

GRANTSVILLE CITY CORPORATION

BOOTH SEWER CONTRACT

*Agreement Between Grantsville City and Whitaker Construction Company Inc.
for the Construction of Grantsville City Booth Sewer Project*

AGREEMENT made as of the 1st day of November, in the year Two Thousand Thirteen

BETWEEN the Owner:

Grantsville City
429 East Main Street
Grantsville, Utah 84029

and the Contractor:

Whitaker Construction Company, Inc.
44 South 1050 West
Brigham City, Utah 84302

for the following Project:

Grantsville City Booth Sewer Project
Grantsville, Utah 84029

The construction of a new public sewer line including a lift station.

The Engineer:

Civil Proj-Ex, Inc
25 South Quirk St.
Grantsville, Utah 84029

The Owner and Contractor agree as follows.

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ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

1. this Agreement signed by the Owner and Contractor;
2. the drawings and specifications prepared by the Engineer, dated August, 2013, labeled as “Contract Documents and Specifications for Grantsville City Northwest Sewer Interceptor Project ” and “Grantsville City Northwest Interceptor Sanitary Sewer”. The complete contents of the Project Manual shall make up a part of the Contract Documents, including information and requirements in the Instructions to Bidders as well as the Owner provided Geotechnical Report; and
3. written orders for changes in the Work issued after execution of this Agreement; and

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The number of calendar days available to the Contractor to substantially complete the Work is the Contract Time. The date of commencement of the Work shall be the date of this Agreement unless otherwise indicated below. The Contractor shall substantially complete the Work, no later than July 1, 2014, subject to adjustment as provided in Article 10 and Article 11.

ARTICLE 3 CONTRACT SUM

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is: **One million, five hundred forty-four thousand, three hundred forty dollars and ten cents** (\$1,544,340.10)

§ 3.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract

Documents and hereby accepted by the Owner:

NO ALTERNATES ARE AWARDED AT THIS TIME.

§ 3.3 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

ARTICLE 4 PAYMENT

§ 4.1 Based on Contractor’s Applications for Payment certified by the Engineer, the Owner shall pay the Contractor, in accordance with Article 12, as follows:

Monthly billing with 5% retainage

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.

4.3 LIQUIDATED DAMAGES.

A. Should the CONTRACTOR fail to complete the work within the times stated above or within such additional or reduced time as may have been established by the Owner, there shall be deducted from any monies due, or that may become due the Contractor, the sum of **One thousand dollars and no cents (\$1,000.00)** for each and every calendar day beyond the agreed completion date that the work remains uncompleted. Such sum is fixed and agreed upon by the Owner and the Contractor as liquidated damages due the Owner by reason of the inconvenience, increased costs of administration and supervision, loss of use, delay to Owner's provision of services to the public, and additional Engineerural costs resulting from the Contractor's delay. The parties stipulate and agree that said sum(s) are the result of the parties' joint discussion upon liquidation of damages, and not a penalty.

B. Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the Time for Completion may have been extended, shall serve only to determine liquidated damages, and shall not be construed in any way as a waiver on the part of the Owner of any of its rights under the contract to terminate for default or of any other contract rights.

C. Said liquidated damage provision shall remain in effect and continue until Substantial Completion, punch list completion, and Final Acceptance of the project by the Owner. The Contractor hereby authorizes the Owner to retain sufficient amounts of moneys due Contractor and remaining in the hands of the Owner to pay the damages caused by any such default or defaults.

ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall provide Contractor's general liability and other insurance as follows:

Type of Insurance:

Limit of Liability:

Full Contract Amount

§ 5.2 The Owner shall provide property insurance to cover the value of the Owner's property, including any Work provided under this Agreement. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its general liability insurance policy to cover the Contractor's obligations under Section 8.12.

§ 5.4 Each party shall provide certificates of insurance showing their respective coverages prior to commencement of the Work.

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents and employees, each of the other; and (2) the Engineer, Engineer's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 THE CONTRACT

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

§ 6.2 THE WORK

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

§ 6.3 INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

§ 6.4 OWNERSHIP AND USE OF ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER

DOCUMENTS Documents prepared by the Engineer are instruments of the Engineer's service for use solely with respect to this Project. The Engineer shall retain all common law, statutory and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Engineer.

§6.5 INCORPORATION OF GENERAL CONDITIONS TO THE CONTRACT

The General Conditions of the Contract for Construction attached hereto shall be integrated into this agreement with all of its terms and conditions being enforceable as provisions of this contract. (Attachment "A")

ARTICLE 7 OWNER

§ 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges.

§ 7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

§ 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

§ 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 7.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

ARTICLE 8 CONTRACTOR

§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the Engineer.

§ 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Engineer's information a Contractor's construction schedule for the Work.

§ 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 8.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Engineer have made a timely and reasonable objection.

§ 8.4 LABOR AND MATERIALS

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

§ 8.5 WARRANTY

The Contractor warrants to the Owner and Engineer that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

§ 8.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

§ 8.7 PERMITS, FEES AND NOTICES

§ 8.7.1 The Contractor shall obtain the building permit and other permits (paid by the Owner) and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Engineer in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

§ 8.8 SUBMITTALS

The Contractor shall promptly review, approve in writing and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 8.9 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

§ 8.10 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

§ 8.12 INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

ARTICLE 9 ENGINEER

§ 9.1 The Engineer will provide administration of the Contract as described in the Contract Documents. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Engineer will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Engineer will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Engineer will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Engineer's observations and evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor.

§ 9.5 The Engineer has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Engineer will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 The Engineer will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request from either the Owner or Contractor.

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

§ 9.9 The Engineer's duties, responsibilities and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor and Engineer. Consent shall not be unreasonably withheld.

ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the Owner and Contractor can not agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 10.2 The Engineer will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such orders shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall carry out such orders promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 CONTRACT SUM

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

§ 12.2 APPLICATIONS FOR PAYMENT

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Engineer an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner or Engineer may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

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

§ 12.3 CERTIFICATES FOR PAYMENT

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

§ 12.4 PROGRESS PAYMENTS

§ 12.4.1 After the Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 Neither the Owner nor the Engineer shall have responsibility for payments to a subcontractor or supplier.

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

§ 12.5 SUBSTANTIAL COMPLETION

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

§ 12.5.2 When the Work or designated portion thereof is substantially complete, the Engineer will make an inspection to determine whether the Work is substantially complete. When the Engineer determines that the Work is substantially complete the Engineer shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 12.6 FINAL COMPLETION AND FINAL PAYMENT

§ 12.6.1 Upon receipt of a final Application for Payment, the Engineer will inspect the Work. When the Engineer finds the Work acceptable and the Contract fully performed, the Engineer will promptly issue a final Certificate for Payment.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the Engineer releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

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

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Engineer as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

§ 15.2 TESTS AND INSPECTIONS

§ 15.2.1 At the appropriate times, the Contractor shall arrange all standard special inspections through the owners selected special inspector and/or company. However, all standard special inspections, i.e. compaction, concrete, asphalt, steel welding and bolted connection, ect. will be paid for by the Owner.

Contractor shall be responsible for any costs and/or fees including costs for re-testing/inspections due to non-conforming work that is rejected by the Engineer.

§ 15.2.2 If the Engineer requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

§ 15.3 GOVERNING LAW

The Contract shall be governed by Utah State law of the place where the Project is located.

§ 15.4 EMPLOYMENT STATUS VERIFICATION

Contractor shall register and fully comply with the Private Employer Verification Act, Utah Code Annotated §13-47-101, et seq. Contractor shall, by contract, require its contractors, subcontractors, contract employees, staffing agencies, or any contractors (regardless of their tier) to register and fully comply with the Private Employer Verification Act, Utah Code Annotated §13-47-101, et seq.

Contractor shall also agree to abide by the Federal and State regulations pertaining to Equal Opportunity Employment that requires project participants not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, or national origin.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 TERMINATION BY THE CONTRACTOR

If the Engineer fails to certify payment as provided in Section 12.3 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 12.4.1 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 TERMINATION BY THE OWNER FOR CAUSE

§ 16.2.1 The Owner may terminate the Contract if the Contractor

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

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Engineer, may without prejudice to any other rights or remedies of the Owner and after

giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

1. take possession of the site and of all materials thereon owned by the Contractor, and finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

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



BRENT K. MARSHALL
Mayor of Grantsville City
429 East Main Street
Grantsville Utah 84029



Brett Nielsen
President/ CEO/Agent Vice President of Operations
Whitaker Construction Company, Inc.
44 South 1050 West
Brigham City, Utah 84302

ATTACHMENT “A”

General Conditions of the Contract

