

CONSTRUCTION SERVICES AGREEMENT

22-03556VW Bay Floor Striping and Recoating at Meadowbrook Building #3

This Construction Services Agreement is entered into and made effective as of the date of last signature below (the “Effective Date”) by and between UTAH TRANSIT AUTHORITY, a public transit district organized under the laws of the State of Utah (“UTA”), and CDC Restoration & Construction (“Contractor”).

RECITALS

- A. UTA desires to hire Contractor for Bay Floor Striping and Recoating at Meadowbrook Building #3 per the Specifications and Bid Schedule included in the RFP.
- B. On April 19, 2022, UTA issued Request for Proposal Package Number 22-03556VW “RFP”) encouraging interested parties to submit proposals to perform the services described in the RFP.
- C. Upon evaluation of the proposals submitted in response to the RFP, UTA selected Contractor as the preferred entity with whom to negotiate a contract to perform the Work.
- D. Contractor is qualified and willing to perform the Work as set forth in the Scope of Services.

AGREEMENT

NOW, THEREFORE, in accordance with the foregoing Recitals, which are incorporated herein by reference, and for and in consideration of the mutual covenants and agreements hereafter set forth, the mutual benefits to the parties to be derived herefrom, and for other valuable consideration, the receipt and sufficiency of which the parties acknowledge, it is hereby agreed as follows:

1. SERVICES TO BE PROVIDED

- a. Contractor shall perform all Work as set forth in the Scope of Services (Exhibit A). Except for items (if any) which this Contract specifically states will be UTA-provided, Contractor shall furnish all the labor, material and incidentals necessary for the Work.
- b. Contractor shall perform all Work under this Contract in a professional manner, using at least that standard of care, skill and judgment which can reasonably be expected from similarly situated professionals.
- c. All Work shall conform to generally accepted standards in the transit industry. Contractor shall perform all Work in compliance with applicable laws, regulations, rules, ordinances, permit

constraints and other legal requirements including, without limitation, those related to safety and environmental protection.

- d. Contractor shall furnish only qualified personnel and materials necessary for the performance of the Work.
- e. When performing Work on UTA property, Contractor shall comply with all UTA work site rules including, without limitation, those related to safety and environmental protection.

2. MANAGEMENT OF WORK

- a. Contractor's Project Manager will be the day-to-day contact person for Contractor and will be responsible for all Work, as well as the coordination of such Work with UTA.
- b. UTA's Project Manager will be the day-to-day contact person for UTA, and shall act as the liaison between UTA and Contractor with respect to the Work. UTA's Project Manager shall also coordinate any design reviews, approvals or other direction required from UTA with respect to the Work.

3. PROGRESS OF WORK

- a. Contractor shall prosecute the Work in a diligent and continuous manner and in accordance with all applicable notice to proceed, critical path schedule and guaranteed completion date requirements set forth in (or developed and agreed by the parties in accordance with) the Scope of Services.
- b. Contractor shall conduct regular meetings to update UTA's Project Manager regarding the progress of the Work including, but not limited to, any unusual conditions or critical path schedule items that could affect or delay the Work. Such meetings shall be held at intervals mutually agreed to between the parties.
- c. Contractor shall deliver monthly progress reports and provide all Contract submittals and other deliverables as specified in the Scope of Services.
- d. Any drawing or other submittal reviews to be performed by UTA in accordance with the Scope of Services are for the sole benefit of UTA, and shall not relieve Contractor of its responsibility to comply with the Contract requirements.
- e. UTA will have the right to inspect, monitor and review any Work performed by Contractor hereunder as deemed necessary by UTA to verify that such Work conforms to the Contract requirements. Any such inspection, monitoring and review performed by UTA is for the sole benefit of UTA, and shall not relieve Contractor of its responsibility to comply with the Contract requirements.
- f. UTA shall have the right to reject Work which fails to conform to the requirements of this Contract. Upon receipt of notice of rejection from UTA, Contractor shall (at its sole expense and without entitlement to equitable schedule relief) promptly re-perform, replace or re-execute the Work so as to conform to the Contract requirements.
- g. If Contractor fails to promptly remedy rejected Work as provided in Section 3.6, UTA may (without limiting or waiving any rights or remedies it may have) perform necessary corrective action using other contractors or UTA's own forces. Any costs reasonably incurred by UTA in such corrective action shall be chargeable to Contractor.

4. PERIOD OF PERFORMANCE

This Contract shall commence as of the Effective Date. This Contract shall remain in full force and effect

until all Work is completed in accordance with this Contract, as reasonably determined by UTA. Contractor shall complete all Work no later than March 30, 2023. This guaranteed completion date may be extended if Contractor and UTA mutually agree to an extension evidenced by a written Change Order. The rights and obligations of UTA and Contractor under this Contract shall at all times be subject to and conditioned upon the provisions of this Contract.

5. COMPENSATION

- a. For the performance of the Work, UTA shall pay Contractor in accordance with the payments provisions described in Exhibit B. Payments shall be made in accordance with the milestones or other payment provisions detailed in Exhibit B. If Exhibit B does not specify any milestones or other payment provisions, then payment shall be made upon completion of all Work and final acceptance thereof by UTA.
- b. To the extent that Exhibit B or another provision of this Contract calls for any portion of the consideration to be paid on a cost-reimbursement basis, such costs shall only be reimbursable to the extent allowed under 2 CFR Part 200 Subpart E. Compliance with federal cost principles shall apply regardless of funding source for this Contract.
- c. To the extent that Exhibit B or another provision of this Contract calls for any portion of the consideration to be paid on a time and materials or labor hour basis, then Contractor must refer to the not-to-exceed amount, maximum Contract amount, Contract budget amount or similar designation (any of these generically referred to as the “Not to Exceed Amount”) specified in Exhibit B (as applicable). Unless and until UTA has notified Contractor by written instrument designated or indicated to be a Change Order that the Not to Exceed Amount has been increased (which notice shall specify a revised Not to Exceed Amount): (i) Contractor shall not be obligated to perform services or incur costs which would cause its total compensation under this Contract to exceed the Not to Exceed Amount; and (ii) UTA shall not be obligated to make payments which would cause the total compensation paid to Contractor to exceed the Not to Exceed Amount.
- d. UTA may withhold and/or offset from payment any amounts reasonably reflecting: (i) items of Work that have been rejected by UTA in accordance with this Contract; (ii) invoiced items that are not payable under this Contract; or (iii) amounts Contractor owes to UTA under this Contract.

6. INCORPORATED DOCUMENTS

- a. The following documents hereinafter listed in chronological order, with most recent document taking precedence over any conflicting provisions contained in prior documents (where applicable), are hereby incorporated into the Contract by reference and made a part hereof:
 - 1. The terms and conditions of this Construction Services Agreement
 - 2. The Addendum 1 Supplemental Terms and Conditions for Construction Services. (including any exhibits and attachments hereto).
 - 3. Contractor's Proposal including, without limitation, all federal certifications (as

applicable);

4. UTA's RFP including, without limitation, all attached or incorporated terms, conditions, federal clauses (as applicable), drawings, plans, specifications and standards and other descriptions of the Construction Services;

b. The above-referenced documents are made as fully a part of the Contract as if hereto

7. **ORDER OF PRECEDENCE**

The Order of Precedence for this contract is as follows:

1. UTA Contract including all terms and conditions and attachments
2. Addendum 1 Supplemental Terms and Conditions for Construction Services
3. UTA Solicitation Terms
4. Contractor's Bid or Proposal including proposed terms or conditions

Any contractor proposed term or condition which is in conflict with a UTA contract or solicitation term or condition will be deemed null and void.

8. **INVOICING PROCEDURES**

- a. Contractor shall invoice UTA after delivery of all Goods and satisfactory performance of all Services. Contractor shall submit invoices to ap@rideuta.com for processing and payment. In order to timely process invoices, Contractor shall include the following information on each invoice:
 - i. Contractor Name
 - ii. Unique Invoice Number
 - iii. PO Number
 - iv. Invoice Date
 - v. Detailed Description of Charges
 - vi. Total Dollar Amount Due
- b. UTA shall have the right to disapprove (and withhold from payment) specific line items of each invoice to address non-conforming Goods or Services. Approval by UTA shall not be unreasonably withheld. Payment for all invoice amounts not specifically disapproved or offset by UTA shall be provided to Contractor within thirty (30) calendar days of invoice submittal.

9. **OWNERSHIP OF DESIGNS, DRAWINGS, AND WORK PRODUCT**

Any deliverables prepared or developed pursuant to the Contract including without limitation drawings, specifications, manuals, calculations, maps, sketches, designs, tracings, notes, reports, data, computer programs, models and samples, shall become the property of UTA when prepared, and, together with any documents or information furnished to Contractor and its employees or agents by UTA hereunder, shall be delivered to UTA upon request, and, in any event, upon termination or final acceptance of the Goods and Services. UTA shall have full rights and privileges to use and reproduce said items. To the extent that any deliverables include or incorporate preexisting intellectual property of Contractor, Contractor hereby grants UTA a fully paid, perpetual license to use such intellectual property for UTA's

operation, maintenance, modification, improvement and replacement of UTA's assets. The scope of the license shall be to the fullest extent necessary to accomplish those purposes, including the right to share same with UTA's contractors, agent, officers, directors, employees, joint owners, affiliates and Contractors.

10. USE OF SUBCONTRACTORS

- a. Contractor shall give advance written notification to UTA of any proposed subcontract (not indicated in Contractor's Proposal) negotiated with respect to the Work. UTA shall have the right to approve all subcontractors, such approval not to be withheld unreasonably.
- b. No subsequent change, removal or substitution shall be made with respect to any such subcontractor without the prior written approval of UTA.
- c. Contractor shall be solely responsible for making payments to subcontractors, and such payments shall be made within thirty (30) days after Contractor receives corresponding payments from UTA.
- d. Contractor shall be responsible for and direct all Work performed by subcontractors.
- e. Contractor agrees that no subcontracts shall provide for payment on a cost-plus-percentage-of-cost basis. Contractor further agrees that all subcontracts shall comply with all applicable laws.

11. KEY PERSONNEL

Contractor shall provide the key personnel as indicated in Contractor's Proposal (or other applicable provisions of this Contract), and shall not change any of said key personnel without the express written consent of UTA.

12. INFORMATION, RECORDS and REPORTS; AUDIT RIGHTS

Contractor shall retain all books, papers, documents, accounting records and other evidence to support any cost-based billings allowable under Exhibit B (or any other provision of this Contract). Such records shall include, without limitation, time sheets and other cost documentation related to the performance of labor services, as well as subcontracts, purchase orders, other contract documents, invoices, receipts or other documentation supporting non-labor costs. Contractor shall also retain other books and records related to the performance, quality or management of this Contract and/or Contractor's compliance with this Contract. Records shall be retained by Contractor for a period of at least six (6) years after completion of the Work, or until any audit initiated within that six-year period has been completed (whichever is later). During this six-year period, such records shall be made available at all reasonable times for audit and inspection by UTA and other authorized auditing parties including, but not limited to, the Federal Transit Administration. Copies of requested records shall be furnished to UTA or designated audit parties upon request. Contractor agrees that it shall flow-down (as a matter of written contract) these records requirements to all subcontractors utilized in the performance of the Work at any tier.

13. FINDINGS CONFIDENTIAL

Any documents, reports, information, or other data and materials delivered or made available to or prepared or assembled by Contractor or subcontractor under this Contract are considered confidential and shall not be made available to any person, organization,

or entity by Contractor without consent in writing from UTA. If confidential information is released to any third party without UTA's written consent as described above, contractor shall notify UTA of the data breach within 10 days and provide its plan for immediate mitigation of the breach for review and approval by UTA.

- a. It is hereby agreed that the following information is not considered to be confidential:
 - 1. Information already in the public domain.
 - 2. Information disclosed to Contractor by a third party who is not under a confidentiality obligation.
 - 3. Information developed by or in the custody of Contractor before entering into this Contract.
 - 4. Information developed by Contractor through its work with other clients; and
 - 5. Information required to be disclosed by law or regulation including, but not limited to, subpoena, court order or administrative order.

14. PUBLIC INFORMATION.

Contractor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Contractor's response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.

15. GENERAL INDEMNIFICATION

Contractor shall indemnify, hold harmless and defend UTA, its officers, trustees, agents, and employees (hereinafter collectively referred to as "Indemnitees") from and against all liabilities, claims, actions, damages, losses, and expenses including without limitation reasonable attorneys' fees and costs (hereinafter referred to collectively as "claims") related to bodily injury, including death, or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of the failure of such Contractor to conform to federal, state, and local laws and regulations. If an employee of Contractor, a subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable brings a claim against UTA or another Indemnitee, Contractor's indemnity obligation set forth above will not be limited by any limitation on the amount of damages, compensation or benefits payable under any employee benefit acts, including workers' compensation or disability acts. The indemnity obligations of Contractor shall not apply to the extent that claims arise out of the sole negligence of UTA or the Indemnitees.

16. INSURANCE REQUIREMENTS

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Utah Transit Authority in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those Stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

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

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$2,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Utah Transit Authority shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor".

3. Worker's Compensation and Employers' Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

a. Policy shall contain a waiver of subrogation against the Utah Transit Authority.

- b. This requirement shall not apply when a contractor or subcontractor is exempt under UCA 34A-2-103, AND when such contractor or subcontractor executes the appropriate waiver form.
- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
 - 1. On insurance policies where the Utah Transit Authority is named as an additional insured, the Utah Transit Authority shall be an additional insured to the full limits of liability purchased by the Contractor. Insurance limits indicated in this agreement are minimum limits. Larger limits may be indicated after the Contractor's assessment of the exposure for this contract; for their own protection and the protection of UTA.
 - 2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Utah Transit Authority, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to (Utah Transit Authority agency Representative's Name & Address).
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the State and with an "A.M. Best" rating of not less than A-VII. The Utah Transit Authority in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the Utah Transit Authority with certificates of insurance (on standard ACORD form) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be sent to ebix.com and received and approved by the Utah Transit Authority before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be emailed directly to Utah Transit Authority's insurance email address at insurancecerts@rideuta.com. The Utah Transit Authority project/contract number and project description shall be noted on the certificate of insurance. The Utah Transit Authority reserves the right to require complete, certified

copies of all insurance policies required by this Contract at any time. DO NOT SEND CERTIFICATES OF INSURANCE TO THE UTAH TRANSIT AUTHORITY'S CLAIMS AND INSURANCE DEPARTMENT.

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. Sub-contractors maintaining separate insurance shall name Utah Transit Authority as an additional insured on their policy. Blanket additional insured endorsements are not acceptable from sub-contractors. Utah Transit Authority must be scheduled as an additional insured on any sub-contractor policies.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by Claims and Insurance Department or the UTA Legal Services, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

17. OTHER INDEMNITIES

- a. Contractor shall protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all Claims of any kind or nature whatsoever on account of infringement relating to Contractor's performance under this Contract. If notified promptly in writing and given authority, information and assistance, Contractor shall defend, or may settle at its expense, any suit or proceeding against UTA so far as based on a claimed infringement and Contractor shall pay all damages and costs awarded therein against UTA due to such breach. In case any portion of the Work is in such suit held to constitute such an infringement or an injunction is filed that interferes with UTA's rights under this Contract, Contractor shall, at its expense and through mutual agreement between the UTA and Contractor, either procure for UTA any necessary intellectual property rights, or modify Contractor's services or deliverables such that the claimed infringement is eliminated.
- b. Contractor shall: (i) protect, release, defend, indemnify and hold harmless UTA and the other Indemnitees against and from any and all liens or Claims made or filed against UTA or upon the Work or the property on which the Work is located on account of any labor performed or labor, services, and equipment furnished by subcontractors of any tier; and (ii) keep the Work and said property free and clear of all liens or claims arising from the performance of any Work covered by this Contract by Contractor or its subcontractors of any tier. If any lien arising out of this Contract is filed, before or after Work is completed, Contractor, within ten (10) calendar days after receiving from UTA written notice of such lien, shall obtain a release of or otherwise satisfy such lien. If Contractor fails to do so, UTA may take such steps and make such expenditures as in its discretion it deems advisable to obtain a release of or otherwise satisfy any such lien or liens, and Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA in obtaining such release or satisfaction. If any non-payment claim

is made directly against UTA arising out of non-payment to any subcontractor, Contractor shall assume the defense of such claim within ten (10) calendar days after receiving from UTA written notice of such claim. If Contractor fails to do so, Contractor shall upon demand reimburse UTA for all costs incurred and expenditures made by UTA to satisfy such claim.

18. INDEPENDENT CONTRACTOR

Contractor is an independent contractor and agrees that its personnel will not represent themselves as, nor claim to be, an officer or employee of UTA by reason of this Contract. Contractor is responsible to provide and pay the cost of all its employees' benefits.

19. PROHIBITED INTEREST

No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by Contractor in this Contract or the proceeds thereof without specific written authorization by UTA.

20. CLAIMS/DISPUTE RESOLUTION

- a. "Claim" means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 6. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.
- b. Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.
- c. The parties shall attempt to informally resolve all claims, counterclaims and other disputes through the escalation process described below. No party may bring a legal action to enforce any term of this Contract without first having exhausted such process.
- d. The time schedule for escalation of disputes, including disputed requests for change order, shall be as follows:

Level of Authority	Time Limit
UTA's Project Manager/Contractor's Project Manager	Five calendar days
UTA's Director/Contractor Equivalent	Five calendar days
UTA's Chief Officer/Contractor Equivalent	Five calendar days

Unless otherwise directed by UTA's Project Manager, Contractor shall diligently continue performance under this Contract while matters in dispute are being resolved.

If the dispute cannot be resolved informally in accordance with the escalation procedures set forth above, than either party may commence formal mediation under the Juris Arbitration and

Mediation (JAMS) process using a mutually agreed upon JAMS mediator. If resolution does not occur through Mediation, then legal action may be commenced in accordance the venue and governing law provisions of this contract.

21. GOVERNING LAW

This Contract shall be interpreted in accordance with the substantive and procedural laws of the State of Utah. Any litigation between the parties arising out of or relating to this Contract will be conducted exclusively in federal or state courts in the State of Utah and Contractor consents to the jurisdiction of such courts.

22. ASSIGNMENT OF CONTRACT

Contractor shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Contract without prior written approval of UTA, and any attempted transfer in violation of this restriction shall be void.

23. NONWAIVER

No failure or waiver or successive failures or waivers on the part of either party in the enforcement of any condition, covenant, or article of this Contract shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party to enforce the same in the event of any subsequent breaches by the other party.

24. NOTICES OR DEMANDS

Any formal notice or demand to be given by one party to the other shall be given in writing by one of the following methods: (i) hand delivered; (ii) deposited in the mail, properly stamped with the required postage; (iii) sent via registered or certified mail; or (iv) sent via recognized overnight courier service. All such notices shall be addressed as follows:

If to UTA:
Utah Transit Authority
ATTN: Vicki Woodward
669 West 200 South
Salt Lake City, UT 84101

with a required copy to:
Utah Transit Authority
ATTN: Legal Counsel
669 West 200 South
Salt Lake City, UT 84101

If to Contractor:
CDC Restoration & Construction
Tom Sykes
130 East Gordon Lane
Salt Lake City, UT 84107

- a. 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. Either party may change the address at which such party desires to receive written notice by providing written notice of such change to any other party.

- b. Notwithstanding Section 23.1, the parties may, through mutual agreement, develop alternative communication protocols to address change notices, requests for information and similar categories of communications. Communications provided pursuant to such agreed means shall be recognized as valid notices under this Contract.

25. CONTRACT ADMINISTRATOR

UTA's Contract Administrator for this Contract is Vicki Woodward, or designee. All questions and correspondence relating to the contractual aspects of this Contract should be directed to said Contract Administrator, or designee.

26. INSURANCE COVERAGE REQUIREMENTS FOR CONTRACTOR EMPLOYEES

- a. The following requirements apply to the extent that: (i) the initial value of this Contract is equal to or in excess of \$2 million; (ii) this Contract, with subsequent modifications, is reasonably anticipated to equal or exceed \$2 million; (iii) Contractor has a subcontract at any tier that involves a sub-Contractor that has an initial subcontract equal to or in excess of \$1 million; or (iv) any subcontract, with subsequent modifications, is reasonably anticipated to equal or exceed \$1 million:
- b. Contractor shall, prior to the effective date of this Contract, demonstrate to UTA that Contractor has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Contractor's employees and the employee's dependents during the duration of this Contract.
- c. Contractor shall also demonstrate to UTA that subcontractors meeting the above-described subcontract value threshold have and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the subcontractor's employees and the employee's dependents during the duration of the subcontract.

27. COSTS AND ATTORNEYS FEES

If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys' fees, if any, incurred in connection with such suit, including on appeal

28. NO THIRD-PARTY BENEFICIARY

The parties enter into this Contract for the sole benefit of the parties, in exclusion of any third-party, and no third-party beneficiary is intended or created by the execution of this Contract.

29. FORCE MAJEURE

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

30. SEVERABILITY

Any provision of this Contract prohibited or rendered unenforceable by operation of law shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Contract.

31. UTAH ANTI-BOYCOTT OF ISRAEL ACT

Contractor agrees it will not engage in a boycott of the State of Israel for the duration of this contract.

32. ENTIRE AGREEMENT

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto. The terms of the Contract supersede any additional or conflicting terms or provisions that may be preprinted on Vendor's work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of Vendor that may subsequently be used to implement, record, or invoice Goods and/or Services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of UTA. The terms of the Contract prevail in any dispute between the terms of the Contract and the terms printed on any such standard forms or documents, and such standard forms or documents will not be considered written amendments of the Contract.

33. AMENDMENTS

Any amendment to this Contract must be in writing and executed by the authorized representatives of each party.

34. COUNTERPARTS

This Contract may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Any signature page of the Contract may be detached from any counterpart and reattached to any other counterpart hereof. The electronic transmission of a signed original of the Contract or any counterpart hereof and the electronic retransmission of any signed copy hereof shall be the same as delivery of an original.

35. SURVIVAL

Provisions of this Contract intended by their nature and content to survive termination of this Contract shall so survive including, but not limited to, Articles 5, 7, 8, 10, 14, 15, 17, 18, 19, 20, 23, 29 and 30.

UTAH TRANSIT AUTHORITY:

By: Date:
Cherryl Beveridge
Chief Operating Officer

By: Date:
Jay Fox
Executive Director

Approved as to Content and Form

By: Date: 9/22/2022
DocuSigned by:
Mike Bell
70E33A415BA44F6...
Mike Bell, AAG State of Utah
And UTA Legal Counsel

Reviewed & Recommended

By: Date:
Guy Miner,
Project Manager

CDC RESTORATION & CONSTRUCTION, L.C.:

By: Date: 9/22/2022
DocuSigned by:
Robbie Bennett
789240AEBAE4497...
Robbie Bennet for
Ralph Midgley, Managing Member

Fed ID#87-0500002

UTA Project Code 22-03556VW

Addendum 1- Supplemental Terms and Conditions for Construction

Bay Floor Stripe Recoating at Meadowbrook Building #3

ARTICLE 1

- 1.1 **Cooperation.** UTA and Contractor commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, so as to permit each party to realize the benefits afforded under the Contract Documents.
- 1.2 **Professional Standards.** Contractor shall perform the Work in a good and workmanlike manner, and shall use reasonable skill, care, and diligence. If the Work includes professional services, Contractor shall perform those services in a professional manner, using at least that standard of care, skill and judgment that can reasonably be expected from similarly situated professionals.
- 1.3 **Definitions.** Terms that are defined in the Agreement have the same definition in all the Contract Documents, including in these General Conditions. Unless expressly modified by the Agreement, the following definitions shall also apply to all Contract Documents:

“**Agreement**” means the document signed by Contractor and UTA to which these General Conditions are attached as an exhibit or into which these General Conditions are incorporated by reference.

“**Application for Payment**” shall mean an invoice for a progress or final payment made in accordance with the requirements of Article 4.

“**Basis of Design Documents**” means those preliminary drawings, concept design drawings, technical requirements, performance requirements, project criteria, or other documents that are (i) included in the Contract Documents, and (ii) serve as the basis or starting point for design services to be performed by Contractor, if any.

“**Claim**” has the meaning indicated in Section 8.1 of these General Conditions.

“**Construction Documents**” means the final drawings and specifications that set forth in detail the requirements for construction of the Project.

“**Contract Documents**” means those documents designated as Contract Documents in the Agreement.

“**Contract Times**” means the guaranteed dates for Substantial Completion, Final Completion (if applicable), and any other deadlines for completion of the Work, or a part thereof, all as set forth in the Agreement.

“**Contractor**” means the entity that has entered into a contract with UTA to perform construction and other services as detailed in the Contract Documents. The Contractor may

be a Design-Builder, general contractor, Construction Manager/General Contractor, or other type of entity.

“Day” means a calendar day unless otherwise specifically noted in the Contract Documents.

“Differing Site Condition” has the meaning indicated in Section 3.2 of these General Conditions.

“Final Completion” has the meaning indicated in Section 4.7 of these General Conditions.

“Force Majeure Event” means a delay caused by any national or general strikes, fires, riots, acts of God, acts of the public enemy, floods, acts of terrorism, unavoidable transportation accidents or embargoes, or other events: (i) which are not reasonably foreseeable as of the date the Agreement was executed; (ii) which are attributable to a cause beyond the control and without the fault or negligence of the party incurring such delay; and (iii) the effects of which cannot be avoided or mitigated by the party claiming such Force Majeure Event through the use of commercially reasonable efforts. The term Force Majeure Event does not include a delay caused by seasonal weather conditions, inadequate construction forces, general economic conditions, changes in the costs of goods, or Contractor’s failure to place orders for equipment, materials, construction equipment or other items sufficiently in advance to ensure that the Work is completed in accordance with the Contract Documents.

“General Conditions” means this document.

“Legal Requirements” means all applicable federal, state, and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work including, without limitation, those related to safety and environmental protection. The terms Legal Requirements shall also include any requirements or conditions included in a permit required for, or issued in conjunction with, the Project.

“Potential Change Notice” has the meaning indicated in Section 7.3 of these General Conditions.

“Project” means the construction project described in the Agreement.

“Punchlist” means shall mean a schedule of Work items (developed in accordance with the procedures described in Article 4) which remain to be completed prior to Final Completion, but which do not adversely affect the performance, operability, capacity, efficiency, reliability, cost effectiveness, safety or use of the Project after Substantial Completion.

“Schedule of Values” means the detailed statement furnished by Contractor and approved by UTA in accordance with Section 4.1, which statement outlines the various components of the Contract Price and allocates values for all such components in a manner that can be used for preparing and reviewing invoices.

“**Site**” means the land or premises on which the Project is located, as more particularly defined and described in the Contract Documents.

“**Subcontractor**” means any person or entity (including subcontractors at any tier, design engineers, laborers and materials suppliers) retained by Contractor or any other Subcontractor to perform a portion of Contractor’s obligations under the Contract Documents.

“**Substantial Completion**” or “**Substantially Complete**” has the meaning indicated in Section 4.6 of these General Conditions.

“**Work**” means all obligations, duties, requirements, and responsibilities for the successful completion of the Project by Contractor, including furnishing of all services and/or equipment (including obtaining all applicable licenses and permits to be acquired by Contractor) in accordance with the Contract Documents.

ARTICLE 2 **Contractor’s Services**

2.1 General Services.

- 2.1.1 Contractor’s Project Manager shall be reasonably available to UTA and shall have the necessary expertise and experience required to supervise the Work. Contractor’s Project Manager shall communicate regularly with UTA and shall be vested with the authority to act on behalf of Contractor.
- 2.1.2 Contractor shall provide UTA with a monthly status report detailing the progress of the Work, including: (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether unusual health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Contractor’s ability to complete the Work for the Contract Price and within the Contract Time(s).
- 2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Contractor shall prepare and submit, within seven (7) Days of the execution of the Agreement, a schedule for the execution of the Work for UTA’s review and response. The schedule must indicate the dates for the start and completion of the various stages of Work, including the required dates when UTA obligations must be completed to enable Contractor to achieve the Contract Time(s). Such UTA obligation dates may include (where contemplated in the Contract Documents): (i) Site availability requirements; and/or (ii) dates when UTA information or approvals are required. The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. UTA’s review of, and response to, the schedule shall not be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.2 Design Services. If the Work includes any design services, provisions 2.2.1 through 2.2.8 apply.

- 2.2.1 Contractor shall provide the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Contractor to complete the Work consistent with the Contract Documents. Contractor shall ensure that design services are performed by qualified, licensed design professionals employed by Contractor, or by qualified, independent licensed design Contractors procured by Contractor.
- 2.2.2 Contractor and UTA shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that UTA may wish to review, which setting forth the Project requirements. Interim design submissions must be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.2.2. On or about the time of the scheduled submissions, Contractor and UTA shall meet and confer about the submissions, with Contractor identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents shall be processed in accordance with Article 7. Minutes of the meetings, including a full listing of all changes, will be maintained by Contractor and provided to all attendees for review. Following the design review meeting, UTA will be entitled to at least ten (10) Days to review and approve the interim design submissions and meeting minutes.
- 2.2.3 To the extent not prohibited by the Contract Documents or Legal Requirements, and with the approval of UTA, Contractor may prepare interim design submissions and portion of the Work prior to completion of the Construction Documents for the entire Work.
- 2.2.4 Contractor shall submit proposed Construction Documents to UTA, which must be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and UTA shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.2.2 above. Contractor shall submit one set of approved Construction Documents to UTA prior to commencement of construction
- 2.2.5 UTA's review and approval of interim design submissions, meeting minutes, and Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither UTA's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to: (i) relieve Contractor from its obligations to comply with the Contract Documents; (ii) relieve Contractor from its obligations with respect to the accuracy of the design submittals; or (iii) transfer any design liability from Contractor to UTA.
- 2.2.6 Upon completion of the Work, and as a condition to receiving final payment pursuant to Section 4.7, Contractor shall prepare and provide to UTA a final set of as-built drawings, depicting the Project as completed, including all changes to the Project made subsequent to the approval of the Construction Documents.

- 2.2.7 All drawings, specifications, interim design submissions, Construction Documents, and other documents furnished by Contractor to UTA pursuant to the Contract Documents (those documents, the “Work Product”) are deemed to be instruments of service and Contractor shall retain the ownership and intellectual property rights therein.
- 2.2.8 Once UTA has made a corresponding payment for the Work required for Contractor to prepare any Work Product, Contractor will be deemed to have granted to UTA a license to use that Work Product in connection with the construction, occupancy, and maintenance of the Project, or any other UTA project or facility.

2.3 Government Approvals, Permits, and Legal Requirements.

- 2.3.1 Except where the Contract Documents expressly state that UTA will be responsible for a specific entitlement, Contractor shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project or Site. Contractor shall provide reasonable assistance to UTA in obtaining any permits, approvals, and licenses that the Contract Documents expressly specify to be a UTA responsibility.
- 2.3.2 Contractor shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 2.3.2 Contractor shall file a notice of commencement, a notice of completion, and other notices required by Utah Code Title 38 (Liens). Contractor shall file such notices in the manner and within the time periods required by law.
- 2.3.3 The Contract Price and/or Contract Time(s) will be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements provided that such changes: (i) materially increase Contractor’s cost of, or time required for, the performance of the Work; and (ii) are enacted after the effective date of the Agreement.

2.4 Construction Services.

- 2.4.1 Contractor shall proceed with construction in accordance with the approved Construction Documents.
- 2.4.2 Except to the extent that the Contract Documents expressly identify UTA obligations related to the Work, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities (whether or not expressly stated or depicted in the Contract Documents or Construction Drawings) to permit Contractor to complete construction of the Project consistent with the Contract Documents.
- 2.4.3 Contractor is responsible for securing the Site until UTA issues a Certificate of Substantial Completion.

- 2.4.4 Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences, techniques and procedures of construction.
- 2.4.5 Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take necessary precautions for the safety of, and shall provide necessary protection to prevent damage, injury or loss to the following: (i) all Contractor, Subcontractor, UTA employees, the public and other persons who may be affected thereby; (ii) all Work and all equipment and materials to be incorporated into the Work; and (iii) other property at the Site or adjacent thereto. Contractor shall comply with the minimum standards imposed by UTA's Construction Safety and Security Program Manual, as updated from time to time (UTA's Construction Safety and Security Program Manual is incorporated into the Contract Documents by reference). However, Contractor shall be responsible for all additional as necessary to comply protect persons and property and comply with applicable Legal Requirements related to safety.
- 2.4.6 Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. UTA may require Contractor to remove from the Project a Subcontractor or anyone employed directly or indirectly by any Subcontractor, if UTA reasonably concludes that the Subcontractor is creating safety risks at the Site or quality risks to the Project.
- 2.4.7 Contractor is responsible for the proper performance of the Work by Subcontractors and for any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between UTA and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.4.8 Contractor shall coordinate the activities of all of its Subcontractors. If UTA performs other work on the Project or at the Site with separate contractors under UTA's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.4.9 Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit UTA to occupy the Project or a portion of the Project for its intended use.

2.5 Quality Control, Quality Assurance, Inspection, Rejection and Correction of Work.

- 2.5.1 Contractor shall develop a Project-specific construction quality control plan as contemplated in UTA's Quality Management Plan and Construction Quality Plan. The

Contractor's plan shall satisfy the minimum requirement imposed by UTA's Construction Quality Plan and shall be sufficient to ensure that Work is performed in compliance with the Contract Documents. If the Work includes any design services, Contractor shall also develop and thereafter comply with a design quality plan that meets the minimum requirements set forth in the UTA Design Quality Plan. The UTA Quality Management Plan, Construction Quality Plan and Design Quality Plan are incorporated into the Contract Documents by reference. The Contractor's plans shall be subject to UTA's review and approval.

- 2.5.2 Contractor shall comply with the approved quality control plan(s). Responsibilities shall include inspection and testing and related activities including administration, management, supervision, reports, record keeping and use of independent testing agencies and laboratories. Contractor shall provide evidence of compliance with the Contract Documents.
- 2.5.3 UTA will have the right to audit and spot check the Contractor's quality control procedures and documentation. This will include the Company's right to inspect and test all Work at reasonable times. Contractor shall cooperate with any inspection and testing performed by UTA. All contractor-furnished materials and supplies shall be subject to inspection at the point of manufacture.
- 2.5.2 Any inspection and testing performed by UTA shall be for the sole and exclusive benefit of UTA. Neither inspection and testing of Work, nor the lack of same nor acceptance of the Work by UTA, nor payment therefore shall relieve Contractor from any of its obligations under the Contract Documents.
- 2.5.3 At any time prior to Substantial Completion, UTA may reject Work which fails to conform to the Contract Documents. Contractor shall, at its sole expense, promptly re-perform or correct any Work so as to conform to the requirements of the Contract. Contractor shall not be entitled to an adjustment to the Contract Price and/or Contract Times with respect to any corrective action necessary to rectify non-conforming Work.
- 2.5.4 If Contractor fails to promptly remedy rejected Work, UTA may, without limiting or waiving any other rights or remedies it may have, self-perform (through its own forces or through other contractors) the necessary corrective action(s) and deduct all amounts so incurred from any amount then or thereafter due Contractor.

2.6 **Contractor's Warranty.**

- 2.6.1 Contractor warrants to UTA that all Work, including all materials and equipment furnished as part of the Work, shall be: (i) of good quality conforming to generally recognized industry standards; (ii) in conformance with the Contract Documents; (iii) free of defects in materials and workmanship; and (iv) consistent with applicable Legal Requirements. Without limiting the generality of the forgoing, Contractor also specifically warrants that any design, engineering or other professional services provided by Contractor shall be shall satisfy applicable professional standards of care and that all materials and that any

equipment furnished as part of the construction shall be new (unless otherwise specified in the Contract Documents). This provision is not intended to limit any manufacturer's warranty that provides UTA with greater warranty rights than set forth in this Section 2.6. Contractor shall provide UTA with all manufacturers' warranties upon Substantial Completion. Similarly, nothing in this Article is intended to limit any other express warranties set forth in the Contract Documents or to limit any other warranties implied by law, custom or usage of trade.

- 2.6.2 If Contractor becomes aware of any defect in the Work, or non-conformance with the Contract Documents, Contractor shall give prompt written notice of that defect or non-conformance to UTA.
- 2.6.3 Except as otherwise stated in the Agreement, Contractor shall correct any Work that does not comply with the warranties provided above for a period of two years following the date of Substantial Completion.
- 2.6.4 Contractor shall, within seven (7) Days of receipt of written notice from UTA that the Work does not comply with the warranties provided above, take meaningful steps to commence corrective action, including the correction, removal, replacement or re-performance of the nonconforming Work and the repair of any damage to other property caused the warranty failure. If Contractor fails to commence the necessary corrective action within such seven (7) Day period (or thereafter fails to continuously and diligently pursue such corrective action to completion), UTA may (in addition to any other remedies provided under the Contract Documents) provide Contractor with written notice that UTA will self-perform (through its own forces or through other contractors) correction of the warranty failure at Contractor's expense. If UTA performs (or causes to be performed) such corrective action, UTA may collect from Contractor all amounts so incurred. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) Day period identified above shall be deemed inapplicable.
- 2.6.5 The two-year period referenced in Section 2.6.3 above only applies to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies UTA may have regarding Contractor's other obligations under the Contract Documents

ARTICLE 3 **Site Conditions**

3.1 Hazardous Materials.

- 3.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Contractor's Work, Contractor is not responsible for any Hazardous Materials encountered at the Site. "Hazardous Materials" means any substance that: (i) is deemed a hazardous waste or substance under any environmental law; or (ii) might endanger the health of people exposed to it.

- 3.1.2 If Contractor discovers at the Site any substance the Contractor reasonably believes to be a Hazardous Material, Contractor shall immediately stop Work in the area of the discovery and immediately report the discovery to the UTA Project Manager. UTA shall determine how to deal with the Hazardous Material, and Contractor shall resume Work in the area when directed to do so by the UTA Project Manager.
- 3.1.3 Contractor will be entitled to an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials.
- 3.1.4 The risk allocation and change provisions of Sections 3.1.1 through 3.1.3 do not apply to any Hazardous Materials introduced to the Site by Contractor, its Subcontractors, or anyone for whose acts Contractor is responsible. Those provisions also exclude Hazardous Materials that were properly stored and/or contained at the Site but thereafter released as a result of the Contractor's negligent performance of the Work. To the extent that Hazardous Materials are introduced and/or released at the Site by Contractor as described above in this Section 3.1.4, then: (i) to the fullest extent permitted by law, Contractor shall defend and indemnify UTA from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from such Hazardous Materials; and (ii) Contractor shall not be entitled to an extension of Contract Price and/or Contract Time(s).

3.2 Differing Site Conditions.

- 3.2.1 If Contractor encounters a Differing Site Condition, Contractor will be entitled to an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the Differing Site Condition. "Differing Site Condition" means concealed or latent physical conditions at the Site that: (i) materially differ from the conditions indicated in the Contract Documents; and (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.
- 3.2.2 Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to UTA of such condition, which notice shall not be later than five (5) Days after such condition has been encountered. Contractor shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

ARTICLE 4
Payment

4.1 Schedule of Values.

- 4.1.1 Unless required by UTA upon execution of this Agreement, within ten (10) Days of execution of the Agreement, Contractor shall submit for UTA's review and approval a Schedule of Values for all of the Work. The Schedule of Values will: (i) subdivide the

Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Contractor throughout the Work.

4.1.2 UTA will timely review and approve the Schedule of Values so as not to delay the submission of the Contractor's first application for payment. UTA and Contractor shall timely resolve any differences so as not to delay the Contractor's submission of its first application for payment.

4.2 Application for Payment.

4.2.1 To receive payment, Contractor shall submit to UTA an Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. Contractor shall not submit Applications for Payment more often than once per month. The Application for Payment must be accompanied by supporting documentation sufficient to establish, to UTA's reasonable satisfaction, Contractor's entitlement to receive payment.

4.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that: (i) UTA is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, UTA will receive the equipment and materials free and clear of all liens and encumbrances.

4.2.3 The Application for Payment will constitute Contractor's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all materials and equipment will pass to UTA free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the materials and equipment into the Project, or upon Contractor's receipt of payment, whichever occurs earlier.

4.3 Sales Tax Exemption

4.3.1 Purchases of certain materials are exempt from Utah sales tax. UTA will provide a sales tax exemption certificate to Contractor upon request. UTA will not pay Contractor for sales taxes for exempt purchases, and such taxes should not be included in Contractor's Application for Payment.

4.4 UTA's Payment Obligations.

4.4.1 UTA shall pay Contractor all amounts properly requested and documented within thirty (30) Days of receipt of an Application for Payment.

4.4.2 Notwithstanding Section 4.4.1, UTA may withhold up to 5% of each payment as retention in accordance with Utah Code Ann. § 13-8-5.

4.4.3 Notwithstanding Section 4.4.1, UTA may offset from such Application for Payment amounts any owed to UTA by Contractor pursuant to the Contract Documents.

4.4.4 If UTA determines that Contractor is not entitled to all or part of an Application for Payment as a result of Contractor's failure to meet its obligations under the Contract Documents, UTA will notify Contractor of the specific amounts UTA has withheld (or intends to withhold), the reasons and contractual basis for the withholding, and the specific actions Contractor must take to qualify for payment under the Contract Documents. If the Contractor disputes UTA's bases for withholding, Contractor may pursue its rights under the Contract Documents, including those under Article 8.

4.5 Contractor's Payment Obligations.

4.5.1 Contractor shall pay Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from UTA on account of their work. Contractor shall indemnify and defend UTA against any claims for payment and mechanic's liens as set forth in Section 5.2 hereof. Contractor may withhold up to 5% of each payment as retention corresponding to retentions withheld by UTA but must pay the subcontractor all retained monies within 10 days of receipt from UTA by the Contractor. All retentions must be in compliance with Utah Code Ann. § 13-8-5.

4.5.2 If the Contract Documents include Federal Clauses, the terms of those Federal Clauses pertaining to payment of Subcontractors supersede any conflicting terms of this Article 4.

4.6 Substantial Completion.

4.6.1 Contractor shall notify UTA when it believes the entire Work is Substantially Complete. As used in the Contract Documents, "Substantially Complete" or "Substantial Completion" refers to the Contractor's satisfactory completion of all Work in accordance with the Contract Documents (excluding Punchlist items) to point such that UTA may safely start-up, occupy or otherwise fully use the Project for its intended purposes in compliance with applicable Legal Requirements. The terms "Substantially Complete" or "Substantial Completion" also require the completion of any items of Work specifically set forth as conditions precedent to Substantial Completion in the Agreement. Within five (5) Days of UTA's receipt of Contractor's notice, UTA and Contractor will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, UTA shall prepare and issue a Certificate of Substantial Completion that will set forth: (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining Punchlist items that have to be completed before Final Completion and final payment; and (iii) provisions (to the extent not already provided in the Contract Documents) establishing UTA's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Completion and final payment.

4.6.2 Promptly after issuing the Certificate of Substantial Completion, UTA shall release to Contractor all retained amounts, less an amount equal to two times the reasonable value of

all remaining Punchlist items noted in the Certificate of Substantial Completion.

4.6.3 Upon Contractor's request or upon UTA's own initiative, UTA may, in its sole discretion, deem a discrete segment of the Project to be Substantially Complete. The provisions of Sections 4.6.1 and 4.6.2 will apply to that discrete segment of the Project. In addition, before UTA may take possession of a discrete segment of the Project, UTA and Contractor shall obtain the consent of their sureties, insurers, and any government authorities having jurisdiction over the Project.

4.6.4 Following Substantial Completion, UTA may restrict Contractor's access to the Site. UTA shall allow Contractor reasonable access to the Site in order for the Contractor to achieve Final Completion.

4.7 **Final Payment.**

4.7.1 When Contractor has achieved Final Completion of the Work, Contractor shall submit a Final Application for Payment. As used in the Contract Documents, "Final Completion" refers to the Contractor's satisfactory completion of all Work in accordance with the Contract Documents including completion of Punchlist items, demobilization from the Site and the transmittal of all deliverables required by the Contract Documents. The Final Application for Payment shall include (at a minimum) the items set forth below.

4.7.1.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect UTA's interests;

4.7.1.2 A general release executed by Contractor waiving, upon receipt of final payment, all claims, except those claims previously made in writing to UTA and remaining unsettled at the time of final payment;

4.7.1.3 All as-built drawings, redlined drawings, operating manuals, warranty assignments and other deliverables required by the Contract Documents; and

4.7.1.4 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

4.7.2 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punchlist if discovered earlier, will be deemed warranty Work. Contractor shall correct such deficiencies pursuant to Section 2.6, and UTA may withhold from the final payment the reasonable value of completion of the deficient work until that work is completed.

ARTICLE 5 **Indemnification and Loss**

5.1 **Patent and Copyright Infringement.** If the Work includes any design services, provisions 5.1.1 through 5.1.3 apply.

5.1.1 Contractor shall defend any action or proceeding brought against UTA based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. UTA shall give prompt written notice to Contractor of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Contractor shall indemnify UTA from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against UTA or Contractor in any such action or proceeding. Contractor shall keep UTA informed of all developments in the defense of such actions.

5.1.2 If UTA is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's expense, either: (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

5.1.3 Sections 5.1.1 and 5.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright: (i) relating solely to a particular process or product of a particular manufacturer specified by UTA and not offered or recommended by Contractor to UTA; or (ii) arising from modifications to the Work by UTA or its agents after acceptance of the Work

5.2 **Payment Claim Indemnification.** Provided that UTA is not in breach of its contractual obligation to make payments to Contractor for the Work, Contractor shall indemnify, defend and hold harmless UTA from any claims or mechanic's liens brought against UTA or against the Project as a result of the failure of Contractor, its Subcontractors, or others for whose acts Contractor is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) Days of receiving written notice from UTA that such a claim or mechanic's lien has been filed, Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Contractor fails to do so, UTA will have the right to discharge the claim or lien and hold Contractor liable for costs and expenses incurred, including attorneys' fees.

5.3 **Contractor's General Indemnification.**

5.3.1 Contractor, to the fullest extent permitted by law, shall indemnify, hold harmless and defend UTA, its officers, trustees, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction resulting from or arising out of the negligent acts or omissions of Contractor, Subcontractors, anyone employed directly or indirectly by

any of them or anyone for whose acts any of them may be liable.

5.3.2 If an employee of Contractor, a Subcontractor, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against UTA, its officers, directors, employees, or agents, Contractor's indemnity obligation set forth in Section 5.3.1 above will not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Contractor, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

5.4 Risk of Loss. Risk of loss should shift upon acceptance by UTA for a construction project that would be substantial completion.

ARTICLE 6 **Time**

6.1 **Obligation to Achieve the Contract Times.** Contractor shall commence performance of the Work and achieve the Contract Time(s) in accordance with the Contract Documents. The Contract Documents specify critical completion milestones with which Contractor must comply. All time and schedule requirements included within the Contract Documents are of the essence. By executing the Agreement, Contractor confirms that the completion milestones in the Contract Documents are reasonable for the performance of the Work. Unless otherwise excused by the terms of the Contract Documents, Contractor's failure to timely perform the Work in accordance with the completion milestones shall result in the assessment of liquidated damages (if, and to the extent, set forth in the Agreement) and (where no liquidated damages are provided under the Agreement or where the maximum liquidated damages available under the Agreement have been incurred) an event of default.

6.2 **Excusable Delays.** The Contract Time(s) for performance shall be equitably adjusted by Change Order to the extent that Contractor is actually and demonstrably delayed in the performance of the Work because of: (i) Differing Site Conditions (as provided in Section 3.2); (ii) Hazardous Materials (as provided in Section 3.1); (iii) Force Majeure Events (as defined in Section 1.3); (iv) changes in the Work directed by UTA (as provided in Section 7.2); (v) constructive changes (as provided in Section 7.3); (vi) changes in Legal Requirements (as provided in Section 2.3.3); (viii) a suspension without cause (as provided in Section 9.1); or (viii) UTA's unexcused delay in performing any UTA obligation specified in the Contract Documents in accordance with the completion milestones indicated in the approved schedule.

6.3 **Excusable and Compensable Delays.** In addition to Contractor's right to a time extension for those events set forth in Section 6.2 above, Contractor will also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price will not be adjusted for delays caused by Force Majeure Events.

ARTICLE 7
Changes

7.1 Change Orders.

7.1.1 Contractor shall not undertake any activity that materially changes the Work, or materially deviates from the requirements of the Contract Documents, except as authorized in this Article 7. Any costs incurred by Contractor without authorization as provided in this Article 7 will be considered non-compensable.

7.1.2 A Change Order is a written instrument, signed by UTA and Contractor, issued after execution of the Agreement, stating their agreement on a change in: (i) the scope of the Work; (ii) the Contract Price; and/or (iii) the Contract Time(s).

7.1.3 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. UTA and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

7.2 UTA-Directed Changes. UTA may direct changes in the Work. Upon receipt of such direction, Contractor shall prepare an estimate of the cost and schedule impact of the change (if any). Upon agreement between UTA and Contractor on the scope of the change to the Work, and the adjustment, if any, to the Contract Price and/or Contract Times, UTA and Contractor shall execute a written Change Order.

7.3 Constructive Changes.

7.3.1 To the extent that Contractor: (i) receives a written or verbal direction or proceeding from UTA that Contractor believes to constitute a material change to the nature, character or schedule of the Work; and/or (ii) becomes aware of any circumstance or condition that expressly provides Contractor a right to a Change Order under the terms of the Contract Documents, then (in either case) Contractor shall deliver to UTA's Project Manager written notice (hereinafter a "Potential Change Notice") within ten (10) Days after Contractor becomes aware of (or should have reasonably become aware) the facts and circumstances which Contractor believes to give rise to a Change Order.

7.3.2 Contractor's failure to deliver a Potential Change Notice in a timely manner shall constitute a waiver of all of Contractor's rights to a Change Order.

7.3.3 In conjunction with the Potential Change Notice (or as soon as reasonably possible thereafter), Contractor shall submit to UTA all supporting information and documentation necessary for UTA to evaluate the contractual basis for the Potential Change Notice and to also evaluate the relief claimed by Contractor. Contractor shall promptly respond to all UTA inquiries about the Potential Change Notice and the supporting information and documentation.

7.3.4 To the extent UTA concludes that the Potential Change Notice demonstrates Contractor's entitlement to a Contract adjustment, and provided that the parties are able to negotiate

mutually agreeable adjustments to the Contract Documents, then UTA and Contractor shall execute a written Change Order.

7.4 Direction or Authorization to Proceed.

7.4.1 Prior to final agreement with respect to a Change Order, UTA may issue a Direction or Authorization to Proceed (“DAP”). A DAP is a written order unilaterally prepared and signed by UTA directing the Contractor to proceed with specified Work while Change Order negotiations or Claim resolution discussions continue. UTA may issue a DAP at any time, and Contractor shall undertake the Work as set forth in the DAP, and in accordance with the Contract Documents.

7.4.2 After issuance of a DAP, UTA and Contractor shall continue to negotiate in good faith to resolve outstanding issues expeditiously.

7.5 **Requests for Information.** UTA shall have the right, from time to time, to issue clarifications to the Work of a non-material nature at any time. Contractor shall have the corresponding right to seek clarification with respect to ambiguous or conflicting provisions of the Contract Documents. Such clarifications or conflicts shall be confirmed, implemented and documented through a Request for Information (“RFI”) process to be developed for the Project. The RFI process may also be used to document minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents.

7.6 Contract Price Adjustments.

7.6.1 The increase or decrease in Contract Price resulting from a change in the Work will be determined by one or more of the following methods:

7.6.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

7.6.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by UTA;

7.6.1.3 Costs, fees and any other markup rates set forth in the Agreement; or

7.6.1.4 If an increase or decrease cannot be agreed to as set forth in items 7.6.1.1 through 7.6.1.3 above and UTA issues a DAP, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit rate, as may be set forth in the Agreement.

7.6.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to UTA or Contractor because of differences in the character or quantity of such unit items as

originally contemplated, such unit prices shall be equitably adjusted.

7.6.3 Negotiations over changes in the Contract Price will be conducted using an open-book cost-estimating process. UTA defines “open-book” to include all elements of Contractor’s costs, including labor hours and rates, units and estimated quantities, unit prices, equipment estimates, material costs, and subcontractor costs. Contractor shall openly share its detailed cost estimate, material and subcontractor quotations and any other information used to compile its cost estimate.

7.7 **Disputes Regarding Change Orders.** If the parties are not able to agree as to whether a Change Order is warranted under the Contract Documents, or cannot agree upon the extent of relief to be granted under a Change Order after good faith negotiations, either party may refer the dispute to the Claim resolution provisions of Article 8. Pending resolution of such Claim, Contractor shall proceed with the Work as directed by UTA under a reservation of rights. UTA shall continue to pay any undisputed payments related to such Claim.

7.8 **Emergencies.** In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 7.

ARTICLE 8

Claims and Claim Resolution

8.1 Claims.

8.1.1 “Claim” means any disputes between UTA and the Contractor arising out of or relating to the Contract Documents including any disputed claims for Contract adjustments that cannot be resolved in accordance with the Change Order negotiation process set forth in Article 8. Claims must be made by written notice. The responsibility to substantiate claims rests with the party making the claim.

8.1.2 Unless otherwise directed by UTA in writing, Contractor shall proceed diligently with performance of the Work pending final resolution of a Claim, including litigation. UTA shall continue to pay any undisputed payments related to such Claim.

8.2 Claim Resolution.

8.2.1 The parties shall attempt in good faith to resolve promptly through negotiation any Claim arising out of or relating to the Contract Documents. If a Claim should arise, UTA’s Project Manager and Contractor’s Project Manager will meet at least once to attempt to resolve the Claim. For such purpose, either may request the other to meet within seven (7) Days of the date the Claim is made, at a mutually agreed upon time and place.

8.2.2 If UTA’s Project Manager and Contractor’s Project Manager are not able to resolve the Claim within fourteen (14) Days after their first meeting (or such longer period of time as may be mutually agreed upon), either party may request that UTA’s Senior Representative

and the Contractor's management representative ("Contractor's Management Representative") meet at least once to attempt to resolve the Claim.

8.2.3 If the Claim has not been resolved within sixty (60) Days of the date the Claim is made, either party may refer the Claim to non-binding mediation by sending a written mediation request to the other party. In the event that such a request is made, the Parties agree to participate in the mediation process. Non-binding mediation of claims or controversies under the Contract Documents shall be conducted by a professional mediator that is mutually acceptable to and agreed upon by both parties (the "Mediator"). The parties and the Mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the Claim. The mediation procedure shall be determined by the Mediator in consultation with the parties. The fees and expenses of the Mediator shall be borne equally by the parties.

8.2.4 If the Claim is not resolved within thirty (30) days after the commencement of mediation, or if no mediation has been commenced within one hundred and twenty (120) days of the date the Claim is made, either party may commence litigation to resolve the Claim. The exclusive forum for any such litigation is the Third District Court in and for Salt Lake County, Utah.

ARTICLE 9 **Suspension and Termination**

9.1 UTA's Right to Stop Work.

9.1.1 UTA may, without cause and for its convenience, order Contractor in writing to stop and suspend the Work. Such suspension shall not exceed one hundred and twenty (120) consecutive Days or aggregate more than two hundred and forty (240) Days during the duration of the Project. In the event a suspension continues longer than the above-referenced periods, Contractor shall have the right to terminate the Agreement. Any such termination shall be considered to be a termination for convenience by UTA.

9.1.2 If a suspension is directed by UTA without cause, Contractor shall be entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension or stoppage of the Work by UTA.

9.1.3 In addition to its rights under Section 9.3, UTA shall have the right to order a suspension for cause if the Work at any time ceases to comply with the workmanship, safety, quality or other requirements of the Contract Documents or any Legal Requirements. Contractor shall not be entitled to seek an adjustment the Contract Price and/or Contract Time(s) with regard to any such suspension.

9.2 **UTA's Right to Terminate for Convenience.** Upon written notice to Contractor, UTA may, for its convenience and without cause, elect to terminate this Agreement. In such event, UTA shall pay Contractor for the following:

- 9.2.1 All Work satisfactorily completed or commenced and in process as of the effective date of termination;
- 9.2.2 The reasonable and demonstrable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors; and
- 9.2.3 The fair and reasonable sums for overhead and profit on the sum of items 9.2.1.1 and 9.2.1.2 above. UTA shall not be liable for anticipated profits, costs or overhead based upon Work not yet performed as of the date of termination.

9.3 UTA's Right to Terminate for Cause; Other Remedies for Default.

- 9.3.1 Subject to the cure provision of Section 9.3.2 below and other limitations set forth in these General Conditions, Contractor shall be in default of its obligations under the Contract Documents if Contractor: (i) fails to provide a sufficient number of skilled workers; (ii) fails to supply the materials required by the Contract Documents; (iii) fails to comply with applicable Legal Requirements; (iv) fails to timely pay its Subcontractors without proper cause; (v) makes a materially false or misleading representation or certification in conjunction with the Contract Documents; (vi) fails to prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted; (vii) fails to satisfy any guaranteed interim or completion milestone set forth in the Contract Documents; or (viii) fails to perform any other material obligations under the Contract Documents. In any such event, UTA (in addition to any other rights and remedies provided in the Contract Documents or by law) shall have the rights set forth in Sections 9.3.2 through 9.3.5 below.
- 9.3.2 Upon the occurrence of an event of default set forth in Section 9.3.1 above, UTA may provide written notice to Contractor that it intends to terminate the Agreement (in whole or in part) or pursue other available remedies unless the grounds for default are cured within ten (10) Days of Contractor's receipt of such notice. If Contractor fails to cure the grounds for default within such period, then UTA may declare the Agreement, or portions of the Agreement, terminated for default by providing written notice to Contractor of such declaration; provided, however, that to the extent that an item included is the notice of default and demand for cure is capable of cure, but not within the ten-Day cure period, then the Agreement shall not be terminated so long as Contractor commences actions to reasonably cure such breach within the 10-Day cure period and thereafter continuously and diligently proceeds with such curative actions until completion (such additional period not to exceed 45 Days). UTA may terminate the Agreement without opportunity to cure if the breach involves the Contractor's material failure to comply with any Legal Requirements pertaining to safety or environmental compliance.
- 9.3.3 Upon the continuance of a breach described in Section 9.3.1 for more than ten (10) Days following delivery of written notice to Contractor (and regardless of whether the Agreement, or any portion hereof, has been terminated as provided above), UTA shall be entitled to self-perform (through its own forces or through other contractors) the corrective

action necessary to cure Contractor's event of default and deduct all costs so incurred from any amount then or thereafter due to Contractor.

- 9.3.4 Upon the continuance of a breach described in Section 9.3.1 for more than ten (10) Days following delivery of written notice to Contractor (and regardless of whether the Agreement, or any portion hereof, has been terminated as provided above), UTA shall be entitled to seek performance by any guarantor of Contractor's obligations hereunder or draw upon any surety or security provided for in the Contract Documents.
- 9.3.5 Upon declaring the Agreement terminated pursuant to Section 9.3.2 above, UTA may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to UTA for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by UTA in completing the Work, such excess shall be paid by UTA to Contractor.
- 9.3.6 All rights and remedies set forth in the Contract Documents are cumulative, and unless otherwise specifically provided in the Contract Documents are not exclusive of any other rights or remedies that may be available, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise. Upon the occurrence of any such default, following the applicable process described in this Article, UTA shall be entitled to pursue any and all other rights and remedies, including without limitation damages, that UTA may have against Contractor under the Contract Documents or at law or in equity.
- 9.3.7 If UTA improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 9.2 above.

9.4 **Bankruptcy of Contractor.**

- 9.4.1 If Contractor institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Contractor's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:
 - 9.4.1.1 Contractor, its trustee or other successor, shall furnish, upon request of UTA, adequate assurance of the ability of the Contractor to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) Days after receiving notice of the request; and
 - 9.4.1.2 Contractor shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) Days of the institution of the bankruptcy

filing and shall diligently prosecute such action. If Contractor fails to comply with its foregoing obligations, UTA shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the UTA under this Article 9.

- 9.4.2 The rights and remedies under Section 9.4.1 above shall not be deemed to limit the ability of UTA to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

ARTICLE 10 **Value Engineering**

10.1 Value Engineering Change Proposals.

10.1.1 A Value Engineering Change Proposal (“VECP”) is a proposal developed, prepared, and submitted to UTA by the Contractor, which reduces the cost of the Work without impairing essential functions or characteristics of the Project, as determined by UTA in its sole discretion. UTA encourages Contractor to submit VECPs whenever it identifies potential savings or improvements. UTA may also request the Contractor to develop and submit a specific VECP.

10.1.2 In determining whether a VECP will impair essential functions or characteristics of the Project, UTA may consider: (i) relative service life; (ii) maintenance effort and frequency; (iii) environmental and aesthetic impacts; (iv) system service; (v) effect of other system components; and (vi) other issues as UTA deems relevant. A VECP must not be based solely on a change in quantities.

10.1.3 Contractor must include the following information in any VECP:

10.1.3.1 A narrative description of the proposed change,

10.1.3.2 A discussion of differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;

10.1.3.3 A complete cost analysis, including the cost estimate of any additional rights-of-way or easements required for implementation of the VECP;

10.1.3.4 Justification for changes in function or characteristics of each item and effect of the change on the performance on the end item;

10.1.3.5 A description of any previous use or testing of the proposed approach and the conditions and results. If the VECP was previously submitted on another UTA project, the Contractor shall indicate the date, contract number, and the action taken by UTA;

10.1.3.6 Costs of development and implementation; and

10.1.3.7 Any additional information requested by UTA, which must be provided in a timely manner.

10.2 Review and Approval of VECPs

10.2.1 Upon receipt of a VECP, UTA shall process it expeditiously, but will not be liable for any delay in acting upon any VECP. Contractor may withdraw all or part of any VECP at any time prior to approval by UTA, but shall, in any case, be liable for costs incurred by UTA in reviewing the withdrawn VECP, or part thereof. In all other situations, each party will bear its own costs in connection with preparation and review of VECPs.

10.2.2 UTA may approve in whole or in part any VECP submitted. The decision of UTA regarding rejection or approval of any VECP will be at the sole discretion of UTA and will be final and not subject to appeal. Contractor will have no claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profits, or increased material or labor costs

10.3 **Cost Savings.** Except as otherwise stated in the Agreement, any savings resulting from an approved VECP will accrue to the benefit of UTA and Contractor on a 50/50 cost sharing basis.

10.4 **Ownership of VECPs.** All approved or disapproved VECPs will become the property of UTA and must contain no restrictions imposed by Contractor on their use or disclosure. UTA retains the right to use, duplicate, and disclose, in whole or in part, any data necessary for the utilization of the VECP on any other projects without any obligation to Contractor. This provision is not intended to deny rights provided by law with respect to patented materials or processes.

ARTICLE 11 Health Insurance

11.1 Insurance Coverage for Employees.

11.1.1 If the Contract Price is \$2,000,000 or more, Contractor shall, prior to the effective date of the Agreement, demonstrate to UTA that Contractor has and will maintain an offer of qualified health insurance coverage (as defined by Utah Code Ann. § 17B-2a-818.5) for the Contractor's employees and the employee's dependents during the duration of the Contract.

11.2.1 If the Contractor enters into any subcontracts under the Contract Documents in an amount of \$1,000,000 or more, then Contractor shall also demonstrate to UTA that such subcontractor(s) have and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employee's dependents during the duration of the subcontract

ARTICLE 12 Miscellaneous

- 12.1 **Confidential Information.** “Confidential Information” means information that is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies in writing as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. To the extent permitted by law (including specifically UCA Title 63G Chapter 2), the receiving party shall maintain the confidentiality of the Confidential Information and shall use the Confidential Information solely in connection with the Project. The parties agree that the Agreement itself (including all incorporated Contract Documents) does not constitute Confidential Information.
- 12.2 **PUBLIC INFORMATION:** Vendor acknowledges that the Contract and related materials (invoices, orders, etc.) will be public documents under the Utah Government Records Access and Management Act (GRAMA). Vendor’s response to the solicitation for the Contract will also be a public document subject to GRAMA, except for legitimate trade secrets, so long as such trade secrets were properly designated in accordance with terms of the solicitation.
- 12.3 **Prohibited Interest.** No member, officer, agent, or employee of UTA during his or her tenure or for one year thereafter shall have any interest, direct or indirect, including prospective employment by, Contractor or the proceeds under the Contract Documents without specific written authorization by UTA.
- 12.4 **Assignment.** Contractor acknowledges that the Work to be performed by Contractor is considered personal by UTA. Contractor shall not assign or transfer its interest in the Contract Documents without prior written approval by UTA.
- 12.5 **Successors.** Contractor and UTA intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and permitted assigns.
- 12.6 **Governing Law.** The Agreement and all Contract Documents are governed by the laws of the State of Utah, without giving effect to its conflict of law principles. Actions to enforce the terms of this Agreement may only be brought in the Third District Court for Salt Lake County, Utah.
- 12.7 **Attorneys Fees and Costs.** If any party to this Agreement brings an action to enforce or defend its rights or obligations hereunder, the prevailing party shall be entitled to recover its costs and expenses, including mediation, arbitration, litigation, court costs and attorneys’ fees, if any, incurred in connection with such suit, including on appeal.
- 12.8 **Severability.** If any provision or any part of a provision of the Contract Documents is finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.
- 12.9 **No Waiver.** The failure of either Contractor or UTA to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to

future performance.

- 12.10 **Headings.** The headings used in these General Conditions, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.
- 12.11 **Amendments.** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.
- 12.12 **FORCE MAJEURE:** Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

Exhibit A- Statement of Work

Project will be done in multiple sections as UTA is unable to turn over the whole building and shut down the production of our service. UTA is also in the process of expanding the building and the construction could cause even more coordinating with the paint project as far as available bays and timing which the paint contractor should plan for.

REFERENCES

This Section contains references to the governing standards and documents listed below. They are a part of this Section as specified and modified; the current version shall apply unless otherwise noted. In case of conflict between the requirements of this section and those of the listed documents, the more stringent of the requirements shall prevail.

ASTM International, (ASTM)

- ASTM D4263 – Standard Test Method for Indicating Moisture in Concrete by the Plastic Sheet Method.
- ASTM D4414 – Standard Practice for Measurement of Wet Film Thickness by Notch Gages
- ASTM D4417 – Standard Test Method for Field Measurement of Surface Profile of Blast Cleaned Steel.
- ASTM F1869 – Standard Test Method for Measuring Moisture Vapor Emission Rate of Concrete Subfloor Using Anhydrous Calcium Chloride
- ASTM F2170 – Standard Test Method for Determining Relative Humidity in Concrete Floor Slabs Using in situ Probes.

International Concrete Repair Institute, (ICRI)

- Guideline No. 310.1 – Guide for Surface Preparation for the Repair of Deteriorated Concrete Resulting from Reinforcing Steel Corrosion
- Guideline No. 310.2 – Selecting and Specifying Concrete Surface Preparation for Sealer, Linings, and Polymer Overlays

SSPC: The Society for Protective Coatings (SSPC)

- SSPC-PA 1 - Shop, Field, and Maintenance Painting of Steel
- SSPC-PA 2 - Procedure for Determining Conformance to Dry Coating Thickness Requirements
- SSPC-PA 11 - Protecting Edges, Crevices, and Irregular Steel Surfaces by Stripe Coating
- SSPC-SP 2 – Hand Tool Cleaning
- SSPC-SP 3 – Power Tool Cleaning
- SSPC-SP 6/NACE No. 3 - Commercial Blast Cleaning.
- SSPC-SP 7 Brush Off Blast Cleaning
- SSPC-SP 11 Power Tool Cleaning to Bare Metal
- SSPC-SP 13/NACE No. 6 – Surface Preparation of Concrete
- SSPC-SP 16 Brush-Off Blast Cleaning of Coated and Uncoated Galvanized Steel, Stainless Steels, and Non-Ferrous Metals

SSPC-VIS 1 - Guide to Reference Photographs for Steel Surfaces Prepared by Dry Abrasive Blast Cleaning

Product Data: For each type of product. Include preparation requirements and application instructions:

Indicate VOC Content

Safety Data Sheets

Installation Instructions: Manufacturer's written installation instructions for the products and coating systems specified.

Construction Details for floor coatings: Copies of manufacturer's computer-generated standard details for specified materials, including leading edge termination, metal embedment in concrete, joint detail, wall-to-slab detail, pipe termination detail, and any other detail at the request of the Architect/Owner.

Qualifications of Applicator: Proof of acceptability of Applicator by Manufacturer.

Mockups for Floor Coating: Apply mockups of each system to verify selections and texture, to demonstrate aesthetic effects and set quality standards for materials and execution. Apply full-thickness mockups on 48-inch- square floor area selected by Architect/Owner. If required include 48-inch length of integral cove base. Simulate finished lighting conditions for Architect/Owner review of mockups. Approved mockups may become part of the completed Work if undisturbed at time of Substantial Completion.

Pre-Installation Conference:

Before start of Work - General Contractor, Applicator, and Manufacturer's Technical Representative shall meet on-site with Architect/Owner to discuss approved products and workmanship to ensure proper surface preparation and application of the coatings.

Review foreseeable methods and procedures related to the coating Work including but not necessarily limited to the following:

- a. Review Project requirements and the Contract Documents.
- b. Review required submittals.
- c. Review requirements of on-site quality control inspection and testing.
- d. Review the requirements for preparing the quality control report as specified herein.
- e. Review availability of materials, tradesmen, equipment, and facilities needed to make progress and avoid delays.
- f. Review material storage and staging.
- g. Review equipment storage and staging.
- h. Review waste management and disposal.
- i. Review environmental conditions, other Project conditions, and procedures for coping with unfavorable conditions.
- j. Review regulations concerning code compliance, environmental protection, health, safety, fire, and similar considerations.

- k. Review procedures required for the protection of the completed work during the remainder of the construction period.

Single-Source Responsibility:

Materials shall be products of a single manufacturer or items standard with manufacturer of specified coating materials.

Provide secondary materials which are produced or are specifically recommended by coating system manufacturer to ensure compatibility of system.

Regulatory Requirements: Conform to applicable codes and ordinances for flame, fuel, smoke and volatile organic compounds (VOC) ratings requirements for finishes at time of application.

PRODUCT DELIVERY, STORAGE, AND HANDLING

Delivery of Materials:

Deliver material in manufacturer's original, unopened and undamaged packages.

Clearly identify manufacturer, brand name, contents, color-white, batch number, and any personal safety hazards associated with the use of or exposure to the materials on each package.

Packages showing indications of damage that may affect condition of contents are not acceptable.

Storage of Materials:

Materials shall be stored in accordance with manufacturer's recommendations in enclosed structures and shall be protected from weather and adverse temperature conditions.

Flammable materials shall be stored in accordance with state and local codes.

Store materials only in area or areas designated by UTA solely for this purpose.

Materials exceeding storage life as defined by the manufacturer shall be removed promptly from the site.

Store in original packaging under protective cover and protect from damage.

Stack containers in accordance with manufacturer's recommendations.

Handling of Materials: Handle materials in such a manner as to prevent damage to products or finishes.

FIELD CONDITIONS

Delivery: Deliver materials to the site in manufacturer's original, unopened containers, and packaging, with labels clearly identifying:

Coating or material name.

Manufacturer.

Color name and number.

Batch or lot number.

Date of manufacturer.

Mixing and thinning instructions.

Handling: Protect materials during handling and application to prevent damage or contamination.

Storage:

Store and dispose of solvent-based materials, and materials used with solvent-based materials, in accordance with jurisdiction.

Store materials in a clean dry area and within temperature range in accordance with manufacturer's instructions.

Keep containers sealed until ready for use.

Do not use materials beyond manufacturer's shelf-life limits.

Apply coatings only when temperature of surfaces to be coated and ambient air temperatures are between 50 and 95 deg F°.

Do not apply coatings when relative humidity exceeds 85 percent; at temperatures less than 5 deg F° above the dew point; or to damp or wet surfaces.

PROJECT CONDITIONS

Maintain environmental conditions (temperature, humidity, and ventilation) within limits recommended by manufacturer for optimum results. Do not install products under environmental conditions outside manufacturer's absolute limits.

Weather:

Air and Surface Temperatures: Prepare surfaces and apply and cure coatings within air and surface temperature range in accordance with manufacturer's instructions.

Surface temperature: Minimum of 5 degrees F° above dew point.

Relative Humidity: Prepare surfaces and apply and cure coatings within the relative humidity range in accordance with manufacturer's instructions.

Precipitation: Do not prepare surfaces or apply coatings in rain, snow, fog, or mist.

Wind: Do not spray coatings if wind velocity is above manufacturer's recommended limit.

Ventilation: Provide ventilation during coating evaporation stage in confined or enclosed areas in accordance with manufacturer's instructions.

Dust and Contaminants:

Schedule coating work to avoid excessive dust and airborne contaminants.

Protect work areas from excessive dust and airborne contaminants during coating application and curing.

WARRANTY

Manufacturer shall warranty its products as free from material defects for a minimum period of three (3) years. Provide associated Warranty Certificate.

Applicator shall warranty the installed protective lining system as free from workmanship defects for a minimum period of three (3) years. Provide associated Warranty Certificate.

CDC Restoration & Construction shall warranty the installed system as free from workmanship defects for a period of three (3) years.

CDC Restoration & Construction shall apply for manufacturers warranty at project completion.

PART 2 - PRODUCTS

MANUFACTURER

Products of Tnemec Company, Inc., Kansas City,

Sample provided:

1c 241-00GR Ultra-Tread MVT W/30-50 Sand (Color will be white)

1c 237-32GR Power-Tread

1c 248-32GR Everthane

HIGH-PERFORMANCE COATINGS, GENERAL

Materials Compatibility: Provide shop and field primers, and finish-coat materials that are compatible with one another and with the substrates indicated under conditions of service and application, as demonstrated by manufacturer based on testing and field experience.

For each coat in a paint system, products shall be recommended in writing by topcoat manufacturers for use in paint system and on substrate indicated.

Products shall be of same manufacturer for each coat in a coating system.

VOC Content: Products shall comply with VOC limits of authorities having jurisdiction and, for interior coatings applied at project site, the following VOC limits, exclusive of colorants added to a tint base, when calculated according to 40 CFR 59, Subpart D (EPA Method 24).

Colors: White and Yellow stripping.

SOURCE QUALITY CONTROL

Testing of Coating Materials: Owner reserves the right to invoke the following procedure:

Owner may engage the services of a qualified testing agency to sample coating materials. Contractor will be notified in advance and may be present when samples are taken. If coating materials have already been delivered to Project site, samples may be taken at Project site. Samples will be identified, sealed, and certified by testing agency.

Testing agency will perform tests for compliance with product requirements.

Owner may direct Contractor to stop applying coatings if test results show materials being used do not comply with product requirements. Contractor shall remove noncomplying coating materials from Project site, pay for testing, and recoat surfaces coated with rejected materials. Contractor will be required to remove rejected materials from previously coated surfaces if, on recoating with complying materials, the two coatings are incompatible.

HIGH-PERFORMANCE COATINGS, PRODUCTS

STEEL – Structural, Tanks, Pipe, and Equipment

System 102 – Steel - Moderate Exposure and/or UV Exposure - Existing Construction

- a. Spot Prime areas of bare steel and corrosion: **Series 133 ProTuff Aluminum**
- b. Primer Coat (entire surface): **Series 133 ProTuff Aluminum**
- c. Finish Coat: **Series 248 Everthane**

CONCRETE & MASONRY – PRECAST, POURED-IN-PLACE, CAST-IN-PLACE AND CMU

System 302 – Interior CMU– Moderate to Severe Exposure – Chemical Exposure

CONCRETE FLOORS

System 311 - Dry Areas – Warehouse and Storage areas – concrete sealer

- d. Finish Coat: **Ashford Formula**

System 313 - Moderate to Severe Abuse, Chemical Exposure – Chemical Storage Rooms, Fuel Areas

- e. Base Coat: Series 241 Ultra-Tread MVT
 - 1) Immediately broadcast into the wet Series 241 at 0.8 lbs. per square foot to refusal with 30/50 aggregate
- f. Grout Coat: **Series 282 Tneme-Glaze**
- g. Finish Coat: **Series 282 Tneme-Glaze**
- h. Striping (Optional): **Series 280 Tneme-Glaze**

System 314 - Moderate to Severe Abuse, Chemical Exposure, Heavy Traffic –Shop areas

- i. Base Coat: **Series 241 Ultra-Tread MVT**
 - 1) Immediately broadcast into the wet Series 241 at 0.8 lbs. per square foot to refusal with 30/50 aggregate
- j. Grout Coat: **Series 237 Power-Tread**
- k. Second Grout Coat: **Series 237 Power-Tread**
- l. Finish Coat: **Series 248 Everthane**
- m. Striping (Optional): **Series 280 Tneme-Glaze**

PART 3 - EXECUTION

EXAMINATION

Examine substrates and conditions, with Applicator present, for compliance with requirements for maximum moisture content and other conditions affecting performance of the Work.

Do not begin installation until substrates have been properly prepared.

If substrate preparation is the responsibility of another installer, notify Architect of unsatisfactory preparation.

Verify suitability of substrates, including surface conditions and compatibility, with existing finishes and primers.

Proceed with coating application only after unsatisfactory conditions have been corrected.
Application of coating indicates acceptance of surfaces and conditions.

PROTECTION OF SURFACES NOT SCHEDULED TO BE COATED

Protect surrounding areas and surfaces not scheduled to be coated from damage during surface preparation and application of coatings.

Immediately remove coatings that fall on surrounding areas and surfaces not scheduled to be coated.

Protect adjacent areas and surfaces from coatings not scheduled to be applied.

SURFACE PREPARATION

Surfaces shall be prepared in accordance with manufacturer's written instructions as outlined in the product data sheet and application guides.

Surface preparation shall be as specified in the designated coating system.

Remove hardware, covers, plates, and similar items already in place that are removable and are not to be painted. If removal is impractical or impossible because of size or weight of item, provide surface-applied protection before surface preparation and painting.

After completing painting operations, use workers skilled in the trades involved to reinstall items that were removed. Remove surface-applied protection if any.

Clean substrates of substances that could impair bond of coatings, including dust, dirt, oil, grease, and incompatible paints and encapsulants.

Remove incompatible primers and reprime substrate with compatible primers or apply tie coat as required to produce coating systems indicated.

Steel – Structural, Tanks, Pipe and Equipment:

Prior to the specified surface preparation SSPC-SP1 Solvent Cleaning shall be performed to all surfaces.

SSPC-SP2 Hand Tool Cleaning: Removal of loose rust, loose mill scale, loose paint, and other loose detrimental foreign matter, by hand chipping, scraping, sanding, and wire brushing.

SSPC-SP3 Power Tool Cleaning: Removal of loose rust, loose mill scale, loose paint, and other loose detrimental foreign matter, by power tool chipping, descaling, sanding, wire brushing, and grinding.

SSPC-SP6/NACE 3 Commercial Blast Cleaning: Removal of all visible oil, grease, soil, dust, mill scale, rust, paint, oxides, corrosion products, and other foreign matter, except that staining shall be limited to no more than 33 percent of each 9-square inch of surface area.

Abrasive Blast-Cleaned Surfaces: Coat abrasive blast-cleaned surfaces with primer before visible rust forms on surfaces. Do not leave blast-cleaned surfaces uncoated for more than 8 hours.

Concrete and Masonry Substrates:

All surfaces must be clean, dry, and free of oil, grease, and other contaminants, prior to preparation in accordance with SSPC-SP13/NACE No. 6. Concrete surfaces must be sound and capable of supporting the coating system.

Prepare concrete surfaces in accordance with SSPC-SP13/NACE No. 6 Joint Surface Preparation Standards and ICRI Technical Guidelines. Abrasive Blast, Shot-blast, water jet or mechanically abrade concrete surfaces to remove laitance, curing compounds, hardeners, sealers, existing coatings, and other contaminants and to provide the recommended ICRI-CSP Profile.

Cracks, voids, and other surface imperfections should be filled with the recommended filler or surfacer prior to the installation of the materials.

Treat control joints and other nonmoving substrate cracks to prevent cracks from reflecting through the coating system according to manufacturer's written recommendations.

Level or grind concrete substrates to produce a uniform and smooth surface, including removal of sharp edges, ridges, form fins, and other concrete protrusions.

All surfaces to be painted or repainted, shall be repaired, cleaned, and finished to the standards as specified herein and in Division 3 for new concrete.

APPLICATION

Apply coatings in accordance with manufacturer's written instructions as outlined in the manufacturer's written instructions.

The application of protective coatings to steel shall be in accordance with SSPC PA 1 – Shop, Field, and Maintenance Painting of Steel.

Mix and thin coatings, including multi-component materials, in accordance with manufacturer's instructions.

Keep containers closed when not in use to avoid contamination.

Uniformly apply coatings at spreading rate required to achieve specified Dry Film Thickness (DFT).

Apply coatings to be free of film characteristics or defects that would adversely affect performance or appearance of coating systems. Apply coatings to produce surface films without cloudiness, spotting, holidays, laps, brush marks, runs, sags, ropiness, or other surface imperfections. Produce sharp glass lines and color breaks.

In accordance with SSPC-PA 11 stripe paint with brush at critical locations such as welds, corners, and edges using specified primer.

Use applicators and techniques suited for coating and substrate indicated.

Use application equipment, tools, pressure settings, and techniques in accordance with manufacturer's instructions.

Coat surfaces behind movable equipment and furniture same as similar exposed surfaces. Before final installation, coat surfaces behind permanently fixed equipment or furniture with prime coat only.

Coat backsides of access panels, removable or hinged covers, and similar hinged items to match exposed surfaces.

Do not apply coatings over labels of independent testing agencies or equipment name, identification, performance rating, or nomenclature plates.

Tint each undercoat a lighter shade to facilitate identification of each coat if multiple coats of the same material are to be applied. Tint undercoats to match color of finish coat but provide sufficient difference in shade of undercoats to distinguish each separate coat.

If undercoats or other conditions show through final coat, apply additional coats until cured film has a uniform coating finish, color, and appearance.

FIELD QUALITY CONTROL, INSPECTION AND TESTING

The Applicator shall perform the quality control procedures listed below in conjunction with the requirements of this section.

Inspect materials upon receipt to ensure that products are supplied by the approved Manufacturer.

Surface Profile and Degree of Surface Cleanliness: Inspect and record substrate profile (anchor pattern) and degree of cleanliness. Surfaces shall meet the manufacturer's recommended anchor profile and degree of blast cleaning.

Visually confirm the specified degree of surface cleanliness of the ferrous metal surface in accordance with SSPC-VIS 1.

The specified surface profile of the prepared substrate shall be verified in accordance with ASTM D4417 – Method C Replica Tape.

Concrete Surface Profile: Inspect and record substrate profile (anchor pattern). Surfaces shall be profiled equal to the CSP amplitude as recommended by the coating manufacturer in accordance with ICRI Guideline 310.2 and SSPC-SP13/NACE No. 6.

Compare the substrate profile once every 50 square feet with the Concrete Surface Profile (CSP) comparators in accordance with ICRI Guideline No. 310.2.

Concrete Surface Cleanliness: Prepared concrete surfaces shall be inspected for surface cleanliness after cleaning and drying, prior to resurfacing or coating application.

Concrete Moisture Testing: After surface preparation verify concrete dryness in accordance with ICRI Guideline 310.2 and SSPC-SP13/NACE No. 6 and one of the following moisture test methods.

ASTM F1869 – Standard Test Method for Measuring Moisture Vapor Emission Rate of Concrete Subfloor Using Anhydrous Calcium Chloride.

ASTM F2170 – Standard Test Method for Determining Relative Humidity in Concrete Floor Slabs Using in situ Probes.

ASTM D4263— Standard Test Method for Indicating Moisture in Concrete by the Plastic Sheet Method.

Consult manufacturer regarding questions and or recommendations about moisture problems or questions.

Measure and record ambient air temperature, relative humidity, and dew point temperature once every two hours of each work shift to ensure that the products are being applied within the manufacturer's recommendations.

Measure and record substrate temperature once every two hours using an infrared or other surface thermometer to ensure that the products are being applied within the manufacturer's recommendations.

Coating Defects: Check coatings for film characteristics or defects that would adversely affect performance or appearance of coating systems.

Report: Submit written reports describing inspections made and actions taken to correct non-conforming work. Report non-conforming work not corrected. Submit copies of report to Architect and Contractor.

The Applicator is responsible for keeping the Architect and Owner informed of progress so that Architect/Owner may provide additional quality control at their discretion.

Inspection by the Owner or Architect does not absolve the applicator from his responsibilities for quality control inspection and testing as specified herein or as required by the Manufacturer's instructions.

Manufacturer's Technical Services: Coordinate with coating manufacturer's technical service department or independent sales representative for current technical data and instructions.

CLEANING AND PROTECTION

At end of each workday, remove rubbish, empty cans, rags, and other discarded materials from Project site.

Remove temporary coverings from painting and coating areas and surfaces. After completing coating application, clean spattered surfaces. Remove spattered coatings by washing, scraping, or other methods. Do not scratch or damage adjacent finished surfaces.

Protect work of other trades against damage from coating operation. Correct damage to work of other trades by cleaning, repairing, replacing, and recoating, as approved by Architect, and leave in an undamaged condition.

At completion of construction activities of other trades, touch up and restore damaged or defaced coated surfaces.

ONE-YEAR INSPECTION

Owner will set date for one-year inspection of coating systems.

Inspection shall be attended by Owner, Contractor, Architect, and manufacturer's representative.

Repair deficiencies in coating systems as determined by Architect in accordance with manufacturer's instructions.

SCHEDULES

STEEL – Structural, Tanks, Pipe, and Equipment

System 102 – Steel - Moderate Exposure and/or UV Exposure - Existing Construction

- a. Surface Preparation for areas of bare steel and rust: SSPC-SP 7 Brush-off Blast Cleaning. If abrasive blast cleaning is not feasible, Power Tool Cleaning to Bare Metal in accordance with SSPC-SP 11 may be used.
- b. Surface Preparation for painted surfaces: All areas shall receive a high-pressure wash utilizing a commercial degreaser/detergent, thoroughly rinse to ensure all surfaces are clean and free of contaminants.
- c. Spot Prime areas of bare steel and corrosion: **Series 133** ProTuff Aluminum at 3.0 – 5.0 mils DFT
- d. Primer Coat (entire surface): **Series 133** ProTuff Aluminum at 3.0 – 5.0 mils DFT
- e. Finish Coat: **Series 248** Everthane at 2.0 – 3.0 mils DFT
- f. Products applied by roller will require multiple coats to achieve specified thickness.

CONCRETE & MASONRY – PRECAST, POURED-IN-PLACE, CAST-IN-PLACE AND CMU

System 302 – Interior CMU– Moderate to Severe Exposure – Chemical Exposure

- g. Products applied by roller will require multiple coats to achieve specified thickness.

CONCRETE FLOORS

System 311 - Dry Areas – Warehouse and Storage areas – concrete sealer

- h. Surface Preparation: Clean and Dry – as per product data sheet
- i. Finish Coat: **Ashford Formula**

System 313 - Moderate to Severe Abuse, Chemical Exposure – Chemical Storage Rooms, Fuel Areas

- j. Surface Preparation: Prepare in accordance with SSPC-13/NACE No. 6 and ICRI Technical Guidelines. Abrasive blast, shot-blast, or mechanically abrade concrete surfaces to provide a minimum ICRI-CSP 4 or greater surface profile.
- k. Base Coat: **Series 241** Ultra-Tread MVT at 70 – 80 square feet per kit.
 - 1) Immediately broadcast into the wet Series 241 at 0.8 lbs. per square foot to refusal with 30/50 aggregate
- l. Grout Coat: **Series 282** Tneme-Glaze at 160 – 200 square feet per gallon
- m. Finish Coat: **Series 282** Tneme-Glaze at 160 – 200 square feet gallon
- n. Striping (Optional): **Series 280** Tneme-Glaze – If recoat window has been missed - Prepare the coated surface by mechanically abrading with power sanders to de-gloss and abrade the surface for the stripe to bond.

System 314 - Moderate to Severe Abuse, Chemical Exposure, Heavy Traffic – New Concrete - Shop areas

- o. Surface Preparation: Prepare in accordance with SSPC-13/NACE No. 6 and ICRI Technical Guidelines. Abrasive blast, shot-blast, or mechanically abrade concrete surfaces to provide a minimum ICRI-CSP 4 or greater surface profile.
- p. Base Coat: **Series 241** Ultra-Tread MVT at 70 – 80 square feet per kit.
 - 1) Immediately broadcast into the wet Series 241 at 0.8 lbs. per square foot to refusal with 30/50 aggregate
- q. Grout Coat: **Series 237** Power-Tread at 60 – 80 square feet per gallon
- r. Second Grout Coat: **Series 237** Power-Tread at 80 – 100 square feet per gallon.
- s. Finish Coat: **Series 248** Everthane at 400 – 500 square feet per gallon
- t. Stripe: **Series 280** Tneme-Glaze – If recoat window has been missed. Prepare the coated surface by mechanically abrading with power sanders to de-gloss and abrade the surface for the stripe to bond.

UTA Meadowbrook Material List and Installation Method

Material List

- 1) Miscellaneous fill and patch work.
 - a. Tnemec Series 215
- 2) Base Coat
 - a. Tnemec Series 241 Ultra-Tread MVT
 - b. 30/50 round aggregate
- 3) First grout coat
 - a. Tnemec Series 237 Power-Tread
- 4) Second grout coat
 - a. Tnemec Series 237 Power-Tread
- 5) Finish coat
 - a. Tnemec 248 Everthane
- 6) Line Striping
 - a. Tnemec 280 Tneme Glaze
- 7) Concrete repair
 - a. Sika 2500

*Materials are specified in project specifications.

Installation Method

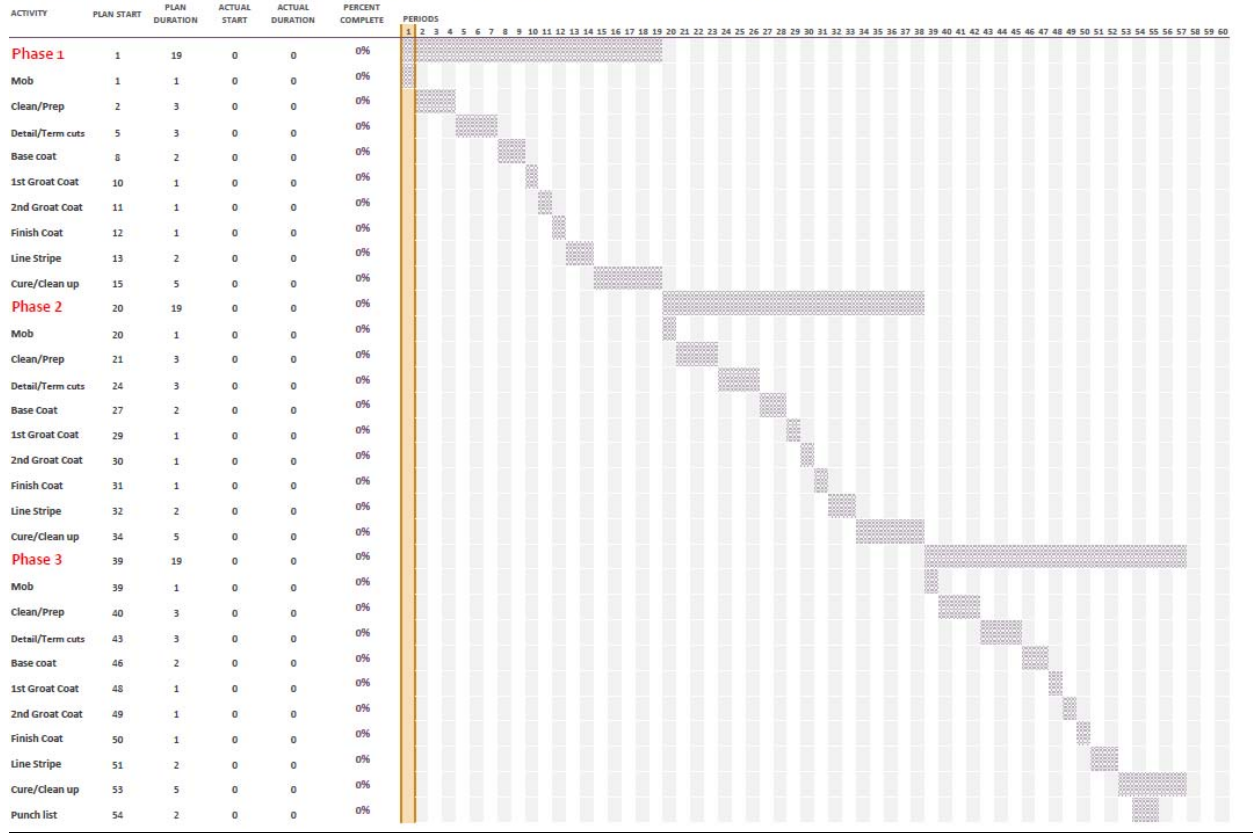
- 1) Prepare Surface
 - a) Area will be caution taped off with barricade tags to protect work areas and UTA employees.
 - b) Perform adhesion test to verify current coating systems bond strength to concrete substrate.
 - c) Surface will be inspected for oils, grease, or other contaminates and cleaned.
 - d) Surface will be mechanically abraded
 - e) Equipment will have dustless attachments to control airborne silica dust.

Schedule:

UTA Meadowbrook

CDC Restoration & Construction

Period Highlight: 4



SCOPE OF PROJECT – Epoxy Floor System with Urethane Top Coat

CDC Restoration & Construction proposes to prepare and install 32,000 SF of a Tnemec four-coat floor system.

All work will be done utilizing our professionally trained crews and extensive array of equipment. The installation procedures generally will be according to the following:

1. Prepare existing floor surface to meet manufactures specification.
2. Prepare up to 2500 lf of joints and cracks.
3. Fill up to 2500 lf of joints and cracks with manufacture approved material.
4. Repair chips in existing floor surface with Tnemec Series 215 as needed.
5. Repair up to four cubic feet of damaged concrete.
6. Cut termination lines as needed at terminations.
7. Vacuum floor surface to receive system.
8. Install Tnemec Series 241 Ultra-Tread MVT at 70-80 square feet per kit using a notched squeegee.
9. While the Series 241 is still “wet” a 30/50 round aggregate will be broadcast to refusal.
10. When Series 241 is cured excess aggregate will be removed.
11. Install Tnemec Series 237 Power-Tread groat coat at 60-80 square feet per gallon using a flat squeegee.
12. Install a second Tnemec Series 237 Power-Tread groat coat at 80-100 square feet per gallon using a flat squeegee.
13. Install a Tnemec Series 248 Everthane white finish coat at 400-500 Square feet per gallon using ¼” shed resistant roller cover.
14. Tape off and install yellow line striping to match existing using Tnemec Series 280.

CDC Restoration & Construction is pleased to submit this proposal to complete this project for a sum of:

SCOPE OF PROJECT – Option A-Pits, Stairs, and Hall

CDC Restoration & Construction proposes to prepare and install 1650 SF of a Tnemec four-coat floor system to the pits, stairs, and hall.

All work will be done utilizing our professionally trained crews and extensive array of equipment. The installation procedures generally will be according to the following:

1. Prepare existing floor surface to meet manufactures specification.
2. Prepare up to 200 lf of joints and cracks.
3. Fill up to 200 lf of joints and cracks with manufacture approved material.
4. Repair chips in existing floor surface with Tnemec Series 215 as needed.
5. Repair up to two cubic feet of damaged concrete.
6. Cut termination lines as needed at terminations.
7. Vacuum floor surface to receive system.
8. Install Tnemec Series 241 Ultra-Tread MVT at 70-80 square feet per kit using a notched squeegee.
9. While the Series 241 is still “wet” a 30/50 round aggregate will be broadcast to refusal.
10. When Series 241 is cured excess aggregate will be removed.
11. Install Tnemec Series 237 Power-Tread groat coat at 60-80 square feet per gallon using a flat squeegee.

12. Install a second Tnemec Series 237 Power-Tread groat coat at 80-100 square feet per gallon using a flat squeegee.
13. Install a Tnemec Series 248 Everthane white finish coat at 400-500 Square feet per gallon using ¼" shed resistant roller cover.
14. Tape off and install yellow line striping and stair nosing to match existing using Tnemec Series 280.

NOTES:

- 1.) CDC has included up to 2500 lf of cracks and joints as there was not a quantity in the project documents.
- 2.) CDC has included up to 4 cubic feet in the base project and 2 cubic feet in the option as there was no quantity for concrete repair in the project documents.
- 3.) Initial cleaning to be done by UTA.
- 4.) No cost have been included to remove or replace equipment, tools, tool boxes, etc..
- 5.) Prior to installing the new coating system CDC has included time to administer an adhesion test in each phase to verify the current systems bond strength to the concrete substrate.
- 6.) All work is based on regular day time work week hours.

Freight charges are included in the quotation price.
Insurance certificates are available upon request.

Exhibit B – Cost Sheet

\$401,032.19 for the main floor without the small rooms (32,005.76 sq ft at \$12.53 per sq ft)
\$132,636.56 for the pits 3,829 sq ft @ \$34.64 per sq ft (actual measured pit area) Option A
\$533,668.75 total cost.

Price Firm Fixed.