

## **CONTRACTOR’S AGREEMENT (Construction Manager/General Contractor)**

This Contractor’s Agreement (this “Agreement”) is made and entered into by and between San Juan (“County”) and Redoubt Restoration, Inc (“CM/GC”). County and CM/GC may be collectively referred to as the “Parties” in this Agreement. Capitalized terms in this Agreement, which are not specifically defined in this Agreement, shall have the meaning set forth in the General Conditions, which is executed by the Parties in conjunction with this Agreement and which is incorporated into this Agreement by this reference (the “General Conditions”), except as specifically modified by this Agreement.

Whereas, County desires to construct multiple flood mitigation projects referenced in the Request for Proposal relating to the Pack Creek Emergency Watershed Protection Projects for the County (the “Project”); and

Whereas, County issued a Request for Proposals relating to the Project on March 13, 2024 (a copy of which is attached as Attachment A) (the “RFP”), whereby County solicited proposals from construction managers/general contractors to provide preconstruction services, including finalization of the designs, and construction services for the Project; and

Whereas, CM/GC submitted a proposal to County in response to the RFP (a copy of which is attached as Attachment B) (the “Proposal”); and

Whereas, County evaluated the Proposal as well as other proposals submitted to County consistent with the RFP and County’s policies and procedures, and on April 16, 2024 issued a notice of intent to engage in contract negotiations with CM/GC; and

Whereas, CM/GC represents and warrants to County both herein and through the Proposal that it is a qualified construction manager and general contractor licensed to engage in such business in the State of Utah and able and competent to undertake and complete the Project; and

Whereas, CM/GC is desirous of entering into this Agreement and undertaking and completing the Project for County under the terms and provisions of this Agreement and the Contract Documents.

NOW, based upon the foregoing and for and in consideration of the mutual conditions and covenants contained herein, the Parties hereby agree as follows:

**1. CM/GC’s Service and Responsibilities.**

A. CM/GC accepts the relationship of trust and confidence established by this Agreement and covenants with County as follows:

- 1) To cooperate with County, the Department of Agriculture’s Natural Resources Conservation Services (“NRCS”), the Pack Creek Water Company, and private property owners (“Owner”) within the Pack Creek Area;
- 2) To use CM/GC's best skills, efforts and judgments in furthering the interest of County;
- 3) To furnish efficient business administration and supervision;

- 4) To furnish at all times an adequate supply of workers, the appropriate materials and equipment, and perform the Work in the best and most expeditious and economic manner in accordance with the Contract Documents; and
  - 5) That the Work shall be subject to inspection by and approval of County or its authorized representative.
- B. In performing its obligations hereunder, CM/GC shall be deemed an independent contractor and not an agent or employee of County. CM/GC shall have exclusive authority to manage, direct, and control the Work, all of which must meet the Contract Documents.
  - C. The term "CM/GC" as used in this Agreement is deemed to include all the duties of a general contractor, including those described by the term "Contractor" in the General Conditions as well as the professional services of a business, administrative and management consultant to County, including all budget, scheduling, quality, safety and all other services related to assuring compliance with this Agreement and the Contract Documents. It is intended that this Agreement not reiterate all the applicable provisions of the General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated.
  - D. The standard of care for the Work under this Agreement and the Contract Documents shall be as follows: CM/GC and all those for whom CM/GC is liable at any tier shall exercise the degree of skill and diligence as is exercised by licensed members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity to the Project. CM/GC shall be liable to County, less any "betterment" obtained by Owner, for all Owner costs, damages, claims, liabilities, additional burdens, judgments, fines, penalties, damages, demolition, removal or modification of Work, any Owner delay damages, increased material costs, or third-party claims (e.g. an Engineering claim against County), to the extent caused by acts, failure to act, negligence, errors or omissions that do not meet this standard of care. This standard of care may be further modified by the Contract Documents. Owner reserves the right to deduct from any payment otherwise due under this Agreement and/or the Contract Documents, the amount related to any Owner costs, damages, claims, liabilities, additional burdens, judgments, fines, penalties, damages, demolition, removal or modification of Work, any Engineering or Owner delay damages, increased material costs, or third-party claims.

## **2. Fixed Limit of Construction Costs and Basis of Compensation.**

- A. The Fixed Limit of Construction Costs for the Project is \$1,067,500 (the "FLCC"), which includes CM/GC's fees. The FLCC may only be increased in advance and in writing by County.
- B. The scope of Work, including CM/GC services, must at all times be within the FLCC. County, NRCS, or Pack Creek Water Company shall not be liable to CM/GC for any amount over the FLCC. The FLCC as stated herein may be modified in writing and in advance by County or as a result of the entitlement of CM/GC for additional monies in accordance with the procedures and substantive requirements of the General Conditions and Contract Documents.
- C. By executing this Agreement, and at the time of submittal of each GMP proposal, CM/GC agrees that the FLCC is a reasonable limit for the total cost of the Project.

- D. For Work, including services, performed during the preconstruction phase of the Project, CM/GC will be compensated up to \$5,000. This shall include the cost of all labor, salaries, travel as well as consumable materials required during the preconstruction phase of the Project. This compensation shall include insurance, benefits, employment taxes, overhead and profit.
- E. Construction Phase Compensation.
- 1) CM/GC's construction management fee for the Work performed during the entire construction phase, including punch list completion, is a lump sum of 3.85% of the FLCC ( $\$4,500,000.00 \times 3.85\% = \$41,098.75$ ). This includes the cost outlined in any management plan submitted by CM/GC.
    - a) This construction management fee includes overhead, profit for the entire job and personnel who will be managing the project during bidding, construction and closeout, including the warranty period. This fee also includes employment taxes, insurance, workers compensation, as well as salaries and benefits for all personnel that are not identified in Section 2.E.3 below.
    - b) This construction management fee does not include general conditions or the monthly supervision cost described below. As used in this Agreement, "general conditions" means temporary construction costs directly related to the Work.
    - c) This construction management fee is subject to modification by County only as the scope of the work changes, and can be adjusted appropriately as the scope of work changes affect the size and/or duration of the Project.
    - d) Following the establishment of the Guaranteed Maximum Price ("GMP"), CM/GC change order markup, described in Section 6.B.7 below, will compensate CM/GC for the additional overhead and profit associated with a change in scope of Work; however, a decrease in scope of Work and Contract Time prior to or after the establishment of the GMP, shall result in a decrease in the amount of CM/GC's construction management fee, at the effective percentage rate established in the Proposal, prorated for the amount of Contract Time that is reduced from the original schedule. Similarly, an increase to the scope of Work prior to the establishment of the GMP shall result in an increase in the amount of CM/GC construction management fee at the effective percentage rate established in the Proposal, prorated for the amount of the Contract Time that is added to the original schedule.

CM/GC's construction management fee shall not be increased due to an increase in cost of material, labor, general conditions or site supervision.
  - 2) Compensation for the following items is deemed already included in CM/GC's construction management fee and not subject to any additional payment beyond said fee by County:
    - a) Costs, losses and expenses, including legal and consultant expenses, to the extent they have resulted from the act, fault or negligence of CM/GC, Subcontractor, Sub-subcontractor or supplier at any tier or anyone for whom CM/GC may be liable, including any loss or expense related to securing the property as required by this Agreement or to prevent injury to persons, the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.
    - b) All expenses related to maintaining and operating CM/GC's principal and branch offices.

- c) Any part of CM/GC's capital expenses, including interest on CM/GC's capital employed for the Work.
  - d) Overhead or general expenses of any kind, except as may be expressly included in Section 3 of this Agreement.
  - e) Food and refreshments for construction meetings or in association with the Project, unless approved in writing and in advance by County based on a showing of benefit to the Project.
  - f) Incentive awards of any kind, unless approved in writing and in advance by County based on a showing of benefit to the Project.
  - g) Training costs either associated or not associated with the Project, unless approved in writing and in advance by County based on a showing of benefit to the Project.
- 3) The following items, while not part of CM/GC's construction management fee, are to be included in any GMP proposal or approved GMP:
- a) If County authorizes CM/GC to self-perform portions of the Work, said Work shall be compensated as a cost of the Work and reimbursed at actual cost incurred based on documentation (direct personnel expense, including labor, materials, equipment, etc.) plus a fixed negotiated fee that shall not exceed 5% of the cost of said Work.
    - i. Self-performed work eligible for payment shall only include labor, materials, and equipment provided directly by CM/GC and not by Subcontractor, Sub-subcontractor or supplier at any tier.
    - ii. Self-performed work eligible for payment shall not include items furnished by CM/GC as a general conditions item.
  - b) CM/GC shall be compensated for general conditions and reimbursed for general condition costs but to not exceed an amount to increase overall GMP. General conditions include such items, to the extent used on the Project, as: construction trailer, office equipment, computers, phones, temporary toilets, and safety precautions including site items such as cost of debris removal, fencing, security and similar items. In order to qualify as a general conditions cost, such item must be necessary for the construction of the Project.
    - i. Rental rates for all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from CM/GC or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, shall be at rental charges at actual cost. If the equipment is owned by CM/GC, then the rental rate shall not exceed the demonstrated cost of ownership by CM/GC for the applicable time period. Other than hand tools with a value under \$100, equipment that is necessary to be purchased for use on the Project by CM/GC shall first be approved in writing by County. Following the completed use, CM/GC may retain ownership of the equipment upon credit of remaining market value compensated to County, otherwise County shall retain ownership.
    - ii. Large cranes, temporary construction utilities (e.g. water, gas and/or power), and weather conditions (winter protection) are excluded from the general conditions fee.

- c) Actual payments made by CM/GC to Subcontractor for Work performed pursuant to subcontracts properly entered into under this Agreement.
- d) Sales, use or similar taxes related to the Work and for which CM/GC is liable and imposed by any governmental authority.
- e) Actual cost of premiums for insurance, which CM/GC is required by the Contract Documents to purchase and maintain based on the amount of the approved GMP.
- f) Actual cost of payment and performance bonds based on the amount of the approved GMP.

**3. Construction Cost.**

- A. Construction cost shall be the total of the following for the entire Project: the preconstruction phase payment by County to CM/GC, the cost of separate subcontracts, the cost of self-performed Work, the CM/GC's construction management fee, eligible supervision costs, eligible general conditions, allowed use of CM/GC's Contingency, as well as payment and performance bond costs.
- B. Construction cost does not include the compensation of the NRCS Engineering and its consultants, or the cost of inspections or testing provided for by County.
- C. The cost estimate provided by CM/GC shall be consistent with the standard of care in the industry for a project of similar magnitude and complexity. If it is reasonably determined by County that CM/GC breached this standard of care in providing budget and/or cost estimates, County reserves the right to seek all available appropriate remedies from CM/GC.
- D. If the final costs of the Project are less than or equal to the final approved FLCC, then CM/GC shall be entitled to 30% of the savings between the final approved GMP and the final costs, or \$100,000.00, whichever is less, and the balance shall belong to the NRCS funding sources. For purposes of this subsection, changes to the final GMP that are the responsibility of County and NRCS (e.g. County initiated scope changes, unforeseen conditions and design error/ omissions) under the Contract Documents, shall not affect CM/GC's entitlement to share in the savings herein.
- E. CM/GC and County shall include an estimating contingency in its cost estimate for undefined design. The County shall continue to reduce this estimating contingency as the design becomes more defined and ultimately shall be eliminated.
- F. Prior to any construction, CM/GC shall submit a GMP proposal for a specific scope of Work, including services, for each individual project within the overall Project award to County, and have it approved by County, NRCS and the Pack Creek Water Company. Notwithstanding any other provision of this Agreement, CM/GC guarantees that the construction cost for the agreed to scope of Work will not exceed the GMP for that scopes of Work. The GMP may only be increased by a Change Order for circumstances described in Article 7 of the General Conditions. CM/GC's GMP proposal shall include the CM/GC's Contingency of up to 2% of the total cost of the proposed scope of Work, including eligible general conditions, CM/GC's construction management fee, supervision cost, bond and insurance. If there is to be more than one bid package from sub-contractors, the GMP proposal must be calculated by CM/GC in order to ensure that the completion of all bid packages and future anticipated increases in the GMP will not exceed the FLCC.
  - 1) Any use of Contingency shall be based on a documented proposal by Contractor and approved by County, which approval shall not be unreasonably withheld. This

contingency fund shall only be used for the following types of Work and for only direct costs of construction:

- a) Where the procurement of the bid package(s) results in costs that are likely to, or does exceed the FLCC, Contingency can be used to offset this increased cost;
  - b) For construction errors, or replacement of defective Work that is self-performed by CM/GC;
  - c) For completion of Work as a result of Subcontractor default; and/or
  - d) For items or the value of items included in the Contract Documents, but missed by CM/GC in the line items of the approved GMP proposal. This may include such items as general conditions, self-performed Work and other items that are directly related to CM/GC itself and not the Subcontractor, Sub-subcontractor or suppliers at any tier.
- 2) Contingency cannot be used for:
    - a) Errors by the GM/GC, Subcontractor, Sub-subcontractor, other subcontractors at any tier, suppliers at any tier or manufacturers at any tier;
    - b) Coordination issues between the GM/GC, Subcontractor, Sub-subcontractor, or other subcontractors at any tier that are not related to CM/GC error; and/or
    - c) Replacement of defective Work installed by the CG/GC Subcontractor, Sub-subcontractor, or other subcontractors at any tier.
  - 3) If the entire Contingency fund is used, any additional funds to complete the scope of Work, including services, defined in the Construction Documents must be provided at 100% by CM/GC.
  - 4) At final completion of the Project, if there are any funds remaining in Contingency, the funds may qualify for distribution in accordance with Subsection 3.D.
  - 5) Design errors and omissions, unforeseen site conditions, and Owner requested scope changes do not apply to the Contingency.

#### **4. Payments to CM/GC.**

- A. Payments for basic services, approved additional services and reimbursable costs, upon proper invoicing, justification and documentation, shall be made monthly for Work properly performed, all in accordance with this Agreement.
- B. General Payment, Retainage and Accounting Provisions.
  - 1) The provisions of the General Conditions regarding payment, withholding of payment, retainage, certification of payment and other payment requirements and rights of County and CM/GC shall apply.
  - 2) Retainage in the amount of 5% shall be withheld from each payment to CM/GC for any Work under this Agreement. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with Section 13-8-5, Utah Code Annotated. CM/GC shall also comply with the requirements of Section 13-8-5, Utah Code Annotated, including restrictions of retainage regarding Subcontractor and the distribution of interest earned on the retention proceeds.
  - 3) County shall not be responsible for enforcing CM/GC's obligations under Utah law in fulfilling the retention law requirements with Subcontractor, or other subcontractors at any tier.
  - 4) CM/GC's retainage shall be held by County in an interest bearing account with said interest to accrue to the account of CM/GC. Said interest shall be distributed by County to CM/GC upon release of retention funds.

- 5) County may withhold from payment to CM/GC such amount as, in County's judgment, may be necessary to pay just claims against CM/GC, Subcontractor, Sub-subcontractor, other subcontractors at any tier, suppliers at any tier or manufacturers at any tier for labor and services rendered and materials furnished in and about the Work. County may apply such withheld amounts for the payment of such claims in County's discretion. In so doing, County shall be deemed the agent of CM/GC and payment so made by County shall be considered as payment made under this Agreement by County to CM/GC. County shall not be liable to CM/GC for any such payment properly made. Such withholdings and payments may be made without prior approval of CM/GC and may also be made prior to any determination as a result of any dispute, PRE, Claim or litigation. However, CM/GC shall be notified prior to any such withholding and will be given an opportunity to inform County as to any reason why the withholding shall not occur.
  - 6) Before final payment is made, CM/GC must submit evidence satisfactory to County that all payrolls, materials bills, subcontracts at any tier and outstanding indebtedness in connection with the Work have been properly paid. Final payment will be made after receipt of said evidence, final acceptance of the Work by County as well as compliance with the applicable provisions of the Contract Documents.
  - 7) CM/GC shall respond immediately to any inquiry in writing by County as to any concern of financial responsibility and County reserves the right to request any waivers, releases or bonds from CM/GC in regard to any rights of Subcontractor, Sub-subcontractor, other subcontractors at any tier, suppliers at any tier, manufacturers at any tier or any third-party prior to any payment by County to CM/GC.
  - 8) Notwithstanding any other provision of this Agreement, CM/GC shall reimburse County for the portion of any expenses paid by County to CM/GC, which is attributable to CM/GC's breach of its duties under this Agreement, including the breach of any duty by any Subcontractor, Sub-subcontractor, other subcontractors at any tier, suppliers at any tier, manufacturer at any tier or anyone for whom CM/GC may be liable.
5. **Basic Services.** CM/GC's basic services consist of the two phases described below and any other services included in this Agreement as basic services.
- A. Preconstruction Phase. CM/GC shall perform the following:
- 1) Provide for County's, NRCS and Pack Creek Water Company's review and acceptance, and periodically update a Project critical path schedule that coordinates and integrates CM/GC's services, the NRCS's Engineering services and County's responsibilities with anticipated construction schedules.
  - 2) Prepare for County's approval a detailed estimate of construction cost, consistent with Section 3 of this Agreement, in a format approved by County, including a project cost analysis of each trade. CM/GC shall update and refine this estimate throughout the design and construction process, including working with the NRCS Engineer and Project Manager during each of the Engineering design phases, including schematic design, design development and construction document phases. The overall objective is for CM/GC and the NRCS Engineering is to present a mutually agreed upon design and estimate that complies with the Project scope and FLCC requirements. Estimates shall be divided for the separate bid packages that are going to be used for bidding. If the estimate exceeds the approved FLCC,

then CM/GC shall, as part of its basic preconstruction services, cooperate with the NRCS Engineer and Project Manager to present to County a mutually agreed upon value-engineering of the Project back within the FLCC.

- 3) Conduct a complete review and consult with County, the NRCS Engineer and Project Manager and Pack Creek Water Company of all aspects and phases of the drawings and specifications. This review and consultation shall evaluate the following: constructability, budget issues, scheduling issues, safety concerns, errors and omissions. CM/GC shall be responsible for being aware of site conditions, market conditions and all other customary information needed to review all aspects and phases of the drawings and specifications.
- 4) Provide advice on the separation of the Project into separate bid packages/phases for various categories of Work.
- 5) Investigate and recommend a schedule of all purchases of materials and equipment requiring long lead-time procurement (including County purchases), coordinate this schedule of purchases with the early preparation of portions of the Contract Documents by the Engineer, and expedite and coordinate delivery of these purchases.
- 6) Bidding Services, including proposals.
  - a) For purposes of this Agreement, the term "bid" and other terms based on that word used in the invitation to bid process shall be deemed to refer to "proposal" and the corollary words related to the request for proposal process, when the request for proposal process is used in lieu of an invitation for bids.
  - b) CM/GC shall prepare, when appropriate, prequalification criteria for bidders if subcontracting any portion of this work. Subcontractor, Sub-subcontractor, other subcontractors at any tier and suppliers at all tiers must be properly licensed in the State of Utah and must meet all qualification requirements of the specifications/Contract Documents.
  - c) CM/GC is responsible for the procurement of subcontractors and suppliers for the Project. CM/GC shall develop subcontractor and supplier interest to ensure bids are received.
  - d) CM/GC shall conduct pre-bid conferences to familiarize potential bidders with the bidding documents. CM/GC shall ensure that the Construction Documents are available to all potential bidders.
  - e) All procurements recommended and conducted by CM/GC shall be in accordance with County's policies, including its financial policies and procedures, and County's code of conduct. CM/GC may obtain copies of these records by submitting a written request to County seeking these records.
  - f) CM/GC shall receive bids, prepare bid analyses and award subcontracts or reject bids. County, NRCS Project Manager and Pack Creek Water Company shall be consulted during this procurement process, however, the determination and responsibility for the procurement of subcontractors and suppliers is that of CM/GC. CM/GC shall conduct pre-award conferences with bidders that have been recommended for award by any selection committee.
  - g) CM/GC shall consult with the NRCS Engineer in order to suggest reasonable adjustments in the scope of the Project, and to suggest alternate bids in the Construction Documents as needed to adjust the construction cost, which shall not exceed the FLCC. If County determines as a result of the bidding process



that the FLCC is exceeded or will likely be exceeded, County reserves the right, in its sole discretion to:

- i. give written approval of an increase in FLCC, including applying CM/GC's Contingency to such increase;
    - ii. authorize re-bidding;
    - iii. revise the scope of the Work; and/or
    - iv. terminate the Project.
  - h) There shall be no contractual relationship between Subcontractor, Sub-subcontractor, other subcontractors at any tier, suppliers at any tier, or manufacturers at any tier and County, NRCS, or the Pack Creek Water Company. CM/GC shall prepare and execute the required Subcontractor/supplier agreements. CM/GC shall be fully responsible for the performance of Subcontractor, Sub-subcontractor and suppliers at any tier.
- 7) Self-Performed Work.
- a) CM/GC may request that it be allowed to self-perform portions or all of the of the Work for the benefit of the Project. The self- performed Work may be allowed as follows:
    - i. When the proposal for the self-performed Work is approved by County as part of CM/GC selection process; or
    - ii. When CM/GC has been selected for the self-performed Work through a selection process that is similar to the selection of subcontractors by County.
  - b) Savings in self-performed Work may be eligible for the incentive described in Subsection 3.D.
- 8) If it is reasonably determined by County that CM/GC has not provided satisfactory preconstruction services, County may determine to terminate this Agreement upon ten days' notice to CM/GC and may use another CM/GC to complete the preconstruction phase and/or perform the construction phase services. All items required to be transferred or delivered to County under the Contract Documents for a termination for cause shall be so transferred or delivered promptly by CM/GC to County. Upon such termination, CM/GC's sole remedy shall be payment for properly performed services up to the date of such termination. For instance, as a result of such termination under this subsection, CM/GC is not entitled to receive:
- a) any fee related to Work not properly performed;
  - b) any fee related to Work not yet performed; or
  - c) any amount related to lost profits.
- CM/GC shall be liable to County, NRCS, or the Pack Creek Water Company for all damages and liabilities regarding the preconstruction phase arising out of this Agreement and the Contract Documents, excluding damages and/or liabilities arising from County's sole acts or conduct.
- B. Construction Phase.
- 1) CM/GC shall complete construction in accordance with Contract Documents prepared for this project and approved by County. Upon receipt of a fully executed Change Order that includes a GMP for a specific scope of Work, CM/GC is authorized to commence the construction phase of the Project. All the requirements of this Subsection 5.B. shall be included as part of any approved GMP.

- 2) Concurrent with the authorization to proceed with the construction phase, CM/GC shall provide 100% payment and performance bonds for the amount of the GMP and meeting the requirements contained in the Contract Documents.
- 3) CM/GC shall provide administrative and management services as required to coordinate the Work of Subcontractor, Sub-subcontractor, and/or other subcontractors at any tier with each other and CM/GC, County NRCS and the Pack Creek Water Company.
- 4) CM/GC's team must be consistent with the team members designated in the Proposal and such team must contain an adequate number of members and have the qualifications necessary to complete the Project in accordance with this Agreement. No member of CM/GC's team submitted in the selection process of CM/GC, shall be removed from the Project unless said team member shall leave the employ of CM/GC or unless County requests or approves the change. Any request to replace a CM/GC team member shall be submitted to County in writing and subject to approval of County upon a showing that such replacement is consistent with the qualifications provided in the selection process of CM/GC.
- 5) CM/GC shall provide competent supervision of the Work and shall cause the Work to be performed in accordance with the Contract Documents.
- 6) CM/GC shall schedule and conduct pre-construction, construction and progress meetings. CM/GC shall prepare and promptly distribute minutes of all such meetings. Said minutes shall not be considered official minutes until approved by County. At the beginning of each meeting, the minutes of the prior meeting shall be the first item on the agenda and the minutes shall be reviewed for editing or approval at that time.
- 7) CM/GC shall provide an updated critical path schedule prior to the commencement of the Work. This critical path schedule shall be further updated in a prompt manner to reflect any changes. CM/GC shall comply with all scheduling requirements in the Contract Documents.
- 8) CM/GC shall perform regular monitoring of the approved estimate of construction cost, including actual costs for activities in progress and estimates for uncompleted tasks. CM/GC shall promptly identify in writing to County, NRCS and the Pack Creek Water Company, variances between actual/estimated costs in regard to the budget for the FLCC. CM/GC shall use its best efforts to work with the NRCS Engineer and Project Manager as a team in an effort to have the designs that are presented to County properly determined in advance by CM/GC to meet the FLCC. CM/GC shall:
  - a) Maintain cost accounting records on authorized Work performed under unit costs and Work performed on the basis of actual costs of labor and materials.
  - b) Recommend necessary or desirable changes to County, review requests for changes, review Subcontractor pricing, and procure reasonable subcontractors' bids.
  - c) Develop and implement procedures for the review and processing of applications by Subcontractor for progress and final payments.
- 9) CM/GC shall be responsible for the overall safety of the Project and shall review the safety programs developed by Subcontractor. CM/GC shall fulfill the safety requirements provided for in the General Conditions.

- 10) If required by County or the Contract Documents, CM/GC shall assist County in selecting and retaining the professional services of surveyors, special consultants and testing laboratories and coordinate their services.
- 11) CM/GC shall determine that the Work of Subcontractor is being performed in accordance with the Contract Documents. CM/GC shall promptly remediate any defects or deficiencies in the Work. CM/GC is solely responsible for the performance of Subcontractor, Sub-subcontractor, and other subcontractors at any tier. Subject to review by the County, NRCS and Pack Creek Water Company, CM/GC shall reject Work that does not conform to the requirements of the Contract Documents.
- 12) CM/GC shall timely arrange for all code inspections, special inspections or testing needed to assure compliance with the Contract Documents.
- 13) CM/GC shall promptly submit to the NRCS and County, any subcontractor requests for interpretations of the drawings and specifications, and promptly assist in the resolution of such requests.
- 14) CM/GC shall receive certificates of insurance from Subcontractor, and upon specific request by County, forward such to County.
- 15) CM/GC shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. CM/GC shall receive from Subcontractor all Shop Drawings, Product Data, Samples and other submittals, and review such for conformance with the Contract Documents. After review by CM/GC, CM/GC shall deliver the submittals to the NRCS Engineer and Project Manager for review.
- 16) CM/GC shall keep a daily log containing a record of weather conditions, Subcontractor Work on the site, Sub-subcontractor Work on the site, number of workers, Work accomplished, all necessary data for verification of Subcontractor and Sub-subcontractor performance, including unit quantities, problems encountered, and other data as County may require. CM/GC shall make the log available to County and NRCS promptly upon request.  
CM/GC shall maintain at the Project site, on a current basis: a record copy, all of which shall be marked to record all changes made during construction, of all contracts, specifications, Drawings, Addenda, Change Orders and other Modifications, all Shop Drawings, Product Data, Samples, submittals, purchases, materials, equipment, maintenance and operating manuals and instructions, as well as other related documents and revisions related to the Project. CM/GC shall make all records promptly available to County upon request.
- 17) At the completion of the Project, CM/GC shall promptly submit to the County, NRCS, and Pack Creek Water Company, all operation and maintenance manuals and as-built record drawings. NRCS will review these submittals for accuracy and then promptly forward the submittals to County.
- 18) CM/GC shall arrange for delivery, storage, protection/security for County-purchased items that are delivered to CM/GC.
- 19) CM/GC shall notify the NRCS Engineer and Project Manager when the Project, or a portion thereof, is ready for a Substantial Completion inspection. Upon Substantial Completion, CM/GC shall promptly complete all punch list items consistent with the Contract Documents.

**6. Additional Services/Work.**

- A. It is understood and agreed by the Parties hereto that no money will be paid to CM/GC for additional labor or materials furnished unless a new contract in writing or a Modification hereof in accordance with the Contract Documents for such additional labor or materials has been executed. County specifically reserves the right to modify or amend this Agreement and the total sum due hereunder, either by enlarging or restricting the scope of the Work, including services.
- B. The following additional services shall be performed by CM/GC upon authorization in advance and in writing from County and shall be paid for as provided in this Agreement:
  - 1) Services related to County-provided furnishings and equipment not specified in the Contract Documents.
  - 2) To the extent not the fault of CM/GC, consultation on replacement of Work damaged by fire or other cause during construction and furnishing services in conjunction with the replacement of such Work.
  - 3) To the extent not the fault of CM/GC, inspections of, and services related to, the Project after the end of the warranty period.
  - 4) Other services that are not part of CM/GC's basic services and not otherwise specified in this Agreement, upon advance written direction from County.
  - 5) Reserved.
  - 6) Other than for those matters caused by the fault or negligence of Contractor, actual costs incurred due to an emergency affecting the safety of persons and property. Advance authorization by County is not needed for CM/GC to be entitled to these costs.
  - 7) Mark-up for Subcontractor additional Work.
    - a) For additional Work performed by Subcontractor that was not part of the scope of Work related to the GMP, CM/GC will be compensated 5% of the subcontract or material price in lieu of markups otherwise provided for in the General Conditions. This compensation is for home office coordination as well as CM/GC overhead and profit.
    - b) Subcontractor shall receive a markup for additional Work in accordance with the General Conditions.

**7. Time and Delay Remedy.**

- A. Time is of the essence for the performance required by this Agreement. CM/GC shall perform basic and additional services in an expeditious manner and consistent with the standard of care requirements of this Agreement.
- B. At the time a bid date is set for a particular subcontract, County and CM/GC will jointly establish a completion date (or dates) for the Work of that subcontract, which shall be consistent with the County-approved project schedule for the entire Project.
- C. CM/GC agrees to pay liquidated damages in the amount of \$1,000.00 per day for each day after expiration of the Contract Time until CM/GC achieves Substantial Completion of the Project. This provision for liquidated damages:
  - 1) is to compensate County for delay only;
  - 2) is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Agreement;
  - 3) is not a penalty; and

- 4) shall not prevent County from maintaining claims for other non-delay damages, such as costs to complete or remedy defective Work.
- D. No PRE, Claim or action shall be maintained by CM/GC, Subcontractor, Sub-subcontractor or suppliers at any tier, against County for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of County or its officers, employees or agents except as permitted by the Contract Documents.
- E. Extension of Time requests must comply with the General Conditions.
- F. CM/GC and County waive claims against each other for consequential damages arising out of or relating to the Contract Documents. This mutual waiver includes:
  - 1) Damages incurred by County for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity, excluding liquidated damages identified in the Contract Documents; and
  - 2) Damages incurred by CM/GC for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and reputation, and for the loss of profit, except anticipated profit arising directly from the Work of this Agreement.

This mutual waiver is applicable to consequential damages arising from either party's termination of the Contract Documents, excluding liquidated damages identified in the Contract Documents.

**8. County's Responsibilities.**

- A. County has provided the requirements for the Project in the RFP, which is part of the Contract Documents.
- B. County has advised CM/GC of the budget of the Project, which is the FLCC identified in the RFP and this Agreement.
- C. County, NRCS and Pack Creek Water Company shall designate one or more representative(s) authorized to act on behalf of the parties with respect to the Project. County shall examine documents submitted by CM/GC and shall render decisions pertaining thereto in a timely manner in order to avoid unreasonable delay in the progress of CM/GC's Work as indicated by the County-approved critical path schedule.
- D. County may furnish structural, mechanical, chemical and other laboratory tests, inspections and reports. CM/GC shall cooperate with any such tests or inspections.
- E. County, NRCS and Pack Creek Water Company may audit applications for payments or any other aspect of the Work of CM/GC and of Subcontractor, Sub-subcontractor or suppliers at any tier. CM/GC shall cooperate with County in providing all necessary information for any County audit.
- F. County shall assure that CM/GC is provided the construction documents in a digital format. CM/GC shall be responsible for making any further copies of the Construction Documents, subject to the copyright requirements in the General Conditions.
- G. County reserves the right to perform Work related to the Project with County's own forces, and to award contracts to other entities in connection with the Project, which are not part of CM/GC's responsibilities under this Agreement. CM/GC shall coordinate CM/GC's Work with work of County's separate contractors as required by the Contract Documents. CM/GC shall promptly notify County in writing if any such independent action will in any way compromise CM/GC's ability to meet CM/GC's responsibilities under this Agreement.

9. **Governmental Immunity Act of Utah.** The Parties acknowledge and agree that no provision of this Agreement or the Contract Documents shall be, or shall be construed as, a waiver of any applicable provision of the Governmental Immunity Act of Utah.
10. **Notices.** The Parties shall comply with the notice provisions of the General Conditions. The initial addresses of the Parties for noticing purposes shall be as follows:

<p><u>If to County:</u>  San Juan County  Attn: Mack McDonald  117 South Main  P.O. Box #9  Monticello, Utah 84535</p> <p><u>With a copy to:</u>  San Juan County  Attn: Attorney's Office  P.O. Box #9  Monticello, Utah 84535</p>	<p><u>If to CM/GC:</u>  David Meyer  General Manager  Redoubt Restoration  4791 Caddie Lane  Highland, Utah 84003</p>
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11. **Successor and Assigns.** County, NRCS and Pack Creek Water Company and CM/GC, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Agreement. CM/GC shall not assign this Agreement without the prior written consent of County, nor shall CM/GC assign any money due or to become due as well as any rights under this Agreement, without prior written consent of County.
12. **Extent of This Agreement.**
- A. This Agreement includes this Agreement, the General Conditions, the RFP, the Proposal, Drawings, Specifications, Addenda, other documents listed or identified in this Agreement or the General Conditions, CM/GC's bonds, and Modifications issued after execution of this Agreement. This Agreement represents the entire and integrated Agreement between County and CM/GC and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both County and CM/GC.
  - B. The following documents shall be read together with the provisions of this Agreement, and in case of irreconcilable conflict between any provisions of the various documents, the first mentioned document in the following list shall control: Modifications, Addenda, this Agreement, the General Conditions, the RFP, and the Proposal.
13. **Contract Date.** The date of this Agreement and the date upon which it shall become effective is the date that this Agreement is executed and dated by the final party to execute and date this Agreement.
14. **Authority to Execute and Perform Agreement.** CM/GC and County each represent that the execution of this Agreement and the performance thereunder is within its respective

duly authorized powers. Each signatory below represents that he/she is duly authorized by its respective entity to execute this Agreement on behalf of its respective entity.

15. **Counterparts, Digital Signatures, and Electronically Transmitted Signatures.** If the Parties sign this Agreement in counterparts, each will be deemed an original but all counterparts together will constitute one Agreement. If the parties digitally sign this contract or electronically transmit signatures for this Agreement by email, such signatures will have the same force and effect as original signatures.

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

<p>SAN JUAN COUNTY</p> <p>By: _____ Jamie Harvey, Chair Board of San Juan County Commissioners</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____ Lyman Duncan, San Juan County Clerk/Auditor</p> <p>Date: _____</p>	<p>REDOUBT RESTORATION, INC</p> <p>By: _____ David Meyer, President</p> <p>Date: _____</p>
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**ATTACHMENT A**  
**(The RFP)**



**ATTACHMENT B**  
**(The Proposal)**