

**DOCUMENT 00 52 00
AGREEMENT**

PART I GENERAL

1.01 CONSTRUCTION CONTRACT

- A. Name of Project: Kearns Sidewalk Maintenance
Project No. 25KEA07
Contract No. MSD-ENG

1.02 CONTRACTOR

- A. Name and address: PNL Construction, Inc
713 South 500 West, Payson, UT 84651

- B. Telephone number: (385) 225-2865
- C. Email address: oswaldo.pnl04@gmail.com

1.03 OWNER

- A. Greater Salt Lake Municipal Services District, a political subdivision of the State of Utah (referred to hereafter as "MSD" or "Owner.") 860 Levoy Drive, Suite 300, Taylorsville, Utah 84123.
- B. The director of the MSD's Engineering Division is Lizel Allen, P.E.

1.04 OWNER'S REPRESENTATIVE/AGENT

- A. The MSD's representative and agent on this Project is Lizel Allen, P.E., who has the rights, authority and duties assigned to the MSD's Representative in the Contract Documents.

PART 2 TIME AND MONEY TERMS AND CONDITIONS

2.01 CONTRACT PRICE

- A. The contract price includes the cost for the Work specified in the Request for Bids, Drawings, Plans, Specifications, General Conditions, Special Conditions (if any), Supplemental Conditions (if any), Bid, Contract Award, and this Agreement, collectively referred to hereafter as Contract Documents; plus the cost of all bonds, insurance, permits and fees required, and all charges, expenses or assessments of whatever kind or character.
- B. The schedule of Prices awarded from the Bid Form submitted by Contractor are as follows:
 1. Base Bid. \$504,177.00
 2. Alternate A. \$ _____
 3. Alternate B. \$ _____
 4. Alternate C. \$ _____

- C. Based upon the above-awarded schedules, the Contract Price awarded is:
Base Bid: \$ _____
Sum of Alternates: \$ _____
Total Price (Bid + Alternates): \$504,177.00

2.02 CONTRACT TIME Five hundred thousand and one hundred seventy seven dollars and zero cents.

- A. Contract time will end:
1. 30 calendar days after date of the Notice to Proceed; or
 2. At midnight on the ____ day of _____, 20__.
 3. Any time specified in the work sequences set forth in the Project's schedule, as prepared by Contractor, shall be part of the Contract Time.

2.03 PUNCH LIST TIME

- A. The Work will be complete and ready for final payment within 15 days after the date Contractor receives MSD's Final Inspection Punch List unless MSD grants exemptions of specific items in writing or an exception has been specified in the Contract Documents.

2.04 EFFECT OF TIME EXTENSION

- A. Permitting the Contractor to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been from time to time extended, whether or not a new completion date is established, shall not operate as a waiver by MSD of any of MSD's right under this Agreement.

2.05 LIQUIDATED DAMAGES

- A. **Late Completion.** Time is the essence of the Contract Documents. Contractor agrees that MSD will suffer financial loss/damages if the Work is not completed within the Contract Time or within any time extensions allowed in accordance with the General Conditions. Contractor and Owner agree that said financial loss/damages will occur from additional administrative costs to MSD and for disruption and delay in the MSD's provision of services to the public, and further agree that the amount of said financial loss/damages is difficult to determine with certainty. Accordingly, instead of requiring proof of specific financial loss or damages for late completion of the Work, Contractor agrees to pay the following sums to the MSD as liquidated damages and not as a penalty:
1. **Late Contract Time Completion:** five hundred dollars (\$500) for each day or part thereof that expires after the Contract Time until the Work is accepted as Substantially Complete as provided in the General Conditions.
 2. **Late Punch List Time Completion:** Fifty percent (50%) of the amount specified for Late Contract Time Completion for each day or part thereof the Work remains incomplete after the Punch List Time. The Punch List shall be considered delivered on the date it is transmitted by email, hand delivery or received by the Contractor by certified mail.
 3. **Reasons for Liquidated Damages, Provision for Other Damages:** The liquidated damages described above are established to provide for administrative costs and damage to MSD's ability to provide public services and convenience thereof to the public which it serves. Consequently, MSD and Contractor agree that in the event MSD suffers special damages from circumstances other than those specified herein and in the description of liquidated damages given above,

the amount of liquidated damages stipulated above shall not be deemed to be a limitation upon MSD's right to recover the full amount of said special damages.

B. **Work Sequence Completion:** Time is of the essence in sequenced work. If a work sequence is specified, then for each day or part thereof that exceeds the specified time and until MSD determines such work sequence is substantially complete, the Contractor agrees to pay the following sums to the MSD as liquidated damages and not as a penalty:

1. Work Sequence 1: _____
_____ dollars (\$ _____)
2. Work Sequence 2: _____
_____ dollars (\$ _____)
3. Work Sequence 3: _____
_____ dollars (\$ _____)
4. Work Sequence 4: _____
_____ dollars (\$ _____)
5. Work Sequence 5: _____
_____ dollars (\$ _____)

C. **Survey Monuments:** No land survey monument shall be disturbed, covered, or removed until the MSD has been properly notified and the County Surveyor has referenced the survey monument. The parties agree that upon such an unauthorized disturbance it is difficult at the time of executing this agreement to determine the full extent of the damages from such a disturbance, and the parties agree that Contractor will pay as liquidated damages the sum of one thousand dollars (\$1,000). In addition to these liquidated damages, the parties agree that the Contractor shall be additionally responsible for those expenses allowed by Utah Code Ann. §17-23-15 and Salt Lake County Ordinance 14.17.10. These liquidated damages are not a penalty, and are in addition to the expenses allowed by Utah Code Ann. § 17-23-15 and Salt Lake County Ordinance Chapter 14.17.

D. **Operation of Utilities:** No interruption of utility service shall be caused by Contractor, its agents or employees, without the MSD's prior written approval. The parties agree that because of the difficulty in determining the MSD's damages resulting from an unapproved interruption, the Contractor shall reimburse the MSD the cost for restoring such service and the following liquidated damage sums for the loss of public use of said utility. Payment of these liquidated damages to MSD does not relieve Contractor from any liability for such a utility interruption to third parties. In the event that any third party successfully makes a claim against the MSD for such interruption, Contractor shall be responsible for payment of claims as follows:

1. Water: Actual costs or _____ dollars (\$ _____) per day or part thereof.
2. Sewer: Actual costs or _____ dollars (\$ _____) per day or part thereof.
3. Storm Drain: Actual costs or _____ dollars (\$ _____) per day or part thereof.
4. Street Lighting: Actual costs or _____ dollars (\$ _____) per day or part thereof.
5. Communications: Actual costs or _____ dollars (\$ _____) per day or part thereof.

6. Electrical: Actual costs or _____ dollars
(\$ _____) per day or part thereof.
7. Natural Gas: Actual costs or _____ dollars
(\$ _____) per day or part thereof.
8. Other utility service: Actual costs or _____ dollars
(\$ _____) per day or part thereof.
9. _____: Actual costs or _____ dollars
(\$ _____) per day or part thereof.
10. _____: Actual costs or _____ dollars
(\$ _____) per day or part thereof.

E. **Deduct Damages from Money Owed Contractor:** MSD shall be entitled to deduct and retain liquidated damages out of any money, which may be due or become due the Contractor under this Agreement. To the extent that the liquidated damages exceed any amounts that would otherwise be due the Contractor, the Contractor shall be liable for such amounts and shall promptly pay said amounts to the MSD.

2.06 PAYMENT PROCEDURES

- A. **Progress Payments:** Contractor shall submit applications for payment in accordance with the General Conditions of the Contract Documents. Applications for payments will be processed by the MSD as provided in the General Conditions. Payment shall not become due or payable for any contract item not provided or installed by the Contractor exactly as indicated in the Contract Documents.
1. **Withholding Payment:** The MSD reserves the right to withhold payment from Contractor for non-compliance with any provision of the Contract Documents.
 2. **Price Adjustments:** MSD will consider making partial payment to the Contractor for certain out-of-tolerance items in advance of any negotiated settlement reached between the Contractor and the MSD, provided the Contractor requests in writing that this be done. Contractor agrees that any such payments made by the MSD are “payments in advance” and that any money, which becomes due when the final settlement is negotiated will not constitute payments “withheld” or “retained” under State law.
 3. **Retainage:** In making any progress payments, the MSD may retain five percent (5%) of the payment amount until the final completion and acceptance of all the work covered by the Contract Documents; provided, however, that the MSD, at any time after fifty percent (50%) of the work has been completed, if it finds, in its sole discretion, that satisfactory progress is being made on the project, may (emphasis added) make any of the remaining progress payments in full. All funds retained by the MSD under this provision shall be placed in an interest-bearing account, as required by Utah law, and the interest on the account shall accrue to the benefit of the Contractor and its subcontractors, to be paid after the project is satisfactorily completed and accepted by the MSD. The MSD Director of Finance will establish the interest-bearing retainage account and accrue interest on all retained amounts in the account at the monthly average interest rate earned by MSD on pooled investments of MSD funds in general. The accrued interest amount in the account will be paid to the Contractor at the time of final payment. As provided by Utah law, it shall be the responsibility of the Contractor to distribute and pay to any and all of its subcontractors any portion of the interest received by the Contractor on the retainage amount to which the subcontractor

may be entitled pursuant to its subcontract with the Contractor. It is expressly agreed by the Contractor that all funds withheld or retained from payment by the MSD because of faulty work, materials, or equipment or for contract items not called for in the Contract Documents or not installed by Contractor in accordance with the plans, specifications, drawings, and other contract documents, or any amount in dispute between MSD and Contractor, shall not be considered as retained amounts and shall not be subject to the provisions of this paragraph.

- B. **Final Payment:** After completion of all Work and Punch List items, and acceptance thereof by the MSD, MSD shall pay the Contract Price due, after deducting therefrom all previous payments, liquidated damages, and other amounts to be withheld by MSD. All prior progress payments shall be subject to correction in the final payment. Contractor must make a written request for the final payment and it shall not be due and payable until the expiration of thirty (30) days from receipt by the MSD of the request for final payment.
1. **Submittal:** Final payment shall not be made until the Contractor has delivered and the MSD has accepted all submittals required by the Contract Documents.
 2. **MSD Released from Claims:** The payment and acceptance of the final Contract Price due and the adjustments and payments for any Work done in accordance with any alterations of the same, shall release the MSD from any and all claims of Contractor on account of work performed under the Contract Documents or any modification thereof, except for those claims specifically agreed to as reserved and unresolved by the MSD.

2.07 EXTRA WORK

- A. No money will be paid to the Contractor for any additions, deletions or revision in the Work required by the Contract Documents unless a contract Change Order for such has been made in writing and executed by the MSD and the Contractor.

2.08 CITIZENS TO RECEIVE HIRING PREFERENCE

- A. To the extent required by the provisions of Title 34, Chapter 30, Section 1, Utah Code, 1953 as amended, Contractor shall give preference in the employment of workmen in the construction of this project who are citizens of the United States or who have declared their intention of becoming citizens. If Contractor fails to comply with the applicable provisions of this paragraph, this agreement shall be void.

PART 3 COVENANTS

3.01 ASSIGNMENT NOT BINDING WITHOUT WRITTEN CONSENT

- A. MSD and Contractor agree no assignment of any right or interest in the Contract Documents will be made without the written consent of the MSD and the Contractor. No assignment will release or discharge the MSD or the Contractor from any duty or responsibility under the Contract Documents unless specifically stated to the contrary in any written consent to an assignment.
- B. Contractor shall make no assignment of money that is due without the MSD's written consent (except to the extent that the effect of this restriction may be limited by law or regulation).

3.02 BINDING TERMS

- A. MSD and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal

representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

3.03 INDEMNIFICATION

A. Provisions concerning indemnification are set forth in the General Conditions.

3.04 DISPUTE RESOLUTION

A. In General:

1. Unless a decision shall be held by an appropriate court of law to have been procured by fraud or to be arbitrary and capricious or so grossly erroneous as necessarily to imply bad faith, any factual decision made under this section shall be final and binding in any suit or action arising under this Agreement or other Contract Documents, including any actions by Contractor or others against MSD or any of MSD's agents, consultants, or employees.
2. Compliance with provisions of this section shall be a condition precedent prior to any legal action by the Contractor or any of Contractor's subcontractors and suppliers against MSD or any of MSD's agents, consultants, or employees.
3. The provisions of this section shall not preclude or limit judicial review of issues of law.
4. Ambiguities in or between Contract Documents shall be construed in favor of the MSD.

B. Procedure: Any dispute arising under or relating to the Contract Documents which is not disposed of by contract modification shall be decided pursuant to the following procedure.

1. An initial decision shall be made by the MSD in interpreting the requirements of the Contract Documents. Said decision shall be made after submission to MSD in writing by Contractor of Contractor's claim. Said claim shall be submitted to the MSD's Representative. MSD shall notify Contractor of its decision upon said claim within seven (7) calendar days after it is received by the MSD's Representative. Contractor may appeal the MSD's decision to the head of the MSD department responsible for the project. The appeal shall be made by Contractor submitting said appeal to the head of the appropriate MSD department within seven (7) calendar days of its receipt of the MSD's initial decision concerning Contractor's claim. The appeal must be in writing and contain sufficient detail to adequately notify the head of the MSD department responsible for the project of the basic factual allegations upon which it is premised and the grounds upon which Contractor believes it is entitled to relief. If the amount of the appeal exceeds five thousand dollars (\$5000), Contractor shall include a sworn statement, made upon penalty of falsification in official matters, that the claim, both as to the amount thereof and the supporting data, are accurate and complete to the best of the Contractor's knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the MSD is liable. If it is ultimately determined that Contractor is unable to support its claim for reasons attributable to Contractor's misrepresentation of fact or fraud, Contractor shall be liable to MSD for an amount equal to the amount of said claim which is insupportable by reason of misrepresentation or fraud.
2. The decision of the head of the MSD department responsible for the project on Contractor's written appeal shall be issued within thirty (30) calendar days of

receipt by said official of Contractor's appeal. Said decision shall be reduced to writing and a copy shall be mailed or otherwise furnished to the Contractor. The decision of the department head shall be final and conclusive for the purposes of Contractor's completion of the project. Contractor may protest the decision by making a protest, in writing, and submitting the same to the MSD's Representative. Any protest Contractor may wish to make in these circumstances must be submitted to MSD's Representative within fifteen (15) calendar days of receipt of the decision on appeal.

3. All notices sent by mail shall be conclusively presumed to have been delivered three calendar days after posting.
- C. Work During Claim, Appeal or Protest Procedures: Notwithstanding the pendency of any claim, appeal or protest thereof as provided above, Contractor shall, if so directed by MSD, proceed with the work under the Contract Documents according to MSD's direction and according to the decision on any claim or appeal. If Contractor protests the decision of its appeal to the head of the MSD's department responsible for the project within the time limit set forth above, the issues of said claim may be preserved. The existence of a claim, appeal or protest shall not excuse Contractor from the requirements of the Contract Documents, including, but not limited to, the Contract Time.
- D. Appeals of Termination or Suspension of Work: Any decision by MSD to terminate or suspend the work of the project shall not be subject to the provisions of this section 3.04.

3.05 CONFLICT OF INTEREST

- A. Disclosures must be made as required by the Utah Public Officers' and Employees' Ethics Act, Title 67, Chapter 16, Utah Code, 1953 as amended and Sections 2.80.100 and 3.16.110, MSD Code of Ordinances. If Contractor aids or abets any MSD officer or agent in said officer's or agent's failure to comply with the requirements of the statutes, ordinances, rules, and regulations referenced or set forth above, or fails to report to the MSD's Representative any knowledge or information Contractor has concerning any MSD officer's or agent's failure to comply with the requirements of said statutes, ordinances, rules and referenced or set forth above, then this Agreement shall be void, *ab initio*.

PART 4 EXECUTION

4.01 EFFECTIVE DATE

- A. MSD and Contractor execute this Agreement and declare it in effect as of the _____ day of _____, 20____.

4.02 CONTRACTOR'S SUBSCRIPTION AND ACKNOWLEDGEMENT

- A. Type of organization: Corporation
(corporation, partnership, sole proprietorship, joint venture, LLC, etc.)
- B. If Contractor is a corporation, attach a corporate resolution evidencing Contractor's authority to sign.
- C. Contractor's Utah license number: 11353410-5501
- D. Contractor's Utah license designation: Utah

: ss.

COUNTY OF SALT LAKE)

On this _____ day of _____, 20____,

_____, personally appeared before me

who being duly sworn, did say that s/he is the

_____ of Greater Salt Lake Municipal Services

District (MSD), and that the foregoing instrument was signed on behalf of the MSD, by authority of law.

(notarial seal goes here)

NOTARY PUBLIC

END OF DOCUMENT