written.

FARMINGTON CITY

OWNER

\_\_\_\_\_  
H. James Talbot, Mayor

\_\_\_\_\_  
\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Holly Gadd, City Recorder

**OWNER ACKNOWLEDGEMENT**

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF DAVIS        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, personally appeared before me \_\_\_\_\_, signer of the foregoing instrument who duly acknowledged to me that he/they executed the same.

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

Residing at: \_\_\_\_\_

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**CITY ACKNOWLEDGEMENT**

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF DAVIS        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, personally appeared before me H. JAMES TALBOT and HOLLY GADD, who being by me duly sworn did say that they are the Mayor and City Recorder, respectively, of Farmington City Corporation, a municipal corporation, and that the foregoing instrument was signed in behalf of said City by authority of its City Council.

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

Residing at: \_\_\_\_\_

# FARMINGTON CITY



H. JAMES TALBOT  
MAYOR  
DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL  
DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council

From: Ken Klinker, Planning Department

Date: April 14, 2015

**SUBJECT: Encroachment License and Permit- Lot 314 Farmington Creek Estates**

### RECOMMENDATION

Approve the request and authorize the Mayor to sign and encroachment license and permit for lot 314 Farmington Creek Estates to allow the construction of a swimming pool in the back yard.

### BACKGROUND

Brent and Tristen Beck have applied for an Encroachment License and Permit to encroach up to 6.5' into a gas pipeline easement and PUE in their back yard on Lot 314 Farmington Creek Estates, 859 S. County Lane in Farmington. The purpose of the encroachment is to construct a swimming pool in their back yard.

The easement was originally 40' feet when the subdivision was recorded. Within the easement was a 16.5' gas pipeline right-of-way. It was later determined that the large easement was not required, so it was reduced to 31.5' on their lot.

The pool will be located a minimum of 5.5' from the pipeline ROW which is assigned to Tesoro Pipeline. The applicants have submitted a letter from Tesoro indicating they do not object to the encroachment which will remain outside their pipeline ROW. The letter also indicates they will be on-site during the excavation of the pool to make sure there are no issues with the pipeline.

There are no utilities other than the pipeline within the easement.

Respectfully submitted,

Ken Klinker  
Planning Department

Review and Concur

Dave Millheim  
City Manager

March 17, 15

David Peterson  
Community Development Director  
Farmington City  
160 S. Main Street  
Farmington, UT 84025

RE: Encroachment License 859 Country Ln, Farmington

Dear Mr. Peterson,

We are requesting an easement encroachment permit for an underground swimming pool located at our home -- 859 Country Ln, lot 314 of Farmington Creek Estates Phase III PUD Subdivision. We are requesting to encroach approximately 6'6" within the platted PUE easement encumbering our property as identified on our subdivision plat. It is important to note that there are two easements encumbering our property; the platted PUE and a 16.5' pipeline easement dating back to the 1950s. Our proposed encroachment will only affect the PUE and not the Tesoro pipeline easement.

The Tesoro easement is the original easement on the property and was established prior to the recordation of the subdivision plat and is located within the subdivision PUE. During the development of our subdivision a 40' easement was recorded by the developer to cover the Tesoro easement as well as to provide space adjacent to the gas pipeline for other utilities as needed. No other utilities have been placed within the PUE and consequently the PUE has recently been reduced in size from 40' to 31'6". This PUE easement does not extend beyond our subdivision.

Attached is a detailed map of our property, which shows the pool dimensions, distances from our house, distances from property lines, distances from the Tesoro easement and the encroachment into Farmington's easement. As you can see from the map we will not be encroaching upon Tesoro's easement. The majority of the construction will take place outside the PUE on our property but a small portion of it will be located within the PUE. The contractor will need to excavate one foot wider than the pool shown in order to construct cinder block support walls.

We have met with Tesoro several times and they have been to the property and flagged the exact locations of the pipe and their easement as indicated on the map. Tesoro's easement is 8'3" from the center of the main pipeline in both the East/West direction for a total of 16'6". The main pipeline is 11'3" from the back of our property, East side. Tesoro's easement is approximately 19'6" from the East side of our property line.

No construction/excavation will take place within Tesoro's easement. Also, the pool would have a 4' concrete deck surrounding the pool. This deck would also not encroach upon Tesoro's easement. Tesoro has given verbal permission that we can dig outside of their easement and that we can move excavation equipment across the pipeline. Tesoro requested that either a steel plate or a 2' to 3' dirt berm be built over the pipeline in order to dissipate the pressure of the excavation equipment used. Our contractor has also agreed to these terms. Tesoro also indicated that they would have a person on sight during excavation. I have listed both individuals from Tesoro that I have worked with below and their contact info

Jamie Thomas - Tesoro Field Agent, 801- 556-2167  
Duran Lucas - Tesoro Right-Of-Way Agent, 801-356-3741

An almost exact duplicate of this project exists of size and placement for this type of encroachment request as Farmington issued a pool permit for the property owner directly South of us at 873 S Country Ln. We will be using the same contractor, Larry's Pool and Spa that was used for the pool at the adjoining property at 873 Country Ln. The contractor is aware of the dirt berm requirement, Tesoro's gas pipeline and easement, and that Tesoro will send a representative during the excavation.

We respectfully request an encroachment permit for our project and appreciate your consideration in this process.

Respectfully,



Brent & Tristin Beck  
859 Country Ln, Farmington



Tesoro Logistics GP, LLC  
19100 Ridgewood Parkway  
San Antonio, TX 78259  
210 626 6000

March 16, 2015

David Peterson  
Community Development Director  
Farmington City  
160 South Main Street  
Farmington, Utah 84025

RE: Easement Encroachment at 859 Country Lane, Farmington

Mr. Peterson,

This letter is in regards to an easement encroachment permit applied for by Brent and Tristin Beck. The applicant is requesting authorization for the construction and placement of a pool within a platted subdivision "Public Utility Easement" (PUE). As a common carrier pipeline we are located within the PUE and we appreciate you and your department's willingness to not only assist us in protecting our pipeline, but also in protecting our Farmington neighbor's by ensuring that proposed projects along the pipeline are permitted and constructed in a manner that will protect this sensitive system.

A few weeks ago, the Becks approached Tesoro Logistic Northwest Pipeline concerning their proposed project and we have been able to review the project and have determined that the proposed pool will not negatively impact our pipeline. The Becks have hired a contractor that is familiar with our Pipeline crossing standards and together they have agreed to take the necessary precautions to protect our pipeline during the excavation and construction of the proposed swimming pool.

With the Becks committed to ensuring the protection of our pipeline, Tesoro is not opposed to the construction of the swimming pool. We would defer to Farmington City regarding the issuing of a permit to encroach within the subdivision PUE.

Thanks,

A handwritten signature in black ink, appearing to read "Duran Lucas".

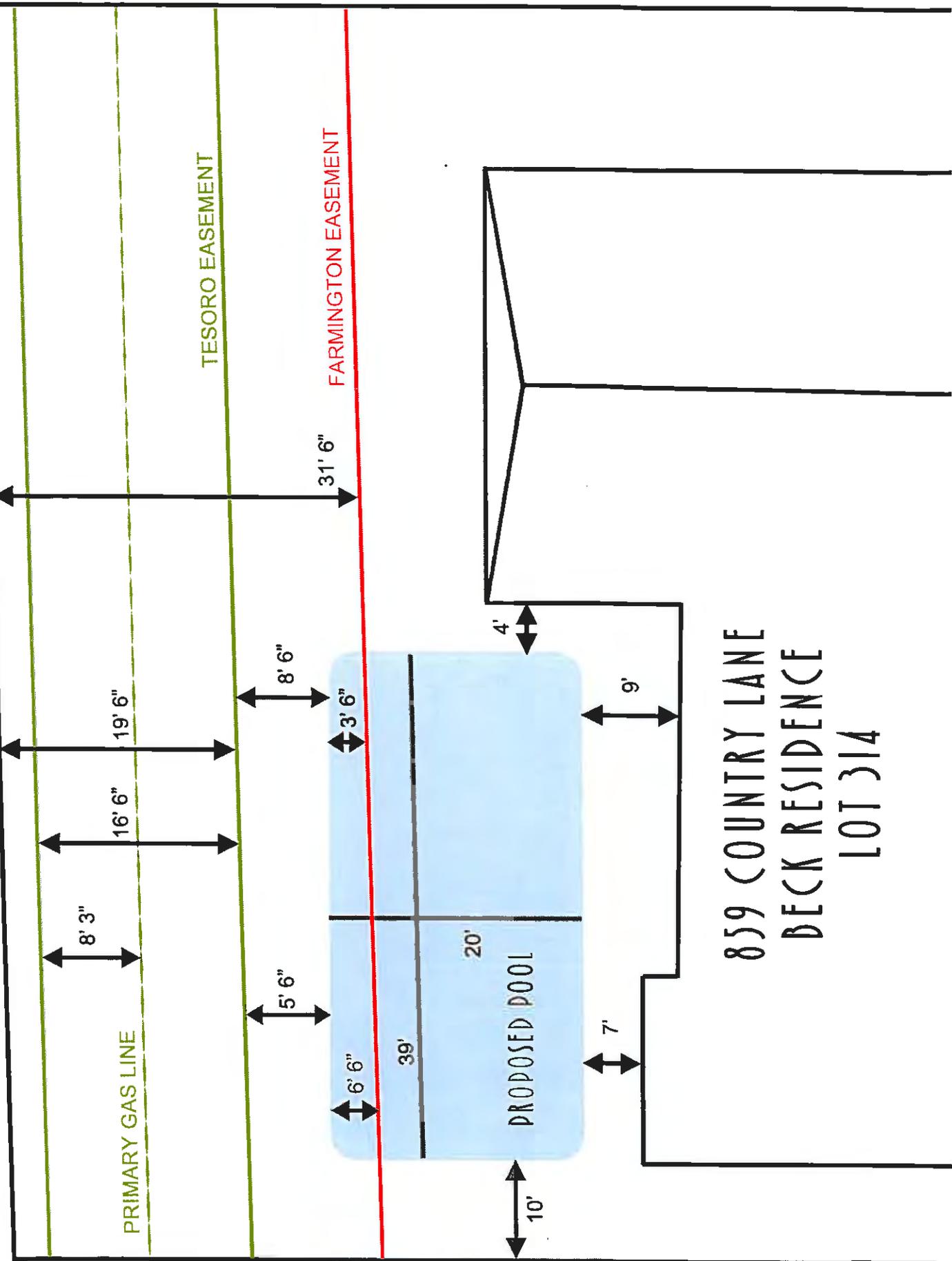
Duran Lucas  
Right-of-Way Agent

PROPERTY LINE

PRIMARY GAS LINE

TESORO EASEMENT

FARMINGTON EASEMENT



859 COUNTRY LANE  
BECK RESIDENCE  
LOT 314

PROPERTY LINE

**WHEN RECORDED RETURN TO:**

Farmington City  
Attn: Zoning Administrator  
160 S Main St  
Farmington, UT 84025

Affects Parcel No. 08-356-0314

**LICENSE AND PERMIT**

**THIS PERMIT** is made and entered into as of the 14<sup>th</sup> day of April, 2015, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and Brent and Tristin Beck, individuals, hereinafter referred to as "Permittee."

**RECITALS:**

**WHEREAS**, City is the holder of a public utility easement along the perimeter of Permittee's property which is located at 859 Country Lane; and is further identified as lot 314 of the Farmington Creek Estates Phase III PUD Subdivision, as described on the official plat of said subdivision in the office of the Davis County Recorder; and

**WHEREAS**, there co-exists a ROW for an Oil pipeline within the Public Utility Easement; and

**WHEREAS**, Permittee is desirous of obtaining a permit from the City for using part of the said Public Utility Easement for an underground pool ("Facilities") on the public utility easement; and

**WHEREAS**, City is willing to grant a permit for such use;

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. For the sum of One Hundred Dollars (\$100.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, City hereby grants permission and license to Permittee to install and maintain Facilities within the premises described in Exhibit "A," attached hereto and by this reference made a part hereof. Said premises is located in Davis County, State of Utah, and this permit is SUBJECT TO the following additional conditions:

2. Prior to any installation, the Permittee's plans, specifications and timetable for installation of said facilities shall be submitted to and must be approved by the City's Community Development Director before any work thereon may commence. Permittee will make any changes in such plans, specifications or timetable as and when requested by the City. The Facilities shall be constructed and maintained strictly in accordance with the approved plan and specifications.

3. Permittee agrees not to erect any other structure other than said Facilities or make any other improvements on the said Premises. Permittee agrees to perform all such installation pursuant to all applicable federal laws or regulations, City ordinances and state law. Installation and maintenance of the Facilities on the Premises shall be at Permittee's sole expense.

4. Permittee will, at Permittee's sole expense, and within the time and when requested in writing by the City, remove, replace or alter the Facilities installed by Permittee on the Premises.

5. Permittee agrees that at all times this Utility Permit shall be subject to any use of the Premises the City may desire within the scope of the granted easement, and City shall not be liable to Permittee for any loss of use or damage to Permittee's Facilities resulting from such use.

6. Permittee agrees, upon written notice from the City, to repair any damage caused to the Premises as a result of Permittee's or his/her/its agents or successor's use of this permit.

7. This License and Permit is subject to revocation by the City for any reason and at any time upon the expiration of thirty (30) days prior written notice sent to Permittee at the Permittee's above-stated address. Upon receipt of such notice, Permittee shall remove the Facilities from the Premises, restoring the surface of the Premises as near as possible to its condition prior to the date hereof.

8. Permittee agrees to indemnify, hold harmless and defend the City, its agents and employees, from and against all claims, mechanics liens, demands, damages, actions, costs and charges, for personal injury or property damage and other liabilities, including attorneys' fees, arising out of or by any reason of Permittee's use of said Premises or any activities conducted thereon by Permittee, or his/her/its agents, employees, invitees or trespassers.

9. Any ambiguity in this License and Permit shall be construed in favor of the City.

10. This License and Permit embodies the entire agreement between the parties and it cannot be changed except through a written instrument signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

**"CITY"**

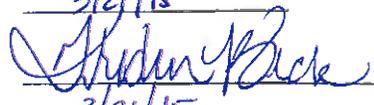
**FARMINGTON CITY**

ATTEST:

\_\_\_\_\_  
City Recorder

By: \_\_\_\_\_  
Mayor

**"PERMITTEE"**

  
\_\_\_\_\_  
3/2/15  
  
\_\_\_\_\_  
3/21/15

CITY ACKNOWLEDGMENT

STATE OF UTAH )
:SS.
COUNTY OF DAVIS )

On the \_\_\_ day of \_\_\_, 201~~4~~<sup>5</sup>, personally appeared before me H. James Talbot, who being duly sworn, did say that he is the Mayor of FARMINGTON CITY, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said \_\_\_ acknowledged to me that the City executed the same.

Seal:

Notary Public
Residing at:

PERMITTEE ACKNOWLEDGMENT

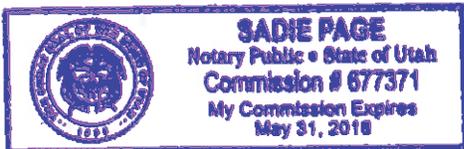
STATE OF UTAH )
:SS.
COUNTY OF DAVIS )

On the 21 day of March, 201~~4~~<sup>5</sup>, Tristin Beck/Brent Beck who being duly sworn, did say that they are the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

Seal:

Sadie Page
Notary Public
Residing at:

Centerville, UT



# EXHIBIT A

**Legal Description:**

The east forty (40) feet of Lot 314 of the Farmington Creek Estates Phase III subdivision as recorded in the Office of the Davis County Recorder, less that portion vacated by the Revocation and Abandonment of Easement recorded in Book 5350, pages 131-133 in the Office of the Davis County Recorder attached as Exhibit B.

Parcel # 083560314



# FARMINGTON CITY

SCOTT C. HARBERTSON  
MAYOR

JOHN BILTON  
NELSEN MICHAELSON  
COREY R. RITZ  
JIM TALBOT  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council

From: Ken Klinker, Planning Department

Date: April 7, 2015

**SUBJECT: BRENTWOOD ESTATES SUBDIVISION IMPROVEMENTS AGREEMENT**

### RECOMMENDATION

Approve the Farmington City Improvements Agreement (Escrow Deposit Form) between Ivory Development, LLC and Wells Fargo Bank, N.A..

### BACKGROUND

The bond estimate for the Brentwood Estates subdivision is \$1,027,330.00 which includes a 10% warranty bond. Ivory Development, LLC has submitted an Escrow Deposit Bond Improvements Agreement with Wells Fargo Bank, N.A. on the City Escrow Deposit Form to administer an escrow account for this project in the same amount.

This bond will be released as improvements are installed by the developer and inspected by the City. Once all improvements are installed and inspected, 90% of the bond will be released. After a warranty period of 1 year, the warranty bond will be released once all items are accepted as satisfactory by the City.

Respectfully submitted,

Ken Klinker  
Planning Department

Review and Concur

Dave Millheim  
City Manager

**FARMINGTON CITY  
IMPROVEMENTS AGREEMENT**

**(ESCROW DEPOSIT FORM)**

**THIS AGREEMENT** is made by and between Ivory Development, LLC (hereinafter "Developer"), whose address is 978 East Woodoak Lane, Farmington City, a municipal corporation of the State of Utah (hereinafter "City"), whose address is 160 South Main St., P.O. Box 160, Farmington, Utah, 84025-0160, and Wells Fargo Bank, N.A. a Utah or Federally chartered Bank or Savings and Loan Association authorized to do business in the State of Utah, whose address is 299 South Main ST SLC, UT 84111, (the "Depository").

**WHEREAS**, Developer desires to subdivide and/or to receive a permit to develop certain property located within the City, said development to be known as Brentwood Estates, located at approximately 1400 N. Compton Rd. in Farmington City, and

**WHEREAS**, the City will not approve the subdivision or issue a permit unless Developer promises to install and warrant certain improvements as herein provided and security is provided for that promise as set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Installation of Improvements.** The Developer agrees to install all improvements required by the City as specified in the bond estimate prepared by the City for Developer's project which is attached hereto as Exhibit "A", (the "Improvements"), precisely as shown on the plans, specifications, and drawings previously reviewed and approved by the City in connection with the above-described project, and in accordance with the standards and specifications established by the City, within \_\_\_\_\_ months from the date of this Agreement. Developer further agrees to pay the total cost of obtaining and installing the Improvements, including the cost of acquiring easements.

2. **Dedication.** Where dedication is required by the City, the Developer shall dedicate to the City the areas shown on the subdivision or development plat as public streets and as public easements, provided however, that Developer shall indemnify the City and its representatives from all liability, claims, costs, and expenses of every nature, including attorneys fees which may be incurred by the City in connection with such public streets and public easements until the same are accepted by the City following installation and final inspection of all of the Improvements and approval thereof by the City.

3. **Escrow.** The Developer and the Depository hereby acknowledge that an account (the "Account") has been established at the Depository in the amount of \$1,027,330.00 (the "Escrow Amount"), which the Developer and the City stipulate to be a reasonable preliminary estimate of the cost of the Improvements, together with 20% of such cost to cover contingencies and to secure the warranty of this Agreement. The Account is identified by the number 1002671. The Developer and the Depository further agree that if (1) the Improvements are not completed as required by this Agreement within the time period specified in Paragraph 1 above, or if (2) the Improvements are not installed strictly in accordance with Paragraph 1 above and written notice of the deficiency has been given to the Developer, who has failed to remedy the deficiency within 10 days after the notice is sent, then in either event the City may withdraw from the account all or any part of the Escrow Amount, in a single or in multiple withdrawals. The Depository agrees to retain funds necessary for such a withdrawal in the Account. Withdrawals from the Account by the City

may be effected by one or more sight drafts signed by the Mayor in the form attached as Exhibit "B", or by other instrument appropriate to the purpose. Interest shall accrue to the City and be payable by the Depository at the rate of 20% per annum beginning at the date on which payment of such a sight draft, properly signed, is refused by the Depository. The City shall not be liable for the payment of any fee or service charge incurred in connection with the Account. The Depository acknowledges sufficient consideration for its promises in the form of fees and fund deposits received from Developer.

4. **Progress Payments.** The City agrees to allow payments from the Account as the work progresses as provided herein. The City shall, when requested in writing, inspect the construction, review any necessary documents and information, and determine if the work completed complies with City construction standards and requirements, and review the bond estimate in Exhibit "A". After receiving and approving the request, the City shall, in writing, authorize disbursement to the Developer from the Account in the amount of such estimate provided that if the City does not agree with the request, the City and Developer shall meet and the Developer shall submit any additional estimate information necessary. Except as provided in this Paragraph or in Paragraphs 4 through 6 inclusive, the Depository shall not release or disburse any funds from the Account.

5. **Refund or Withdrawal.** In the event the City determines it is necessary to withdraw funds from the Account to complete construction of Improvements, the City may withdraw all or any part of the Escrow Amount and may cause the Improvements (or any part of them) to be constructed or completed using the funds received from the account. Any funds not expended in connection with the completion of said Improvements by the City shall be refunded to Developer upon completion of the Improvements, less an additional 15% of the total funds expended by the City, which shall be retained by the City as payment for its overhead and costs expended by the City's administration in completing the Improvements.

6. **Preliminary Release.** At the time(s) herein provided, the City may authorize release all funds in the Account, except 10% of the estimated cost of the Improvements, which shall be retained in the Account until final release pursuant to the next Paragraph. Said 10% shall continue as security for the performance by the Developer of all remaining obligations of this Agreement, including the warranty, and may be withdrawn by the City as provided in Paragraph 5 above for any breach of such an obligation. The release provided for in this Paragraph shall occur when the City certifies that the Improvements are complete, which shall be when the Improvements have been installed as required and fully inspected and approved by the City, and after "as-built" drawings have been supplied as required.

7. **Final Release.** Upon full performance of all of Developer's obligations pursuant to this Agreement, including the warranty obligations of Paragraph 26, the City shall notify the Depository and the Developer in writing of the final release of the Account. After giving such notice, the City shall relinquish claims and rights in the Account.

8. **Non-Release of Developer's Obligations.** It is understood and agreed between the parties that the establishment and availability to the City of the Account as herein provided, and any withdrawals from the Account by the City shall not constitute a waiver or estoppel against the City and shall not release or relieve the Developer from its obligation to install and fully pay for the Improvements as required in Paragraph 1 above, and the right of the City to withdraw from the Account shall not affect any rights and remedies of the City against the Developer for breach of any covenant herein, including the covenants of Paragraph 1 of this Agreement. Further, the Developer agrees that if the City withdraws from the Account and performs or causes to be performed the installation or any other work required of the Developer hereunder, then any and all costs incurred by the City in so doing which are not collected by the City by withdrawing from the Account shall be paid by the Developer, including administrative, engineering, legal, and procurement fees and costs.

9. **Connection and Maintenance.** Upon performance by Developer of all obligations set forth in this Agreement and compliance with all applicable ordinances, resolutions, rules, and regulations of the City, whether now or hereafter in force, including payment of all connection, review, and inspection fees, the City shall permit the Developer to connect the Improvements to the City's water and storm drainage systems and shall thereafter utilize and maintain the Improvements to the extent and in the manner now or hereafter provided in the City's regulations.

10. **Inspection.** The Improvements, their installation, and all other work performed by the Developer or its agents pursuant to this Agreement shall be inspected at such times as the City may reasonably require and prior to closing any trench containing such Improvements. The City shall have a reasonable time of not less than 24 hours after notice in which to send its representatives to inspect the Improvements. Any required connection and impact fees shall be paid by the Developer prior to such inspection. In addition, all inspection fees required by the ordinances and resolutions shall be paid to the City by the Developer prior to inspection.

11. **Ownership.** Off-site Improvements covered herein shall become the property of the City upon final inspection and approval of the Improvements by the City and the Developer shall thereafter advance no claim or right of ownership, possession, or control of the Improvements.

12. **As-Built Drawings.** The Developer shall furnish to the City, upon completion of the Improvements, drawings showing the Improvements, actual location of water and sewer laterals including survey references, and any related structures or materials as such have actually been constructed by the Developer. The City shall not be obligated to release the Account until as-built drawings have been provided to the City.

13. **Amendment.** Any amendment, modification, termination, or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

14. **Successors.** No party shall assign or transfer any rights under this Agreement without the prior written consent of the other first obtained, which consent shall not be unreasonably withheld. When validly assigned or transferred, this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

15. **Notices.** Any notice required or desired to be given hereunder shall be deemed sufficient if sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble.

16. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

17. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

18. **Counterparts.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instrument, and each such counterpart shall be deemed an original.

19. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

20. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only and shall not affect the interpretation of any provision herein.

21. **Integration.** This Agreement, together with its exhibits and the approved plans and specifications referred to, contains the entire and integrated agreement of the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

22. **Attorney's Fees.** In the event either party hereto defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

23. **Other Bonds.** This Agreement and the Account do not alter the obligation of the Developer to provide other bonds under applicable ordinances or rules of any governmental entity having jurisdiction over the Developer. The furnishing of security in compliance with the requirements of other ordinances or rules of other jurisdictions shall not adversely affect the ability of the City to draw on the Account as provided herein.

24. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.

25. **Exhibits.** Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

26. **Warranty.** The Developer hereby warrants that the Improvements installed, and every part hereof, together with the surface of the land and any improvements thereon restored by the Developer, shall remain in good condition and free from all defects in materials, and/or workmanship during the Warranty Period, and the Developer shall promptly make all repairs, corrections, and/or replacements for all defects in workmanship, materials, or equipment during the Warranty Period, without charge or cost to the City. The City may at any time or times during the Warranty Period inspect, photograph, or televise the Improvements and notify the Developer of the condition of the Improvements. The Developer shall thereupon immediately make any repairs or corrections required by this Paragraph. For purposes of this Paragraph, "Warranty Period" means the one-year period beginning on the date on which the Improvements are certified complete by the City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives this 12<sup>th</sup> day of March, 2015.

**DEVELOPER:** Ivory Development, LLC  
By: [Signature]  
Its: President

**DEPOSITORY:**  
By: [Signature]  
Its: Vice President

**CITY:**  
FARMINGTON CITY CORPORATION  
By: \_\_\_\_\_  
H. James Talbot, Mayor

**ATTEST:**  
  
\_\_\_\_\_  
Holly Gadd, City Recorder

DEVELOPERS ACKNOWLEDGEMENT

(Complete if Developer is an Individual)

STATE OF UTAH )
: ss.
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_, the signer(s) of the foregoing instrument who duly acknowledged to me that he/she/they executed the same.

NOTARY PUBLIC
Residing in \_\_\_\_\_ County, \_\_\_\_\_

\*\*\*\*\*

(Complete if Developer is a Corporation)

STATE OF UTAH )
: ss.
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, who being by me duly sworn did say that he/she is the \_\_\_\_\_ of \_\_\_\_\_ a \_\_\_\_\_ corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

NOTARY PUBLIC
Residing in \_\_\_\_\_ County, \_\_\_\_\_

\*\*\*\*\*

(Complete if Developer is a Partnership)

STATE OF UTAH )
: ss.
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_ who being by me duly sworn did say that he/she/they is/are the \_\_\_\_\_ of \_\_\_\_\_, a partnership, and that the foregoing instrument was duly authorized by the partnership at a lawful meeting held by authority of its by-laws and signed in behalf of said partnership.

NOTARY PUBLIC
Residing in \_\_\_\_\_ County, \_\_\_\_\_

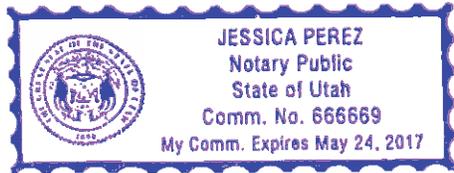


**DEPOSITORY ACKNOWLEDGEMENT**

STATE OF UTAH )  
 )  
COUNTY OF SALT LAKE ) : ss.

On this 12<sup>th</sup> day of MARCH, 20 15, personally appeared before me ERIK BEUGTZEN, who being duly sworn did say that he/she is the VICE PRES. of WELLS FARGO BANK NA a NATIONAL ASS. corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its Board of Directors, and he/she acknowledged to me that said corporation executed the same.

Jessica Perez  
NOTARY PUBLIC  
Residing in SALT LAKE County UTAH



**CITY ACKNOWLEDGEMENT**

STATE OF UTAH )  
 )  
COUNTY OF DAVIS ) : ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me H. James Talbot and Holly Gadd, who being by me duly sworn, did say that they are the Mayor and City Recorder, respectively, of Farmington City Corporation, and said persons acknowledged to me that said corporation executed the foregoing instrument.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Davis County, Utah

(OR AS SUPPLIED BY BANK)

EXHIBIT "B"

**SIGHT DRAFT**

To Drawee

\_\_\_\_\_, Utah \_\_\_\_\_  
\_\_\_\_\_

Pay To The Order Of FARMINGTON CITY CORPORATION on sight the sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) drawn against Account No.  
\_\_\_\_\_.

FARMINGTON CITY CORPORATION

By: \_\_\_\_\_  
H. James Talbot, Mayor



# FARMINGTON CITY

H. JAMES TALBOT  
MAYOR

DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council  
From: Holly Gadd, City Recorder  
Date: April 1, 2015  
Subject: **AGREEMENT WITH DAVIS COUNTY REGARDING ELECTIONS**

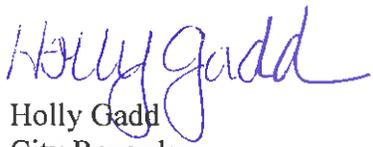
### RECOMMENDATION

By minute motion, approve the attached Agreement from Davis County outlining the responsibilities of the County and City for the upcoming elections.

### BACKGROUND

The City has decided to go forward with the vote-by-mail option for the 2015 Primary and General Elections. Davis County has put together a proposal outlining the cost for traditional as well as a vote-by-mail election. Legislation was passed that no longer requires cities to pay the return postage for election ballots. This will be a good savings to the City. Prices may also be reduced if the School District puts a bond on the ballot. In that case, they would have to share in the cost of mailing the ballots out to residents. I suggest that we contract with the County for the 2015 elections. That would free up a lot of time to do other City business.

Respectfully Submitted

  
Holly Gadd  
City Recorder

Review & Concur

  
Dave Millheim  
City Manager

## AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 by and between DAVIS COUNTY, a body politic of the State of Utah, hereinafter referred to as "County," and \_\_\_\_\_ CITY, a municipal corporation of the State of Utah, hereinafter referred to as "City."

### WITNESSETH:

WHEREAS, pursuant to Section 20A-1-201.5 and 20A-1-202, *Utah Code Ann.* (1953) as amended, City is authorized and required to hold municipal elections in each odd-numbered year; and

WHEREAS, County has equipment and resources needed to carry out an election and is willing to make available the resources and equipment to assist City in holding its municipal primary and general elections in 2015 upon the following terms and conditions; and

WHEREAS, the parties are authorized by the *Utah Interlocal Cooperation Act* as set forth in Chapter 13, Title 11, and Section 20A-5-400.1 of the *Utah Code Ann.* (1953) as amended, to enter into this Agreement:

NOW THEREFORE, in consideration of the mutual terms and conditions set forth hereafter, the parties hereto agree as follows:

1. County agrees to provide to City if needed for the primary election in August 2015, and if needed for the general election in November 2015 the following:
  - a. Test, program, assemble and make available to City voting machines and poll supplies.
  - b. Provide for delivery and retrieval of voting equipment.

- c. Polling location management, which includes, but is not necessarily limited to making arrangements for use, ADA compliance survey and contact information.
  - d. Absentee and By-Mail ballot processing, which includes mailing, receiving, signature verification and tabulation.
  - e. Provide electronic ballot files for Optical Scan Ballots printing.
  - f. Provide Information System assistance which includes, but is not necessarily limited to election programming, tabulation, programmers and technicians.
  - g. Canvass reports.
  - h. Electronic tabulation results transmitted to the Office of the Lieutenant Governor.
  - i. Provide personnel and technical assistance throughout the election process and equipment and/or supplies required specifically for voting.
  - j. Recruit poll workers; provide training, scheduling, supplies and compensation.
  - k. Provide preparation and personnel for the public demonstration of the tabulation equipment.
  - l. If required, in cooperation with the City, conduct an election audit.
  - m. Store all election returns for the required twenty-two (22) months.
2. \_\_\_\_\_ City agrees to do the following:
- a. Provide the Recorder or other designated officer to act as the election officer and assume all duties and responsibilities as outlined by law.
  - b. Identify polling location(s) and assign voting precinct.

- c. Enter into a polling location Hold Harmless Agreement, if needed.
- d. Provide projected voter turnout.
- e. Declaration of Candidacy filing.
- f. Provide County with ballot information which includes, but is not necessarily limited to races, candidates and ballot issues.
- g. Approve the election plan, which includes, but is not necessarily limited to accuracy of polling location and precinct assignments, voter turnout percentages, paper ballot quantities, voting machine quantities and poll worker assignments.
- h. City's legislative body poll worker approval.
- i. Proof and approve the accuracy of the printed and audio of ballot formats.
- j. Publish all legal notices which include, but are not necessarily limited to election notice, polling locations, ballots and public demonstration.
- k. Early voting administration if needed.
- l. Arrange and conduct election canvass.
- m. Prepare candidate certificates.
- n. Perform all other election related duties and responsibilities not outlined in this agreement but required by law.
- o. City agrees to pay County repair or replacement costs for damaged voting equipment, which occurs at the polling locations beyond the normal wear and tear.

3. Both parties agree to conduct the election according to the statutes, rules, Executive Orders, and Policies of the Lieutenant Governor as the Chief Elections Officer of the state.

4. City agrees to pay County the costs for providing the election equipment, services and supplies in accordance with the election costs schedule, attached hereto, incorporated herein, and made a part hereof as Exhibit "A". The payment shall be made within thirty (30) days of receiving the invoice prepared by the County.

5. This Agreement shall be effective as of the date of execution by all parties.

6. This Agreement shall continue in effect until 30 days after the election or upon invoicing, whichever occurs later.

7. The individuals executing this Agreement on behalf of the parties confirm that they are duly authorized representatives of the parties and are lawfully enabled to execute this Agreement on behalf of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each of which shall be deemed an original.

DAVIS COUNTY

By \_\_\_\_\_  
P Bret Milburn, Chair  
Davis County Commission

ATTEST:

\_\_\_\_\_  
Curtis Koch  
Davis County Clerk/Auditor

Attorney Approval

The undersigned, the authorized attorney of Davis County, approves the foregoing Agreement as to form and compatibility with State law:

\_\_\_\_\_  
Neal Geddes  
Deputy Davis County Attorney

\_\_\_\_\_ CITY

By \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_ City Recorder

Attorney Approval

The undersigned, the authorized attorney of \_\_\_\_\_ City, approves the foregoing Agreement as to form and compatibility with State law:

\_\_\_\_\_  
\_\_\_\_\_ City Attorney

**Exhibit "A" (Page 1 of 3)**  
**DAVIS COUNTY MUNICIPAL ELECTION EXPENSES**

**Poll Workers Compensation Rates**

20A-5-602(4)(b) Municipalities may not compensate higher than the county.	COST TRADITIONAL	COST BY-MAIL	
Poll Manager (PM)	\$160.00	\$160.00	Poll Workers who are trained for early voting and work on election day only attend early vote training. They do not attend or receive compensation for regular training. Poll workers who are trainers and work the position they trained do not attend or receive compensation for training. Poll workers who are trainers and do not work the position they train will attend and receive compensation for additional training.
Training Course(s)	\$50.00	\$50.00	
Review Training	\$10.00	\$10.00	
Touch Screen Technician (TST)	\$160.00	\$160.00	
Training Course(s)	\$35.00	\$35.00	
Review Training	\$10.00	\$10.00	
Receiving Clerk	\$135.00	\$135.00	
Training Course(s)	\$35.00	\$35.00	
Review Training	\$10.00	\$10.00	
Poll Book Clerk	\$125.00	\$125.00	
Training Course(s)	\$25.00	\$25.00	
Review Training	\$10.00	\$10.00	
Provisional Clerk	\$135.00	\$135.00	
Training Course(s)	\$35.00	\$35.00	
Review Training	\$10.00	\$10.00	
Host	\$125.00	\$125.00	
Training Course(s)	\$25.00	\$25.00	
Mileage	\$0.25	\$0.25	
Early Voting Poll Worker Pay (per hour)	\$10.00		Early voting only with Traditional administrative option
Training Course(s)	\$50.00	\$50.00	
Alternate Poll Workers	\$740.00	\$330.00	Shared with all cities under administrative option

**Poll Worker Recruitment and Training**

Poll Worker Recruitment and Administration	\$8.00	\$8.00	Per Poll Worker
Training Creation and Preparation (Includes equipment and preparation)	\$500.00	\$500.00	Shared with all cities
Poll Worker Handbook and Supplies	\$1.00	\$1.00	
Poll Worker Training (per person)	\$20.00	\$20.00	
Review Training (per person)	\$10.00	\$10.00	

**Equipment**

Touch Screen (TSX) Includes:	\$75.00	\$75.00	(150 voters per machine, minimum of 3 machines per location)
Testing Pre and Post election			
Security Seals			
Canister, Label, and (1) Roll of Paper			(1 per machine)
Printer Housing			(1 per machine)
VIBS—Visually Impaired Ballot Station (Keypad & Headphones)			(1 per polling location)
Voter Access Cards			(4 per machine)
Vote Here Signs (4 per location)	\$5.00	\$5.00	
WiFi Connection	\$40.00	\$40.00	
Laptop Computers, Programming, Pre/Post Test	\$75.00	\$75.00	(If using electronic voter check in, 1 laptop per 500 voters)

**Consumable Supplies**

Paper Roll (for each additional)	\$1.00	\$1.00	(No charge for unused and returned paper rolls)
Canister Label	\$1.00	\$1.00	
Canisters	\$10.00	\$10.00	
Polling Location Supplies	\$35.00	\$35.00	(Forms, instructions, signs, stickers, pens, pencils, name tags, etc.)
Regular Green Poll Books (per check in station)			Included with Laptop
Provisional Orange Poll Books			Included with Laptop
Paper Ballot Yellow Poll Books			Included with Polling Location Supplies

**Ballot Layout and Programming**

Gems Programming/ Ballot Logic and Accuracy Testing - TSX & Optical Scan	\$800.00	\$800.00	Shared with all cities
City/District set-up (cities/districts with new recorders/clerks)	\$75.00	\$75.00	
Memory Card Programming (per card)	\$15.00	\$15.00	
Audio Programming	\$50.00	\$50.00	

**Exhibit "A" (Page 2 of 3)**  
**DAVIS COUNTY MUNICIPAL ELECTION EXPENSES**

**Election Services**

Public L&A Demonstration (testing, programming & demonstration)	\$300.00	\$300.00	Shared with all cities
Independent Rovers (training & election day - per person)	\$500.00	\$500.00	Shared with all cities
Election Night Clerk Staff Support	\$1,400.00	\$1,400.00	Shared with all cities
Election Night Security	\$150.00	\$150.00	Shared with all cities
Election Night Ballot / Supply Return Teams	\$210.00	\$210.00	Shared with all cities
Rover Kits (each)	\$25.00	\$25.00	Shared with all cities
Rovers Training	\$400.00	\$400.00	Shared with all cities
Help Desk Set-Up	\$75.00	\$75.00	Shared with all cities
Help Desk Staff	\$450.00	\$450.00	Shared with all cities
Pre-Canvass Ballot Issues Audit, if needed	\$300.00	\$300.00	Only if needed
Canvass Preparation	\$150.00	\$150.00	Shared with all cities

**Delivery and Pickup (machines & supplies at polls)**

Delivery (per location)	\$34.50	\$34.50	Actual cost per contract with moving company
Pickup (per location)	\$34.50	\$34.50	Actual cost per contract with moving company

**Election Night Counting - IT Services**

TSX Counters	\$750.00	\$750.00	Shared with all cities
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**Early Voting**

Fees and services not listed below apply to early vote sites same as an election day polling location			
Administration Support	\$30.00		Early voting only with Traditional administrative option
Poll Delivery and Setup for Electronic Check-in	\$50.00		Early voting only with Traditional administrative option
Early Vote On-call Technical Support (per hour + mileage)	\$50.00		Early voting only with Traditional administrative option
Early Vote TSX	\$75.00		Early voting only with Traditional administrative option
Memory Card Programming (per card)	\$15.00		Early voting only with Traditional administrative option
Early Vote Laptop Computers, Programming, Pre/Post Test	\$75.00		Early voting only with Traditional administrative option
Early Voting Polling Location Supplies	\$35.00		Early voting only with Traditional administrative option

**Ballot Remake Equipment**

Remake TSX		\$75.00	Shared with cities using by-mail option
Remake Memory Cards		\$15.00	Shared with cities using by-mail option
Remake Laptops		\$75.00	Shared with cities using by-mail option

**By-Mail and Paper Ballots**

<b>Materials and Services from Printer</b>			
By-Mail Outer Envelopes	0.130	\$0.0552	Actual cost from printer
By-Mail Inner Return Envelopes	0.240	\$0.1055	Actual cost from printer
Instruction/ID requirement Inserts per ballot	0.054	\$0.0544	Actual cost from printer
Test Deck Paper Ballots	399.500	\$399.50	Shared with all cities
Ballot set-up (per style)	25.000	\$25.00	Actual cost from printer
Freight cost per ballot	0.130	0.0140	Actual cost for shipping per ballot
<b>1st Mailing</b>			
By-Mail Ballots	0.3200	\$0.3240	Actual cost from printer
Assembly, insert and mailing services	0.3200	\$0.3100	Actual cost from printer
Postage Out-Bound	0.1047	\$0.1047	Actual Postage
<b>2nd Mailing</b>			
By-Mail Ballots	0.3670	\$0.3670	Actual cost from printer
Assembly, insert and mailing services	0.3670	\$0.3670	Actual cost from printer
Postage Out-Bound	0.6900	\$0.6900	Actual Postage
<b>County Administration</b>			
Signature Verification and Tabulation Prep. (each returned)	0.820	\$0.3076	

<b>Return Postage</b>			
Postage In-Bound Business Reply	NA	NA	Return Postage is no longer required
Returned Undeliverable Postage	NA	NA	

**Post Election**

Provisional Verification (per hour)	\$25.00	\$25.00	
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**General Administration**

Election Administration Support	\$45.00	\$45.00	
Clerk Staff (per-hour for any additional services)	\$25.00	\$25.00	

**Exhibit "A" (Page 3 of 3)**  
**DAVIS COUNTY MUNICIPAL ELECTION EXPENSES**

**Complete Paper Voting System**

Printed Official Registers (1-3 precincts)	\$30.00	\$30.00	
Printed Official Registers (4 or more precincts)	\$60.00	\$60.00	
Addendums (per location)	\$5.00	\$5.00	Only applies if Vista Local is not used for early voting
Posting List (each)	\$7.00	\$7.00	Optional
Update Voter Histories Manually (Hours)	\$25.00	\$25.00	

**Important Notice about the above listed prices**

This exhibit shows listed costs for both a traditional as well as a by-mail administrative option. Most of the above listed prices show the cost per unit. Some show the overall cost for that service and indicate that the cost will be shared with all cities. The total cost of the election is subject to decisions made by each city and approved in each election plan and varies from each city. For a more complete view of total cost you should refer to the cost estimate that has been prepared for each individual city based upon their administrative option.



# FARMINGTON CITY

H. JAMES TALBOT  
MAYOR

DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Mayor and City Council  
From: Holly Gadd  
Date: April 7, 2015  
SUBJECT: **UTA SHUTTLE AGREEMENT**

### RECOMMENDATION

Approve the attached Agreement with UTA regarding shuttle.

### BACKGROUND

The City is in need of public transportation routes within areas in the City. UTA, Hampton Inn, CenterCal and the City have determined that it is in their best interest to work together to provide additional transit service. The City, Hampton Inn, CenterCal and Lagoon have each agreed to pay UTA \$5,536.00 to help defray the costs of operating the Farmington Service. The City's portion will come from the General Fund. The term of the agreement shall commence on the 28<sup>th</sup> day of March, 2015, and run through the 30<sup>th</sup> day of October, 2015. This agreement replaces the previous shuttle agreements of previous years to make the costs more reflective of those benefitting from the shuttle service.

Respectfully Submitted

Holly Gadd  
City Recorder

Review & Concur

Dave Millheim  
City Manager

SERVICE AGREEMENT

THIS AGREEMENT is effective on the 28<sup>th</sup> day of March, 2015, by and between UTAH TRANSIT AUTHORITY, a public transit district, hereinafter referred to as the “Authority”, FARMINGTON CITY CORPORATION, a municipal corporation of the State of Utah, hereinafter referred to as “City”, SHREYA MANAGEMENT, INC., a Utah corporation, hereinafter referred to as “Hampton Inn”, STATION PARK CENTERCAL, LLC, hereinafter referred to as “Centercal” and LAGOON CORPORATION, INC., a Utah corporation, hereinafter referred to as “Lagoon”.

WITNESSETH:

WHEREAS, Hampton Inn, Centercal, Lagoon, and the City are in need of public transportation routes within areas in the City and each desire to assist in the funding of approximately twenty-five percent of the operating costs of such routes; and

WHEREAS, the Authority is a public transit district that operates transit vehicles within and around Farmington City, among other areas; and

WHEREAS, the parties have determined that it is in their best interests to work together to provide additional transit service, including a shuttle bus service, within Farmington City, servicing facilities owned by Hampton Inn, Centercal, and Lagoon (the “Farmington Service”); and

WHEREAS, the City is willing to make an outright grant to the Authority in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00) from the General Fund to help defray the costs of operating the Farmington Service from downtown Farmington City to the drop-off area on the frontage road at Lagoon and to the Hampton Inn, Centercal’s Station Park facilities, and FrontRunner commuter rail station in Farmington; and

WHEREAS, Hampton Inn has agreed to make an outright grant to the Authority in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00) to help defray the costs of operating the Farmington Service; and

WHEREAS, Centercal has agreed to make an outright grant to the Authority in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00) to help defray the costs of operating the Farmington Service; and

WHEREAS, Lagoon has agreed to make an outright grant to the Authority in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00) to help defray the costs of operating the Farmington Service..

NOW, THEREFORE, in consideration of the mutual covenants, condition and promises as hereinafter set forth, it is mutually agreed as follows:

1. Term. The term of this Agreement shall commence on the 28<sup>th</sup> day of March, 2015, and run through the 30<sup>th</sup> day of October, 2015.

2. Authority's Responsibilities.

(a) The Authority shall operate the Farmington Service as part of its public transit operations further described herein.

(b) The Authority, during the term of this Agreement and while the bus equipment is in its possession, shall have absolute and exclusive control of such equipment. The Authority will employ and have control and supervision over the drivers of said bus equipment and the City, Hampton Inn, Centercal, and Lagoon shall not in any manner interfere therewith the daily operation of the bus system.

(c) The Authority shall maintain and keep said bus equipment in good running condition at all time during the term of this Agreement, and shall, without additional cost to the City, Hampton Inn, Centercal, or Lagoon, furnish all necessary labor, material, parts and supplies to keep said equipment in good running condition, including any and all necessary repair as a result of or by accidental damage, collision or the elements, ordinary wear and tear excepted.

(d) The Authority shall collect no fares for this service. However, the Authority shall be entitled to one hundred percent (100%) of any advertising revenues generated from advertising located on or about the buses operated as part of the Farmington Service.

3. City's Responsibilities. The City covenants and agrees to pay the Authority, the proceeds of which shall be used solely to help defray the expenses of operating the Farmington Service, a grant in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00). Payment of the grant shall be made in two (2) equal payments: Two-Thousand Seven-Hundred and Sixty-Eight Dollars (\$2,768.00) on or before May 31, 2015 and Two-Thousand Seven-Hundred and Sixty-Eight Dollars (\$2,768.00) on or before October 1, 2015.

4. Hampton Inn's Responsibilities. Hampton Inn covenants and agrees to pay the Authority, the proceeds of which shall be used solely to help defray the expenses of operating the Farmington Service, a grant in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00). Payment of the grant shall be made in two (2) equal payments: Two-Thousand Seven-Hundred and Sixty-Eight Dollars (\$2,768.00) on or before May 31, 2015 and Two-Thousand Seven-Hundred and Sixty-Eight Dollars (\$2,768.00) on or before October 1, 2015.

5. Centercal's Responsibilities. Centercal covenants and agrees to pay the Authority, the proceeds of which shall be used solely to help defray the expenses of operating the Farmington Service, a grant in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00). Payment of the grant shall be made in two (2) equal payments: Two-Thousand Seven-Hundred

and Sixty-Eight Dollars (\$2,768.00) on or before May 31, 2015 and Two-Thousand Seven-Hundred and Sixty-Eight Dollars (\$2,768.00) on or before October 1, 2015.

6. Lagoon's Responsibilities. Lagoon covenants and agrees to pay the Authority, the proceeds of which shall be used solely to help defray the expenses of operating the Farmington Service, a grant in the sum of Five-Thousand Five-Hundred and Thirty-Six Dollars (\$5,536.00). Payment of the grant shall be made in two (2) equal payments: Two-Thousand Seven-Hundred and Sixty-Eight Dollars (\$2,768.00) on or before May 31, 2015 and Two-Thousand Seven-Hundred and Sixty-Eight Dollars (\$2,768.00) on or before October 1, 2015.

7. Routes and Hours of Operation. The initial route for the operation of the Farmington Service shall be established by the Authority, as follows, and as more particularly outlined shown and described in Attachment 1.

(a) The Farmington Service will begin the 2015 season, weekends only, from Saturday, March 28, 2015 through Sunday, May 31, 2015. The Farmington Service will begin daily operation on Friday, June 5, 2015 and continue through Sunday, August 23, 2015. The Farmington Service will resume weekend only service, beginning with Saturday service on August 29, 2015 and Route 470 will begin Sunday service on August 30, 2015 and continue through Saturday, October 24 and Sunday, October 25, 2015 respectively. Additional service will be provided on Thursday and Friday October 15-16, 2015. On Monday May 25<sup>th</sup> (Memorial Day), Friday July 3<sup>rd</sup> (UTA Observed), Saturday, July 4<sup>th</sup> (Independence Day Holiday), Friday, July 24 (Pioneer Day), and on Monday September 7<sup>th</sup> (Labor Day), the Farmington Service will operate on a Saturday service schedule.

(b) The Farmington Service route will connect the bus stop at 45 E. State Street in Farmington with the FrontRunner Station at approximately 30-minute intervals with priority given to making connections with commuter trains. Anyone wishing to ride the Farmington Service from the Authority's regular Route 470 stops may do so at no charge to the riding party. The Authority's regular Route 455 and the Farmington Service will not operate on Sundays. The Authority's Route 470 will provide direct service to Lagoon on Sunday at the Lagoon Pioneer Village Campground entrance.

(c) The Authority hereby covenants and agrees to publish and distribute information regarding the route of the Farmington Service in the same manner that the Authority publishes and distributes written information regarding other public transportation routes operated by the Authority within the transit district. The buses shall operate on the day and at the times according to the schedule established by the Authority after consideration of any recommendations of the City.

8. Service Changes. If the Davis County School District announces a change in scheduled school days after to the effective date of this Agreement, Lagoon shall notify the Authority within 48 hours of the change. The Authority shall, at its discretion, modify the

Farmington Service schedule to include additional or reduced service, to reflect the change in school days. If additional service is warranted because of the school day changes, each of the City, Hampton Inn, Centercal, and Lagoon agree to pay an additional amount proportional to the cost specified in Paragraphs 3 and 4 on or before Friday, May 31, 2015. In the event reduced service is warranted and results in a decrease in operational costs for the Farmington Service, the Authority shall return to each of the other parties a proportional share of the reduced operational costs.

9. Labor Strike. In the event of a labor strike or threatened strike or interruption or threatened interruption by the operators of the buses or the persons performing the cleaning, maintenance and repair of the buses or other Authority employees, the authority shall take such action in respect to the system as it deems in its best interest (including the termination of this Agreement), considering the safety of its passengers, the protection of its buses and transit equipment, and its ability to pay consistent with its other transit operations within the public transits district known as Utah Transit Authority.

10. Indemnification. Each of the parties and Lagoon hereby covenant and agree to indemnify and hold harmless the other parties to this Agreement from and against any and all claims, causes of action, liability, damages, costs and expenses which said parties may incur or which may be asserted against any of the other parties as the result of the failure of such party to perform its obligations hereunder,. The Authority and the City are governmental entities under the Governmental Immunity Act of Utah, Utah Code Ann, § 63G-7-101, et seq. Consistent with and as limited by the terms of this Governmental Immunity Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which it commits or which are committed by its agents, officials, or employees. No party waives any defenses otherwise available under the Governmental Immunity Act; and the parties specifically do not waive any defenses or assertions as to third parties.

11. Notice or Demands. Any notice or demand to be given by one party to the other shall be given in writing per personal service, express mail, Federal Express, or any other similar form of courier or delivery service, or mailing in the United States Mail, postage prepaid, certified, return receipt requested and addressed to such party as follows:

If to the City:  
Dave Millheim  
Farmington City Manager  
130 North Main Street  
Farmington, Utah 84025

Hampton Inn:  
Shreya Management Inc.  
Hampton Inn  
332 W. Park Lane  
Farmington, Utah 84025

If to Centercal:  
J. David Anderson  
Centercal, LLC  
140 N. Union Ave.  
Farmington, Utah 84025

If to Lagoon:

David Freed  
Lagoon Corporation  
P.O. Box 696  
Farmington, Utah 84025

If to UTA:

Utah Transit Authority  
ATTN: Jolene Higgins  
669 West 200 South  
Salt Lake City, Utah 84101

Either party may change the address at which such party desires to receive notice on written notice of such change to any other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

12. Project Manager. The Authority's project Manager for this Agreement shall be Mr. Trevan Blaisdell, or designee. All correspondence regarding the technical aspects of this Agreement should be addressed to Mr. Blaisdell, or designee.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

UTAH TRANSIT AUTHORITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael A. Allegra  
General Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
D. Eddy Cumins  
Ogden Regional General Manager

ATTEST:

FARMINGTON CITY CORPORATION

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

ATTEST:

SHEYRA MANAGEMENT, INC.

\_\_\_\_\_ Date: \_\_\_\_\_ *Leena Akh* Date: 3/27/15

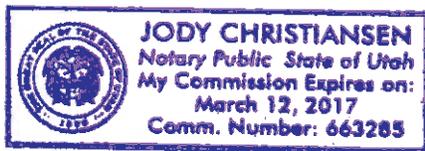
Station Park CenterCal, LLC,  
a Delaware limited liability company

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

By: CenterCal, LLC,  
a Delaware limited liability company  
Its: Sole Member

By: CenterCal Associates, LLC,  
a Delaware limited liability company  
Its: Manager

By: \_\_\_\_\_  
Jean Paul Wardy, as Trustee of the Wardy  
Family Trust, u/d/t December 13, 2007,  
Managing Member



ATTEST:

*Jody Christiansen* Date: 3-27-15

LAGOON CORPORATION, INC.  
*[Signature]* Date: 03/27/15

Approved As To Form:

\_\_\_\_\_  
UTA Legal Counsel

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

UTAH TRANSIT AUTHORITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael A. Allegra  
General Manager

By: \_\_\_\_\_ Date: \_\_\_\_\_  
D. Eddy Cumins  
Ogden Regional General Manager

ATTEST:

FARMINGTON CITY CORPORATION

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

ATTEST:

SHEYRA MANAGEMENT, INC.

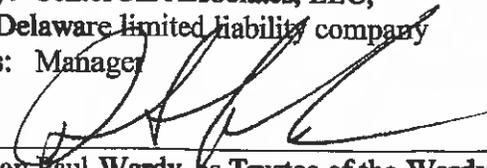
\_\_\_\_\_ Date: \_\_\_\_\_ Date: \_\_\_\_\_

Station Park CenterCal, LLC,  
a Delaware limited liability company

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

By: CenterCal, LLC,  
a Delaware limited liability company  
Its: Sole Member

By: CenterCal Associates, LLC,  
a Delaware limited liability company  
Its: Manager

By:   
Jean Paul Wardy, as Trustee of the Wardy  
Family Trust, u/d/t December 13, 2007,  
Managing Member

ATTEST:

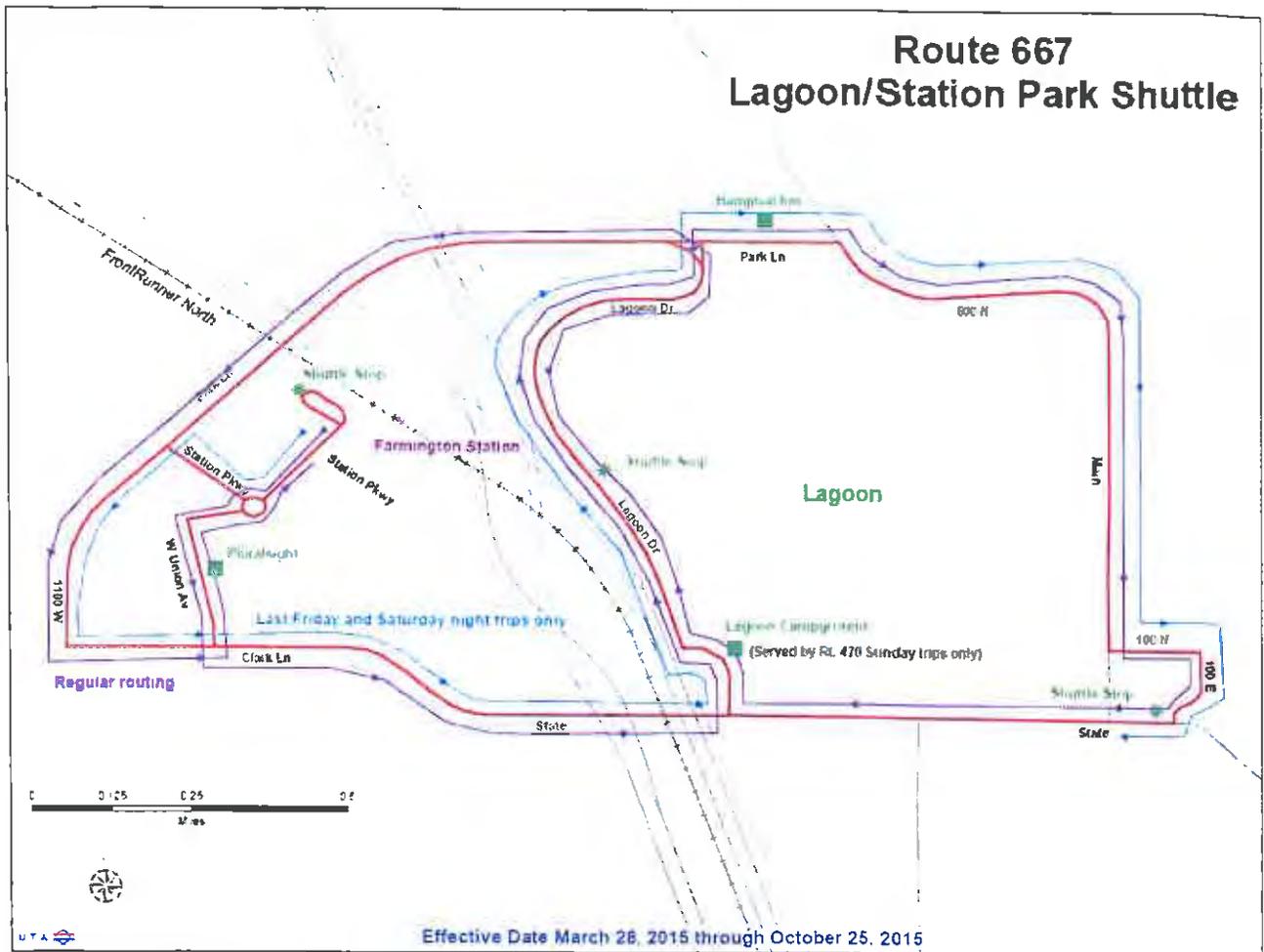
LAGOON CORPORATION, INC.

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

Approved As To Form:

\_\_\_\_\_  
UTA Legal Counsel

ATTACHMENT 1 TO SERVICE AGREEMENT



## ATTACHMENT 2 TO SERVICE AGREEMENT

OPERATING SCHEDULE						
MARCH 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
23	24	25	26	27	28	29
APRIL 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			
MAY 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31
JUNE 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					
JULY 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

**SCHEDULE**

Pre Season: March 28 – May 31  
 Summer Season: June 5 – August 23  
 Post Season: August 23 – September 13  
 Frightmares: September 18 – October 30

Campground Opens: May 1 – October 25

Entrance Gates: Open 20 minutes prior to park scheduled opening  
 Pioneer Village: Closes 1 hour prior to park posted closing

AUGUST 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
31 CLOSED					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
SEPTEMBER 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				
OCTOBER 2015						
MON	TUE	WED	THUR	FRI	SAT	SUN
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

DW/J 02/26/2015



# FARMINGTON CITY

H. JAMES TALBOT  
MAYOR

DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council

From: Eric Anderson, Associate City Planner

Date: April 6, 2015

SUBJECT: LETTER OF CONCURRENCE AND MATCH AGREEMENT – WFRC LOCAL PLANNING RESOURCE GRANT

### RECOMMENDATION

Approve the WFRC letter of concurrence and match agreement for the joint Kaysville and Farmington Bicycle Active Transportation Plan grant for the amount of \$6250.00.

### BACKGROUND

Kaysville and Farmington applied for a joint grant with WFRC to do a bicycle infrastructure plan in coordination between the two cities. The grant was awarded by WFRC last month, and now staff would like to move forward with getting this plan completed. The first step in receiving the funds and getting the active transportation plan completed is that both municipalities need to have their respective mayors sign the letter of concurrence. Kaysville City is reviewing the letter and will likely have it signed on April 7, 2015.

Respectfully Submitted

Eric Anderson  
Associate Planner

Review & Concur

Dave Millheim  
City Manager



## LETTER OF CONCURRENCE AND MATCH AGREEMENT

This Letter of Concurrence represents a formal agreement between the Wasatch Front Regional Council and the Cities of Kaysville and Farmington for the information below, consistent with the application submitted by the Cities of Kaysville and Farmington to WFRC for assistance through the Local Planning Resource Program.

### PROJECT INFORMATION

Project Title:	<u>Kaysville and Farmington Bicycle Active Transportation Plans</u>	
Project Manager:	<u>Lyle Gibson (Primary)</u>	<u>Eric Anderson</u>
Manager Email:	<u>lgibson@kaysvillecity.com</u>	<u>eanderson@farmington.utah.gov</u>
Manager Phone:	<u>801-546-7573</u>	<u>801-939-9220</u>

VALUE OF AWARDED PROGRAM RESOURCES \$40,000

### MATCH AGREEMENT

Cash Amount: Kaysville City Match: \$6,250  
 Farmington City Match: \$6,250  
**Total Match: \$12,500**

In-Kind Staff Hours: 40 hours of staff time from each municipality

### GENERAL TIMELINE

Start Date: May 2015  
 End Date: July 2015

### SUMMARY OF DELIVERABLES

Kaysville City and Farmington City will be working in cooperation to plan for bicycle infrastructure and active transportation facilities. The process will include: 1. Data collection 2. Demand, Origin, & Destination Analysis 3. Concept Alternative Plans Development: classification system for bicycle infrastructure based on roadway types; maps illustrating potential bicycle active transportation facilities and routes; text describing the pros, cons, and challenges of each alternative; text assessing the ease or difficulty of implementing each alternative; cost estimate break down of right-of-way, design, and construction. 4. Preferred Alternative Development: identification of priority projects and additional detail regarding the preferred alternative 5. Final Plan Creation.

As part of this agreement, it is understood that the governing body of the Cities of Kaysville and Farmington will in earnest consider the final work products for adoption.

\_\_\_\_\_  
Steve A. Hiatt – Kaysville City Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jim Talbot – Farmington City Mayor

\_\_\_\_\_  
Date

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**WORK SESSION**

*Present: Mayor Jim Talbot, Council Members Doug Anderson, Brigham Mellor and Jim Young, City Manager Dave Millheim, Assistant City Manager Keith Johnson, City Development Director David Petersen, Associate City Planner Eric Anderson, City Recorder Holly Gadd and Recording Secretary Lara Johnson. Council members John Bilton and Cory Ritz were excused.*

**Dave Millheim** stated that, due to the number of council members absent, any action item must be unanimous otherwise the item will be automatically tabled. He also said the proposed site plan for the future park and gym will be presented to the Council. He is seeking approval on the recommended priority list, as shown in the staff report, so the City can move forward with obtaining bids. Up until this point, the City has not requested bids to finalize budgetary numbers as it has not been finalized what will be bid upon.

**Dustin Wessell**, from Design West Architects, presented the site plan for the park and gym. Some of the features for the park include walkable paths around the entire site, pedestrian walkways from the gym to the park, a south side drop-off to the gym to deter drop-offs on 650 W., a bowery that will include a stage element, basketball courts, restrooms, storage areas, soccer fields and baseball fields with a raised score keeper and dugouts. **Neil Miller**, Director of the Parks and Recreation department, also mentioned the Trails Committee would like to be on the advisory committee for the trail system that will connect the park to the current trails system to ensure the current habitat is supported.

**Brent Tippetts**, from VCBO Architects, presented the plans for the gym. Some of the features for the gym include basketball courts that may total up to 18 baskets to be utilized, drop down curtain dividers to allow a better multi-use ability, collapsible bleachers that could hold approximately 800 people, an upper level walking/jogging track, reception control, restrooms and an office area for staff. He also pointed out that the courts will also be lined for volleyball and pickle ball. He said there are open areas near the walking/jogging track where a limited amount of exercise equipment may also be placed in the future. He discussed the elevations of the building. **Brent Tippetts** also said they were charged with the task to ensure expansion is an option. Although it is not currently in the plans, opportunities to expand are possible with the layout. Some of the expansion that could take place may include racquetball courts, formal locker rooms, space for cardio, and more.

**Neil Miller** presented the recommended priority list for Phase I of the park, as shown in the staff report. **Dave Millheim** said the purpose of the priority list is to determine what the Council feels is most critical to be built out first, then obtain bids. Once bids are obtained, it will be easier to make adjustments based on the budget.

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**REGULAR SESSION**

*Present: Mayor Jim Talbot, Council Members Doug Anderson, Brigham Mellor and Jim Young, City Manager Dave Millheim, Assistant City Manager Keith Johnson, City Development Director David Petersen, Associate City Planner Eric Anderson, City Recorder*

*Holly Gadd and Recording Secretary Lara Johnson. Council members John Bilton and Cory Ritz were excused.*

**CALL TO ORDER:**

**Roll Call (Opening Comments/Invocation/Pledge of Allegiance)**

The invocation was offered by City Council member **Doug Anderson** and the Pledge of Allegiance was led by a local Boy Scout **Dawson Thomas** from Troop 1114.

**REPORTS OF COMMITTEE/MUNICIPAL OFFICERS**

**Festival Days Theme, Logo and Grand Marshal Recommendation**

**Kristen Harbertson**, 28 E. 930 N., is the 2015 Farmington Festival Days Chair. She said the Committee will continue the previous theme of “Faith\*Family\*Freedom\*Farmington” for the 2015 Festival Days. The Festival Days will be held July 6-11, 2015. She thanked the Mayor and City Council members for their support and participation in past activities. **Mayor Talbot** recognized Mrs. Harbertson for her hard work and success with the Festival Days in past years.

**PUBLIC HEARINGS:**

**Plat Amendments for: A) Shepard Heights, B) Parkland Subdivision A C) Hidden Meadows Subdivision**

**Eric Anderson** said the three applicants are seeking to combine lots. State law requires the City notices surrounding property owners that will be affect by the change. If there are no protests to the change within 10 days, a public hearing is not required. **Dave Millheim** asked if any protests have been presented. **Eric Anderson** said City is not aware of any protests at this time.

***Mayor Jim Talbot opened the public hearing at 7:22 p.m.***

No comments were received.

***Mayor Jim Talbot closed the public hearing at 7:22p.m.***

**Mayor Talbot** entertained a motion as there were not any protests to the change.

***Motion:***

**Brigham Mellor** made a motion that the City Council approve the proposed plat amendments as set forth therein. **Jim Talbot** seconded the motion which was unanimously approved.

**OTR Garage Width Amendment**

**David Petersen** provided a history for the OTR (Original Townsite Residential) zone. He said each decade is represented within the zone dating back to the year 1850. He said over half of the lots (or approximately 180 lots) are less than 85' in width, with many of the lots as 70'-75' in width. This provides challenges based on the Zoning Ordinance, specifically with regards to garages. **David Petersen** provided information on each garage type and the approximate percentage found within the OTR zone. Now that garages are standard for homes, the Planning Commission previously set a standard that a garage could not take up more than 33% of the front plane of the home; however, with a narrow lot and the side setbacks as set forth in the ordinance, it is nearly impossible for a homeowner to have a 2 car garage that is flush with the home. **David Petersen** explained the discussion the Planning Commission had and their desire for the Historic Preservation Commission's input as the Planning Commission did not want to compromise the look and feel of the City's downtown. The Historic Preservation Commission did not want to compromise the area as well, but proposed for each 1½' the garage is recessed (set back), the homeowner could increase the front plane of the home standard 1% point. The Planning Commission liked the concept; but decided 1% point increase per 1' set back seemed reasonable, up to 40% of the front plane of the home. **Dave Millheim** asked an approximate number of homes may apply this rule change based on the existing housing stock. **David Petersen** said he does not feel it will be a significant impact as there may only be 10 homes a decade.

**Mayor Talbot** feels this is an important issue to address as it is typically the standard for homes to now have 2 car garages for their personal use and for the resale value of the home.

*Mayor Jim Talbot opened the public hearing at 7:38 p.m.*

No comments were received.

*Mayor Jim Talbot closed the public hearing at 7:38 p.m.*

The Council had no further discussion on the item.

***Motion:***

**Doug Anderson** made a motion that the City Council approve the enclosed ordinance, as recommended by the Planning Commission on March 5, 2015, amending Sections 11-17-050-(b) and 11-17-040 (1) regarding attached garage percentage standards for narrower lots less than 85 feet in width from 33 percent to 40 percent so long as for every percentage point increase in garage width as a percentage of the whole over 33 percent, the owner causes the garage to be set back (or recessed) 1.0 foot from the front plane of the home, and change both side setbacks to 10 feet. **Brigham Mellor** seconded the motion which was unanimously approved.

**Findings:**

1. Farmington's original town site is characterized by an extremely diverse array of housing styles representative of each decade dating back to the 1850's. This adds to the fine architectural grain and unique sense of place indicative of this area.
2. Historically, and even today, very few attached front facing garages (which often dominate the front façade of a residential dwelling) exist in central Farmington as compared to other more recently developed areas of the community.
3. These and other urban design attributes create an inviting place for walking/pedestrian activities in the downtown core, including all the social, environmental, and public health benefits which accompany such activities.
4. In support of the foregoing, a previous Planning Commission recommended that attached garages eve/flush with the main part of the home (not encroaching into the front yard) shall not exceed 33% of the entire front plane of the dwelling (which includes the garage).
5. A large number of lots in the original town site are less than 85' wide, and the Zoning Ordinance allows for lots down to 70' in width.
6. A two-car garage is a typical size found in residential neighborhoods.
7. Lots less than 85 feet in width cannot accommodate an attached two-car garage even with the front plane of the home and meet the 33% standard.
8. Increasing the garage standard up to 40% as a percentage of the entire front for dwellings on narrower lots (under certain conditions set forth herein) will better accommodate two-car garages, but at the same time aide in preserving the ambiance of downtown. It represents an acceptable compromise for two competing issues: 1) the owner's desire for garage space, and 2) maintaining and preserving the characters of the built environment of the downtown area.

#### **DISCUSSIONS:**

#### **Approval of Park Master Plan and Gym Design and the Priority List of Items to Build in the Park and the Budget Resources and use of Funds for the Park and Gym and other Related Projects.**

**Mayor Talbot** said this subject was presented to the Council during the Work Session and the discussion is now being continued during this meeting. **Dave Millheim** suggested voting on Items 1 (Park Master Plan and Gym Design) and 2 (Priority List) as those points were thoroughly presented and discussed.

**Mayor Talbot** briefly reviewed the discussion that took place on Items 1 and 2. **Dave Millheim** said that the City will have to take the Master Plan through Planning Commission and City Council approval; however, before that can happen, it must first be determined what that plan will look like for the application. An open house will be held April 9, 2015 during the afternoon with a public hearing that night during the Planning Commission meeting to ensure the residents have an opportunity for input, but the City should not notice those meetings until a vote on the park and gym proposal first takes place.

#### ***Motion:***

**Jim Young** made a motion that the City Council adopt the park master plan and gym design as thoroughly reviewed and recommended by the park review committee and our professional staff and adopt the priority list of what we want to see built based on budgetary restraints. **Doug Anderson** seconded which was unanimously approved.

**Keith Johnson**, the Assistant City Manager, continued the park and gym discussion. He said based on rough estimates provided by Hogan Construction, it would take a total of \$14-15 million to build the park and gym in its entirety. **Keith Johnson** presented what the City estimates it will have to put toward the park and gym's development and future uses of the budget as outlined in the staff report. He pointed out that based on just the priority list, as voted upon, the City can only spend approximately \$10 million on the park and gym's development. **Mayor Talbot** also mentioned that bids have not yet been obtained so all numbers are estimations at this time.

**Brigham Mellor** expressed concern that things may not be included in the plans as something may cost more initially, but may end up saving more in the long run. **Dave Millheim** assured the Council that the architects and project managers are aware of the budget and are working to balance practical applications with long term maintenance. At this point, nothing is set in stone; he requested the priorities for the design be set so the design can be sent out to bid. Once the hard bids come back on the voted priority list, **Dave Millheim** said the discussion about how to stretch available dollars will take place.

**Keith Johnson** outlined the other related projects the City has going on, which include prep work for the park and gym, improvements along 1100 West, the 1100 West culvert and the 1100 West from the proposed school to Glover Lane. The Council discussed some of the possibilities for additional assistance from the School District with some of the upcoming projects, although nothing has been solidified.

**Mayor Talbot** recommended the budget be voted upon.

***Motion:***

**Brigham Mellor** made a motion that the City Council approve the budget sources and uses for the park and gym and related projects in reference to the staff report. **Doug Anderson** seconded the motion which was unanimously approved.

**SUMMARY ACTION**

**Minute Motion Approving Summary Action List**

1. One-Two Year Extension for the Lease with CRS Engineers
2. Parkwalk Downs Final Plat
3. Approval of Minutes from March 3, 2015
4. Ratification and Approval of the Storm Water Bond Log
5. Arbor Day Proclamation

**Mayor Talbot** said it was originally proposed that two-two year extension for the lease with CRS Engineers be voted upon; however, he feels one extension for now is appropriate. With proper notice, he said another may be added in the future.

***Motion:***

**Jim Young** made a motion to approve the items on the Summary Action List. **Doug Anderson** seconded the motion which was unanimously approved.

**GOVERNING BODY REPORTS:**

**City Manager – Dave Millheim**

- The Executive Summary for the Planning Commission meeting held on March 5, 2015 was in the staff report.
- The Building Activity Report for February was also in the staff report.
- He requested a special meeting be scheduled to approve the Final Plat for Cabela's site plan. Cabela's deadline is April 1<sup>st</sup>; however, the City Council will not meet again until after that deadline. **Mayor Talbot** requested that this is the only item of the meeting to limit the time the Council members are away for an additional evening. The meeting was scheduled on March 24, 2015 at 6 p.m.
- He discussed the Emergency Management Institute Training. It is sponsored by FEMA, takes place in rural Maryland and last for five days. FEMA has agreed to tailor an emergency exercise specific to Davis County to provide realistic training for city employees and elected officials. The dates will be June 21<sup>st</sup>-26<sup>th</sup>. He asked for the Council to let him know if they are interested in attending the training.

**Council Member Jim Young**

- He discussed the nomination for Frank and Barbara Frodsham as the 2015 Farmington Festival Days Parade Grand Marshal. The Council members agreed that the Frodsham's were deserving of the nomination as they have continually serve the less-fortunate in the community as well as much more.

***Motion:***

**Jim Young** made a motion that the City Council accept the nomination for Frank and Barbara Frodsham as the Parade Grand Marshal for the 2015 Farmington Festival Days. **Brigham Mellor** seconded the motion which was unanimously approved.

**Council Member Cory Ritz**

- Although he was unable to attend, he emailed his comments regarding the park and gym plans as presented. He expressed concern on the placement of the soccer fields (he prefers them to be located at the future Glover Ln. park), the placement of the gym

location (he prefers it to be located closer to the charter school) and assuming a future expansion of the park as the neighboring property owner is not interested in selling.

**Mayor Jim Talbot**

- He followed-up on those that plan to attend the Utah League of Cities & Towns Conference on April 8-10, 2015. **Brigham Mellor** and **Jim Young** said they both plan to attend; **Doug Anderson** will get back on his final decision. **John Bilton** and **Cory Ritz** will not be in attendance.
- The **Mayor** read Cynthia DeCoursey's letter of resignation as the City Council Recording Secretary. He thanked her for her hard work and contributions she made as the recording secretary.
- He asked for the Council's input to seek out a token that may be presented to people as a gift from Farmington. The Council agreed it would be a nice gesture and felt comfortable exploring possible tokens.

Council members Doug Anderson, John Bilton, and Brigham Mellor did not have anything to report at this time.

**CLOSED SESSION**

***Motion:***

At 8:43 p.m., **Brigham Mellor** made a motion to go into a closed meeting for property acquisition. **Doug Anderson** seconded the motion which was unanimously approved.

**Sworn Statement**

I, **Jim Talbot**, Mayor of Farmington City, do hereby affirm that the items discussed in the closed meeting were as stated in the motion to go into closed session and that no other business was conducted while the Council was so convened in a closed meeting.

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**Jim Talbot, Mayor**

***Motion:***

At 9:01 p.m., a motion to reconvene into an open meeting was made by **Brigham Mellor**. The motion was seconded by **Doug Anderson** which was unanimously approved.

**ADJOURNMENT**

***Motion:***

**Brigham Mellor** made a motion to adjourn the meeting. The motion was seconded by **Doug Anderson** which was unanimously approved; the meeting was adjourned at 9:26 p.m.

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**Holly Gadd**, City Recorder  
Farmington City Corporation

**REGULAR SESSION**

*Present: Mayor Jim Talbot, Council Members Doug Anderson, John Bilton, Brigham Mellor and Jim Young, City Manager Dave Millheim, Assistant City Manager Keith Johnson, City Development Director David Petersen, Associate City Planner Eric Anderson, City Recorder Holly Gadd and Recording Secretary Lara Johnson. Council member Cory Ritze was excused.*

**CALL TO ORDER:**

**Roll Call (Opening Comments/Invocation/Pledge of Allegiance)**

The invocation was offered by City Council member **John Bilton** and the Pledge of Allegiance was led by a local Boy Scout **Josh Harwood**.

**Brief Comments by City Manager Dave Millheim**

**Dave Millheim** thanked Norm Marshall for his attendance of tonight's meeting. He said Mr. Marshall was the author of the smart mobility modeling report for the West Davis Corridor. Mr. Marshall assisted the City in preparing a presentation for the Wasatch Front Regional Council meeting that will be held tomorrow, March 25, 2015. **Dave Millheim** said he is unsure what will result of the meeting with the Regional Council and UDOT; however, he hopes all appropriate and correct information that they plan to present will be used when evaluating the WDC.

**Norm Marshall**, president of the company Smart Mobility from Vermont, said he studied mathematics at Dartmouth; however, his main focus was modeling. He has worked with all different organizations, including the state of California in reviewing models for many of their cities. He said his skill set is unique and he remains independent which is why he is widely used across the country. **Mayor Talbot** thanked him for his assistance and looks forward to continuing working with him.

**CLOSED SESSION:**

***Motion:***

At 6:07 p.m., **Jim Young** made a motion to go into a closed meeting for property acquisition related to easements. **Doug Anderson** seconded the motion which was unanimously approved.

**Sworn Statement**

I, **Jim Talbot**, Mayor of Farmington City, do hereby affirm that the items discussed in the closed meeting were as stated in the motion to go into closed session and that no other business was conducted while the Council was so convened in a

closed meeting.

---

**Jim Talbot, Mayor**

***Motion:***

At 6:20 p.m., a motion to reconvene into an open meeting was made by **Jim Young**. The motion was seconded by **Doug Anderson** which was unanimously approved.

**RECOMMENDATIONS**

**Park Lane Commons Phase II (Cabela's) Final Plat and Street Cross-Section Modification**

**Dave Millheim** said if the Council chooses to approve this phase of the project tonight, the majority of the plat approval (and the entitlement phase) will be concluded. He said going forward after tonight's approvals, one of the requirements of the land purchase agreement between The Haws Companies and Cabela's will now be satisfied as their plat can be recorded. He also said the building elevations are currently being reviewed by the City.

**Dave Millheim** stated that the following three recommendations are before the Council this evening:

- A. Approve the Final Plat with a few conditions; however, condition #3 has been modified from the staff report that the easement for Cabela's Drive will end at the southern property line and condition #4 has been added that all future applications will follow the City's Regulating Plan.
- B. Approve the street cross-section modification for Cabela's Drive as it will be owned privately, but will be used publically.
- C. Approve the two easement access agreements which have been signed by the future property owner and endorsed by The Haws Companies.

**Scott Harwood** does not have any additional comments and thanked the City for moving these approvals forward. **Mayor Talbot** thanked the applicant for his contributions in bringing Cabela's to Farmington.

**Mayor Talbot** entertained motions for the three recommendations.

***Motion for Recommendation A:***

**John Bilton** made a motion that the City Council approve the Final Plat for the Park Lane Commons Phase II, subject to all applicable Farmington City ordinances and development standards and obtaining final site plan or development design approval from staff and the following conditions:

1. The building permit shall not be issued until the plat is recorded;
2. The “Cabela’s drive” ROW shall be amended to reflect the cross-section approved by City Council;
3. The plat will be allowed to be recorded when the Cabela’s Drive easement is executed to their south property line, with the easements as described by Farmington City;
4. Any future site applications will follow the Regulating Plan.

**Jim Young** seconded the motion which was unanimously approved.

Finding:

The proposed subdivision will ensure compliance by the applicant with City Ordinance in conjunction with concurrent approval for the Cabela’s site plan and allow for Lot 1 to be owned and maintained by Cabela’s.

***Motion for Recommendation B:***

**Doug Anderson** made a motion that the City Council approve the modified street cross-section for Cabela’s Drive. **John Bilton** seconded the motion which was unanimously approved.

Findings:

1. The modification of the street cross-section allows for a more walkable mixed use development to better accommodate the pedestrian while at the same time addressing the needs of the motorist.
2. The modification better meets the needs of the applicant and more fully reflects the easement agreement that is being entered into by Cabela’s with the City.

***Motion for Recommendation C:***

**Jim Young** made a motion that the City Council approve the two attached access agreements for the future Market Street ROW and the promenade which is an unnamed principal street (and access area) on the northern edge of the property which will be a common border between THC property and the Cabela’s parcel. **John Bilton** seconded the motion which was unanimously approved.

Finding:

Since neither property owners to the west and north of the Cabela’s site have identified future uses – these easement, access and improvement agreements specify

DRAFT

the known responsibilities of the City and Cabela's regarding future development and right of way responsibilities until such time as development might require modification and/or construction of potential public and private improvements.

## ADJOURNMENT

### *Motion:*

**John Bilton** made a motion to adjourn the meeting. The motion was seconded by **Doug Anderson** which was unanimously approved; the meeting was adjourned at 7:45 p.m.

---

**Holly Gadd**, City Recorder  
Farmington City Corporation



# FARMINGTON CITY

H. JAMES TALBOT  
MAYOR

DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL

DAVE MILLHEIM  
CITY MANAGER

WHEREAS, one in every 2,500 pregnancies are diagnosed with a congenital diaphragmatic hernia (CDH); and

WHEREAS, since 2000, it is estimated that over 500,000 babies have been born with CDH; however, only 50 percent of those babies survived; and

WHEREAS, CDH is as common as spina bifida and cystic fibrosis; however, very few people know about it or are aware of it; and

WHEREAS, 1,600 babies are born with CDH every year in the United States; and

WHEREAS, there are many people living in Utah who have been diagnosed with and have survived their CDH; although many families in Utah have endured the horrible pain and grief associated with the loss of loved ones with CDH; and

WHEREAS, those with CDH often endure multiple surgeries and possible medical complication beyond their diagnosis that include heart defects, pulmonary complications, gastric and intestinal problems, developmental delays, and may require respiratory and medicinal support for years; and

WHEREAS, raising awareness of this congenital defect will help bring about acceptance and support for those suffering with it and will help advocate for urgently needed medical research and advances;

Therefore, I proclaim April 19 as a Day of Congenital Diaphragmatic Hernia Awareness

---

H. James Talbot, Mayor

To Whom It May Concern:

I would like to formally request a proclamation for April 19, 2015 to be declared "A Day of Congenital Diaphragmatic Hernia Awareness".

Congenital Diaphragmatic Hernia (CDH) is a devastating birth defect that strikes 1600 babies each year (approximately 20 babies in Utah), taking the lives of 50%, or 800 babies lost. It occurs when the diaphragm fails to fully form, allowing abdominal organs into the chest cavity and preventing lung growth. The cause is unknown.

Congenital Diaphragmatic Hernia occurs as often as Spina Bifida and Cystic Fibrosis but has little awareness and even less research funding. Currently, we are supporting a bill in the US Senate, S.3396, to support more awareness and funding for CDH. You can learn more about CDH at [www.SaveTheCherubs.org](http://www.SaveTheCherubs.org)

CDH is a horrible birth defect that has affected my family greatly. In June 2007 our first child, a daughter, Evie, was born with CDH. She fought bravely but lost her battle with CDH after a short 14 hours. In February 2009, our second child, also a girl, Allyson was born with CDH. Allyson was the bravest and strongest little girl. She had 3 major surgeries and 4 hospitalizations in the first year of her life. Unfortunately after a 15 month battle that would test the mettle of any human, Allyson also lost her fight against CDH.

My story is not unique to the CDH community in general, or even the CDH community in Utah. There are many other families in our wonderful state that have similar stories.

My family is also part of CHERUBS, the world's first and largest CDH charity, CHERUBS, and we are working together with families in 5400 countries to raise awareness on April 19th by asking for proclamations, holding awareness events in many cities and wearing the CDH Awareness ribbon to tell the world about these babies and the need for research funding

Last year CHERUBS led families to reach out to our governors and mayors and together we gathered proclamations from 46 states for 2014 (including Utah) and 72 cities nationwide. Governor Herbert again declared April 19 A Day of Congenital Diaphragmatic Hernia for 2015.

I would be incredibly proud if you would sign a proclamation to help these babies and families. Utah also offers a unique support to the CDH community. Primary Children's Medical Center (PCMC) has an ECMO machine in the Neonatal ICU. ECMO is a blood oxygenating process that many CDH babies require. The ECMO machine at PCMC serves a five state area! That more than doubles the number of potential CDH babies treated in Utah each year.

My family and the families of all of the other CDH babies helped by Utah and PCMC very, very much appreciate your assistance for a proclamation for this year and for the support for families like ours.

Sincerely Yours,

Josh Hensley, CHERUBS Utah State Representative  
3276 Cedar Grove Lane  
Saratoga Springs, Utah 84045  
801-953-5622  
jhensley.cherubs@gmail.com

### STORM WATER BOND LOG

DATE	NAME	PERMIT	STORM WATER BOND
3/18	Oakwood Homes	11695	\$1,000.00
3/24	Larry's Pool & Spa	11683	\$1,000.00
3/25	Cook Builders	11713	\$1,000.00
3/25	Kent Nickell Construction	11689	\$1,000.00
3/31	Alan Money Bird	11692	\$1,000.00

## CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

### **S U B J E C T: City Manager Report**

1. Executive Summary for Planning Commission held on March 19, 2015
2. Fire Monthly Activity Report for February
3. Building Activity Report for March

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.



# FARMINGTON CITY

H. JAMES TALBOT  
MAYOR  
DOUG ANDERSON  
JOHN BILTON  
BRIGHAM N. MELLOR  
CORY R. RITZ  
JAMES YOUNG  
CITY COUNCIL  
DAVE MILLHEIM  
CITY MANAGER

## City Council Staff Report

To: Honorable Mayor and City Council  
From: David Petersen, Community Development Director  
Date: April 14, 2015  
SUBJECT: EXECUTIVE SUMMARY FOR PLANNING COMMISSION HELD ON MARCH 19, 2015

### RECOMMENDATION

No action required.

### BACKGROUND

The following is a summary of Planning Commission review and action on March 19, 2015 [note: four commissioners attended the meeting—Vice Chair Brett Anderson, Val Halford, Alex Leeman, and Heather Barnum.

3. Scott Harwood/The Haws Companies - Applicant is requesting a recommendation for approval of final plat for the Cabela's Subdivision (Park Lane Commons Phase II) consisting of 2 lots on 11.185 acres located at approximately Grand Avenue and Station Parkway in a GMU (General Mixed Use) zone. (S-3-15)

*Voted to approve the final plat as set forth in the staff report with changes to condition one as follows: "No building permit shall be issued until the plat is recorded and until a bond is posted for public improvements related to the site."*

*Vote: 4-0*

4. Russell Wilson/Symphony Homes (Public Hearing) -Applicant is requesting a recommendation for Schematic Plan approval for the proposed Pheasant Hollow Subdivision consisting of 15 lots on 4.55 acres located at approximately 700 South and 50 East in an R Zone. (S-2-14)

*Voted to recommend schematic plan approval for Alternative A, which includes a flag lot, sidewalk at the back of curb on both sides of the cul-de-sac (but stopping at the bulb), and a pocket park which borders the cul-de-sac and 700 South Street, subject to all of the conditions set forth in staff report including extensive requirements related to soil test*

*Vote: 4-0*

5. Scott Harwood/The Haws Companies - Applicant is requesting approval to change the location of a pylon sign related to the Park Lane Commons Project, and city staff is requesting input regarding a possible substantial amendment to the Supplemental Development Agreement related to the project.

*Voted to approve the proposed pylon sign relocation on their property 160 feet to the north of the spot as shown in the Development Agreement; and the majority of Commissioners suggested to staff that the proposed increase to the top sign cabinet area did not constitute a substantial change to the Agreement.*

*Vote: 3-1*

Respectfully Submitted



Eric Anderson  
Associate Planner

Review & Concur



Dave Millheim  
City Manager



# Farmington City Fire Department



## Monthly Activity Report

### February 2015



#### Emergency Services

**Fire / Rescue Related Calls:** 18

*All Fires, Rescues, Haz-Mat, Vehicle Accidents, CO Calls, False Alarms, Brush Fires, EMS Scene Support, etc...*

**Ambulance Related Calls:** 46 / Transported 20 (43%)

*Medicals, Traumatic Incidents, Transfers, CO Calls w/ Symptomatic Patients, Medical Alarms, etc...*

**Calls Missed / Unable to adequately staff:** 6

**Urgent EMS Related Response Times (AVG):** 4.6 Minutes GOAL 4 minutes or less (+.6min.)

**Urgent Fire Related Response Times (AVG):** 7.1 Minutes GOAL 4 minutes or less (+ 3.1min.)

#### PT Department Man-Hours (based on the following 28-day pay periods Feb 6<sup>th</sup> and Feb 20<sup>rd</sup>)

<b>Part-Time Shift Staffing:</b>	<b>1,419</b>	<b>Budgeted 1,344</b>	<b>Variance + 81</b>
<b>Part-Time Secretary:</b>	<b>80</b>	<b>Budgeted 80</b>	<b>Variance - 0</b>
<b>Part-Time Fire Marshal:</b>	<b>80</b>	<b>Budgeted 80</b>	<b>Variance - 0</b>
<b>Full-Time Captains:</b>	<b>N/A</b>	<b>48/96 Hour Schedule</b>	<b>Variances / Overtime +32</b>
<b>Full-Time Fire Chief:</b>	<b>N/A</b>	<b>Salary Exempt</b>	
<b>Training &amp; Drills:</b>	<b>134</b>		
<b>Emergency Callbacks:</b>	<b>89</b>	<b>FIRE 17 Hrs. / EMS 72 Hrs. (YTD) 330</b>	
<b>Special Event Hours:</b>	<b>26</b>	<b>(YTD) 26</b>	
<b>Total PT Staffing Hours:</b>	<b>1,828</b>	<b>(YTD) 3,709</b>	

#### Monthly Revenues & Grant Activity YTD

<b>Ambulance (JANUARY):</b>	<b>Prev. Month</b>	<b>Calendar Year</b>	<b>FY 2015</b>
Ambulance Services Billed (previous month):	\$30,960.69	\$82,050.64 YTD	\$384,888.05
Ambulance Billing Collected (previous month):	\$18,925.63	\$35,300.99 YTD	\$205,725.86
<b>Variances:</b>	<b>-\$12,035.06</b>	<b>-\$46,749.65 YTD</b>	<b>-\$179,162.19</b>
Collection Percentages:	61.1%	43.0%	53.5%

**Grants / Assistance / Donations**

**Grants Applied For:**

None \$0 \$4,200 YTD

**Grants / Funds Received / Awarded:**

None \$0 \$0 YTD

**Scheduled Department Training (To Include Wednesday Evening Drills) & Man Hours**

Drill # 1– Officers Monthly Meeting & Training: 6  
Drill #2– ADO-Aerial – Drill Nights & Saturday 35 Avg. Wednesday Night Drill Att.  
Drill #3– ADO-Aerial – Drill Nights & Saturday 35 FFD Personnel This Month: N/A  
Drill #4– EMS DRILL – Trauma w/ Dr. Fredrickson 14

**Other:** Ice Rescue Certification Training 44  
**Total Training / Actual Attended:** 134 351 YTD

**Fire Prevention & Inspection Activities**

**Business Inspections:** 6 QTY  
**Fire Plan Reviews & Related:** 12  
**Station Tours & Public Ed Sessions:** 13 24 YTD

**Health, Wellness & Safety Activities**

**Reportable Injuries:** 1 1 YTD  
**Physical Fitness / Gym Membership Participation %** 100%  
**Chaplaincy Events:** 1

**FFD Committees & Other Internal Group Status**

**Process Improvement Program (PIP) Submittals:** 1 0 YTD

**Active FFD Committees:** Emergency Medical Services (EMS), Apparatus & Equipment, Rescue/Heavy Rescue, Water, Rope & Related Equipment, Wildland Apparatus & Equipment, Health, Wellness & Safety, Charity / Fund Raiser, Fire Prevention & Pub-Ed, Haz-Mat, Building and Facilities.

**Additional Narrative:**

*Call volumes (and call-types) came in low compared to past trends, primarily due to light weather. Emergent EMS response times averaged 4.6 minutes and Emergent FIRE response times averaged 7.1 minutes. Six calls resulted in “no-staffing” or “short-staffing” of apparatus (on-duty crew attending to other calls and/or part-time staffing not available due to availability). 43% of all Ambulance calls resulted in transporting patients to Hospitals. Collections of revenues continue with little predictability due to collection & mandated billing variables. FFD exceeded the typical fulltime staffing hours due ADO-Aerial certification training, Ice Rescue training and Hiring sessions to fill vacant part-time positions. NOTE: FFD was only able to fill 2 of 4 vacant part-time positions due to under qualified applicants and/or qualified applicants testing with higher paying departments instead. The two new probationary hires are Scott Gall – New academy graduate and David Burningham – A couple of years of fire service experience. Evening drills held throughout the month focused on ADO-Aerial training with emphasis on certification evolutions and practical skills – Academy testing will take place mid-March. EMS training focused on Trauma care with Dr. Fredrickson. FFD received 30-day notice to remove EMS and Fire Apparatus from the building located on the west-side of Farmington (March 28 deadline). This will create a gap in our west-side protection and contingency plan as outlined in previous hazard assessments.*



Month of March 2015	BUILDING ACTIVITY REPORT - JULY 2014 THRU JUNE 2015				
RESIDENTIAL	PERMITS THIS MONTH	DWELLING UNITS THIS MONTH	VALUATION	PERMITS YEAR TO DATE	DWELLING UNITS YEAR TO DATE
<b>NEW CONSTRUCTION *****</b>					
SINGLE FAMILY	5	5	\$1,362,000.00	72	72
DUPLEX	0	0	\$0.00	0	0
MULTIPLE DWELLING	0	0	\$0.00	0	0
OTHER RESIDENTIAL	0	0	\$0.00	0	0
<b>SUB-TOTAL</b>	<b>5</b>	<b>5</b>	<b>\$1,362,000.00</b>	<b>72</b>	<b>72</b>
<b>REMODELS / ALTERATION / ADDITIONS *****</b>					
BASEMENT FINISH	4		\$65,158.00	28	
CARPORIT/GARAGE	0		\$0.00	6	
ADDITIONS/REMODELS	3		\$121,484.00	27	
SWIMMING POOLS/SPAS	2		\$75,000.00	10	
OTHER	20		\$177,950.00	86	
<b>SUB-TOTAL</b>	<b>29</b>		<b>\$439,592.00</b>	<b>157</b>	
<b>NON-RESIDENTIAL - NEW CONSTRUCTION *****</b>					
COMMERCIAL	1		\$225,000.00	2	
PUBLIC/INSTITUTIONAL	1		\$50,000.00	3	
CHURCHES	0		\$0.00	0	
OTHERS	1		\$500,000.00	2	
<b>SUB-TOTAL</b>	<b>3</b>		<b>\$775,000.00</b>	<b>7</b>	
<b>REMODELS / ALTERATIONS / ADDITIONS - NON-RESIDENTIAL *****</b>					
COMMERCIAL/INDUSTRIAL	3		\$510,000.00	21	
OFFICE	0		\$0.00	1	

PUBLIC/INSTITUTIONAL	0		\$0.00	0	
CHURCHES	0		\$0.00	0	
OTHER	0		\$0.00	1	
<b>SUB-TOTAL</b>	3		\$510,000.00	23	
<b>MISCELLANEOUS - NON-RESIDENTIAL *****</b>					
Demolitions @ Lagoon	2		\$11,000.00	30	
<b>SUB-TOTAL</b>	2		\$11,000.00	30	
<b>TOTALS</b>	42	5	\$3,097,592.00	289	72

CITY COUNCIL AGENDA

For Council Meeting:  
April 14, 2015

**SUBJECT: Mayor Talbot & City Council Reports**

1. Greg Wall Appointment to Historic Preservation Commission

NOTE: Appointments must be scheduled 14 days prior to Council Meetings; discussion items should be submitted 7 days prior to Council meeting.