10/2/14

151317

CONTRACT NO.	
CONTRACTOR:	Roosevelt City
VENDOR NO.	05838H
PROJECT NAME:	New Aquatic Center
AWARD NUMBER:	FUND5285-15
CFDA #/TITLE:	N/A
CONTRACT ORIGINATOR:	Gayle Gardner
FEDERAL AGENCY:	N/A

CONTRACT

DEPARTMENT OF WORKFORCE SERVICES
HOUSING & COMMUNITY DEVELOPMENT DIVISION
1385 S. State, Salt Lake City, UT 84115

1. PARTIES: This contract is between the DEPARTMENT OF WORKFORCE SERVICES:

Permanent Community Impact Fund (CIB)
(Board or Program)

Referred to as STATE, and the following CONTRACTOR

Roosevelt City
Name

255 South State Street
Address

Roosevelt	Utah	84066
City	State	Zip
Justin Johnson	435-722-5001	435-722-5000
Contact	Phone #	Fax #

2. GENERAL PURPOSE OF CONTRACT:

New Aquatic Center

3. CONTRACT PERIOD: Commencing on 10/02/2014 and terminating on 09/30/2016

4. CONTRACT COSTS: CONTRACTOR will be paid a maximum of $2,400,000.00 , pursuant to the budget attached hereto as Attachment C

5. ATTACHMENTS:

- ✓ ATTACHMENT A – GENERAL PROVISIONS
- ✓ ATTACHMENT B - PROGRAM GENERAL CONDITIONS
- ✓ ATTACHMENT C – BUDGET
- ✓ ATTACHMENT D – SCOPE OF WORK

151317

Execution

IN WITNESS WHEREOF, the parties sign and cause this contract to be effective as of the date indicated below by the Utah State Division of Finance.

CONTRACTOR

APPROVED:

Roosevelt City

Name

BY: Vaun D. Ryan

Signature

Vaun D. Ryan

Name

Mayor

Title

STATE

APPROVED: HOUSING & COMMUNITY DEVELOPMENT DIVISION

BY: Gordon D. Walker

Gordon D. Walker, Director

WITNESS

Signature

Justin Johnson

Name

City Manager

Title

APPROVED - DIVISION OF FINANCE

BY: CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE

Execution Date: NOV 17 2014

ATTACHMENT A
GENERAL PROVISIONS FOR HOUSING & COMMUNITY DEVELOPMENT DIVISION AGREEMENTS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in Section 63G-6a, Utah Code, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases by the STATE.

2. **CONTRACT JURISDICTION, CHOICE OF LAW AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** The CONTRACTOR and any and all supplies, services, equipment, and construction proposed and furnished under this contract will comply fully with all applicable Federal and State laws and regulations including applicable licensure and certification requirements.

4. **PROJECT COMPLETION:** shall complete the project described in Attachment D - Scope of Work within the contract period shown on page 1 of this Contract.

5. **RECORDS ADMINISTRATION:** The CONTRACTOR shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the CONTRACTOR pursuant to this Contract. The records shall be retained by the CONTRACTOR for at least four years after the Contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The CONTRACTOR agrees to allow State and Federal auditors, and State Agency Staff, access to all records related to this Contract, for audit, inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

6. **CONFLICT OF INTEREST:** CONTRACTOR represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with §67-16-8, Utah Code Annotated, 1953, as amended. CONTRACTOR certifies that it has not offered or given any gift or compensation prohibited by the laws of the State of Utah to any officer or employee of the STATE or participating political subdivisions to secure favorable treatment with respect to being awarded this contract.

7. **CONTRACTOR AN INDEPENDENT CONTRACTOR:** The CONTRACTOR shall be an independent CONTRACTOR, and as such, shall have no authorization, express or implied, to bind the STATE to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the STATE, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the CONTRACTOR by the STATE. The CONTRACTOR shall be responsible for the payment of all income tax and social security tax due as a result of payments received from the STATE for the Contract services. Persons employed by the STATE and acting under the direction of the STATE shall not be deemed to be employees or agents of the CONTRACTOR.

8. **INDEMNITY CLAUSE:** The CONTRACTOR agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers and employees from and against any and all loss, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the acts or negligence of the CONTRACTOR's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence. The parties agree that if there are any Limitations of the CONTRACTOR's Liability, including a limitation of liability for anyone whom the CONTRACTOR is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages of property.

9. **EMPLOYMENT PRACTICES CLAUSE:** The CONTRACTOR agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the CONTRACTOR agrees to abide by Utah's Executive Order, dated December 13, 2006, which prohibits sexual harassment in the work place.

10. **SEPARABILTY CLAUSE:** A declaration by any court, or any other binding legal authority, that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

11. **DEBARMENT:** The CONTRACTOR certifies that neither it nor its principals are presently or have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by the STATE. The CONTRACTOR must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the Contract may be terminated for cause. This Contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 60 days prior written notice being given the other party. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS, OR CHANGES IN LAW:**
13.1 Upon thirty (30) days written notice delivered to the CONTRACTOR, this Contract may be terminated in whole or in part at the sole discretion of the State, if the State reasonably determines that a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of the contract.
13.2 Upon thirty (30) days written notice delivered to the CONTRACTOR, this Contract may be terminated in whole or in part, or have the services and purchase obligations of the State proportionately reduced, at the sole discretion of the State, if the State reasonably determines that a change in available funds affects the State's ability to pay under the Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
13.3 If a notice is delivered under paragraph 1 or 2 of this Section 13 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW", the State will reimburse the CONTRACTOR for products properly delivered or services properly performed up until the effective date of said notice. The State will not be liable for any performance, commitments, penalties, or liquidated damages that acrrue after the effective date of said notice.
13.4 Notwithstanding any other paragraph or provision of this Section 13 "NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW", if the State in said notice to the CONTRACTOR indicates that the CONTACTOR is to immediately cease from placing any orders or commitments with suppliers, subcontractor or other third parties, the CONTRACTOR shall immediately cease such orders or commitments upon receipt of said notice and the State shall not be liable for any such orders or commitments made after the receipt of said notice.

14. **WARRANTY:** The Contractor warrants that (a) all services shall be performed in conformity with the requirements of this Contract by qualified personnel in accordance with generally recognized standards; and (b) all goods or products furnished pursuant to this Contract shall be free from defects and shall conform to contract requirements. The Contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The Contractor acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the Contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The Contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the Contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

15. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later.

16. **PATENTS, COPYRIGHTS, ETC:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the CONTRACTOR'S use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

17. **ASSIGNMENT/SUBCONTRACT:** CONTRACTOR will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the STATE.

18. **UNUSED FUNDS:** Any funds authorized by the STATE that are not used in the completion of Scope of Work must be returned to the STATE.

19. **INELIGIBLE EXPENSES:** CONTRACTOR expenditures under this Contract determined by audit to be ineligible for reimbursement because they were not authorized by the terms and conditions of the Contract, or that are inadequately documented, and for which payment has been made to the CONTRACTOR will be immediately refunded to the STATE by the CONTRACTOR. The CONTRACTOR further agrees that the STATE shall have the right to withhold any or all subsequent payments under this or other Contracts to the CONTRACTOR until the recoupment of overpayments is made.

20. **PUBLIC INFORMATION:** CONTRACTOR agrees that the contract, related Sales Orders, and Invoices will be public documents,and may be available for distribution. CONTRACTOR gives the STATE express permission to make copies of the Contract, and related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, CONTRACTOR also agrees that the CONTRACOR"s response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information or similar notation.

21. **PROCUREMENT ETHICS:** The contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the STATE, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use of for the use or benefit of any other person or organization (63G-6a - 2304.5, Utah Code Annotated, 1953, as amended).

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the STATE to declare CONTRACTOR in default of the Contract: 1). Nonperformance of contractual requirements; or, 2). A material breach of any term or condition of this contract. The STATE will issue a written notice of default providing a period in which CONTRACTOR will have an opportunity to cure. Time allowed for cure will not diminish or eliminate CONTRACTOR's liability for liquidated or other damages. If the default remains, after CONTRACTOR has been provided the opportunity to cure, the STATE may do one or more of the following: 1). Exercise any remedy provided by law; 2). Terminate this Contract and any related contracts or portions thereof; 3). Impose liquidated damages, if liquidated damages are listed in the contract; 4). Suspend CONTRACTOR from receiving future bid/proposal solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The STATE may terminate this Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

24. **CONFLICT OF TERMS:** Terms and Conditions that apply must be in writing and attached to the Contract. No other Terms and Conditions will apply to this Contract. In the event of any conflict in the Contract terms and conditions, the order of precedence shall be: 1). Attachment A: State of Utah Standard Contract Terms and Conditions: 2). State of Utah Contract Signature Page(s); 3). Additional State Terms and Conditions; 4).Contractor Terms and Conditions.

25. **ENTIRE AGREEMENT:** This Agreement, including all Attachments, and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. The terms of this Agreement shall supersede any additional or conflicting terms or provisions that may be set forth or printed on the CONTRACTOR'S work plans, cost estimate forms, receiving tickets, invoices, or any other related standard forms or documents of the CONTACTOR that may subsequently be used to implement, record or invoice services hereunder from time to time, even if such standard forms or documents have been signed or initialed by a representative of the State. The parties agree that the terms of this Agreement shall prevail in any dispute between the terms of this Agreement and terms printed on any such standard forms or documents, and such standard forms or documents shall not be considered written amendments of this Agreement.

26. **AMENDMENT:** This Contract may be altered, modified, or supplemented only by written amendment to this contract,executed by authorized persons of the parties hereto, and attached to the original signed copy of this agreement. No claim for services furnished by the CONTRACTOR, not specifically authorized by this Contract will be allowed by the STATE. Automatic renewals will not apply to this contract.

27. **ACCOUNTING REPORTS:** The governing board of the CONTRACTOR is responsible to ensure that CONTRACTOR complies with the accounting reporting requirements in Utah Code §51-2a-201 enacted by Chapter 206, 2004 General Session.

28. **INSURANCE:** Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to State and must add State as an additional insured with notice of cancellation.

29. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT STATUS VERIFICATION SYSTEM:** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to other types of procurement processes, including but not limited to Invitation to Bids or to Multiple Stage Bids.

29.1 Status Verification System

1. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.

2. The Contractor shall require that the following provision be placed in each subcontract at every tier."The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including UCA Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

3. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.

4. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

29.2 Indeminity Clause for Status Verification System

1. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

2. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act,error or omission or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

ATTACHMENT B - PROGRAM GENERAL CONDITIONS
PERMANENT COMMUNITY IMPACT FUND BOARD
(Revised May 15, 2012)

1. Permanent Community Impact Fund Board Findings of Fact:
   The CONTRACTOR is an applicant under the Permanent Community Impact Fund provisions contained in Section 35A-8 et seq UCA. Pursuant to the provisions of that Statute, and the powers and functions of the Permanent Community Impact Fund Board (the BOARD) hereby finds and determines, based upon the formal application of the CONTRACTOR, the evidence provided by the CONTRACTOR to the BOARD and its staff, and information developed by the BOARD in its own investigations and at the hearings on the application of the CONTRACTOR, the following, that:

   1. Pursuant to Section 35A-8-305 et seq.UCA, the CONTRACTOR:

      1. Is a State agency or subdivision;
      2. Which is or may be socially or economically impacted, directly or indirectly, by mineral resource development;
      3. That the monies sought by the CONTRACTOR are for planning, construction and maintenance of public facilities, or the provision of public services;
      4. That the CONTRACTOR meets and complies with the criteria set by Statute and by the BOARD for the providing of money to applicants;
      5. That the CONTRACTOR has been prioritized in comparison with other applicants, and the order of payment has been determined, and this contract is appropriate.

   2. Pursuant to Section 35A-8-307 et seq.UCA, the BOARD has reviewed the usages of the funds allocated to the CONTRACTOR, and that the usages are within the proper purposes of Section 35A-8 et seq., and the Federal Mineral Leasing Act of 1920, 30 U.S.C. Section 191; and Pursuant to the Rules of the Permanent Community Impact Fund Board, Rule R990-8, the allocation of money to the CONTRACTOR is within the proper prioritization of the BOARD and meets all the criteria and requirements of the rules and statutes involved.

2. Payment by the STATE is subject to availability of state funds.

3. The CONTRACTOR shall notify the STATE in writing of any proposed modification to the Project which alters ATTACHEMENT D - SCOPE OF WORK and/or amount to ten percent (10.0%) or more of the total CONTRACT AMOUNT. If such notification is not received, the STATE reserves the right to disallow the cost of the proposed modification and to request return of its funds. This in no way should be construed so as to allow any surplus funds to be expended on items not related to the specifically approved project.

4. The CONTRACTOR shall comply with all laws which normally govern its affairs in regard to contracts, fiscal procedure, and fair bidding procedures.

5. If work on the project has not commenced within 90 days after having received final approval, then this contract may be canceled by written notice from the STATE to the CONTRACTOR. No work completed after receipt of the notice shall be reimbursable. The project must be completed within the specified contract period.

6. In order for the STATE to comply with its duties under Section 9-8-404 et seq., CONTRACTOR agrees that if any district, site, building, structure, or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register ("cultural/paleontological resources") are discovered during the project the CONTRACTOR shall stop all construction on the project which may affect or impact the cultural/paleontological resources, notify the STATE of the discovery, and not proceed without further approval of the STATE, which approval may only occur after the STATE takes into account the effects of the project on cultural/paleontological resources, which may require or result in modification of the project. The CONTRACTOR further agrees that it shall notify the Utah Division of State History of the discovery and comply with all of the requirements of the Utah Division of State History, including obtaining a permit, if necessary, prior to proceeding any further with those portions of the project which may affect or impact the cultural/paleontological resource.

ATTACHMENT C – BUDGET

Roosevelt City

COST SHARING

Total Project Cost	$ 7,533,756.00
Project Revenues	
Applicant Cash	$ 1,033,756.00
Local Cash	$ 2,500,000.00
Federal Grant	$ 0.00
PCIFB Loan	$ 1,600,000.00
PCIFB Grant	$ 2,400,000.00
Total Revenues	$ 7,533,756.00

BUDGET

1.	Construction	1.	$ 6,605,135.00
2.	Construction Contingency	2.	360,280.00
3.	Engineer/Architect	3	363,271.00
4.	Special Studies	4.	90,070.00
5.	Land/Rights-of-Way/Water Rights	5.	0.00
6.	Equipment	6.	100,000.00
7.	Administration	7.	15,000.00
	TOTAL		$ 7,533,756.00

ATTACHMENT D - SCOPE OF WORK

New Aquatic Center

The project consists of demolishing the existing facility and constructing a 57,471 square foot facility to be located at 90 West Lagoon Street with a 3,500 square foot indoor pool, a 5,545 square foot outdoor pool, offices, locker rooms, and a 40-stall parking lot.