

Exhibit 1: Estimated Costs for City's 12300 South Street Pre-Emption for Pedestrian Signal

RESOLUTION NO. 12-08

A RESOLUTION OF THE CITY COUNCIL OF DRAPER, UTAH, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH KIEWIT/HERZOG/PARSONS (KHP), A JOINT VENTURE, FOR THE CONSTRUCTION OF BETTERMENTS AS PART OF THE DRAPER LIGHT RAIL PROJECT

Whereas, the City Council of the City of Draper has reviewed the Agreement between the City of Draper and KHP (a copy of which is attached as Exhibit A) for the construction of Betterments as part of the Draper Light Rail Project in an amount not to exceed \$31,257.00; and

Whereas, the City Council of the City of Draper desires to enter into the attached the Agreement between the City of Draper and KHP for the construction of Betterments as part of the Draper Light Rail Project, and

Whereas, the Mayor is authorized to execute this agreement pursuant to Draper City Municipal Code.

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF DRAPER, UTAH:

Section 1. After approval as to legal form, the Mayor is hereby authorized and directed to execute and Agreement between the City of Draper and KHP for the construction of Betterments as part of the Draper Light Rail Project for an amount not to exceed \$31,257.00

Section 2. This Resolution shall take effect immediately.

Adopted by the City Council of Draper, Utah, this March 6, 2012.



CITY OF DRAPER

Samuel A. Smith
Mayor

ATTEST:

Tracy B. Nov
City Recorder

AGREEMENT FOR 12300 SOUTH STREET PRE-EMPTION FOR FUTURE PEDESTRIAN SIGNAL AS PART OF THE DRAPER LIGHT RAIL PROJECT

This Agreement is entered into as of the March 6, 2012 (the "Effective Date"), by and between Kiewit/Herzog/Parsons, a Joint Venture (the "Contractor") and the City of Draper, a municipality organized and existing under the State of Utah (the "City").

RECITALS:

- A. The Contractor is a joint venture organized and existing pursuant to the laws of the State of Utah for the purposes, among others, of designing and constructing the Draper Light Rail line;
- B. The Contractor has caused plans and specifications to be prepared for the construction of the Draper Light Rail line (the "Project") within the rail corridor, Draper, Utah;
- C. The City is a municipality organized under the laws of the State of Utah;
- D. The City desires to participate in the pre-emption of a pedestrian signal for future use at 12300 South Street ("12300 South Street Pre-Emption for Pedestrian Signal");
- E. The parties agree that 12300 South Street Pre-Emption for Pedestrian Signal are for the benefit of the City and that the City shall pay the construction costs for 12300 South Street Pre-Emption for Pedestrian Signal as set forth in this Agreement; and
- F. The parties enter this Agreement to set forth the terms and conditions by which 12300 South Street Pre-Emption for Pedestrian Signal shall be constructed as part of the Project.

TERMS:

The parties agree as follows:

1. On or before _____, 2012, the Contractor shall cause 12300 South Street Pre-Emption for Pedestrian Signal to be constructed as part of the Project.
2. All Design documents, plans, and specifications for 12300 South Street Pre-Emption for Pedestrian Signal, as part of the Project: (i) have been prepared by the Contractor's Project Engineer, Parsons, qualified to do business and doing business in the State of Utah ("Engineer"); (ii) are in accordance with all requirements and specifications imposed by applicable regulatory agencies; (iii) have been approved by the City; and, (iv) have been incorporated into the Contract's plans and

specifications (the "Plans and Specifications") and also into this agreement. The Contractor agrees to comply with the Plans and Specifications during construction.

3. The Contractor will manage the construction of 12300 South Street Pre-Emption for Pedestrian Signal using the Engineer.
4. (a) The Contractor shall employ its own forces to 12300 South Street Pre-Emption for Pedestrian Signal. The Contractor has demonstrated competence and experience in constructing projects similar to that contemplated by this Agreement, and the Contractor shall hold current, relevant licenses from the State of Utah during all construction activities on 12300 South Street Pre-Emption for Pedestrian Signal. (b) The Contractor shall obtain all permits, licenses, and similar authorizations from applicable governmental organizations which are required to construct 12300 South Street Pre-Emption for Pedestrian Signal (c) Prior to and during the construction of 12300 South Street Pre-Emption for Pedestrian Signal, the Contractor shall furnish the following to the City at such times as the City may reasonably request: (i) proof the Contractor holds a valid contractor's license from the State of Utah; (ii) proof of the Contractor's public liability, property damage, and vehicle liability insurance in the principal amount of \$1,000,000.00, naming the Contractor and the City, and their trustees, officers, agents, and employees as addition insured's; (iii) a performance bond and a payment bond for the full cost of the construction of 12300 South Street Pre-Emption for Pedestrian Signal with sureties and with such terms as are required by the Plans and Specifications. The insurance coverage required in this paragraph shall not be canceled or materially altered except after thirty (30) days written notice to the Contractor.

5. (a) The City may select and employ, at its expense, such consultants as it deems reasonable to assist it in the inspection of the construction of 12300 South Street Pre-Emption for Pedestrian Signal The City and its consultants shall work with and through the Engineer and shall not give orders directly to the Contractor unless authorized in writing to do so. The Contractor shall construct 12300 South Street Pre-Emption for Pedestrian Signal in accordance with the Plans and Specifications, including changes or additions to those Plans and Specifications which have been approved by the City. All change orders for 12300 South Street Pre-Emption for Pedestrian Signal required by the City, shall be at the sole expense of the city. Change orders shall be communicated by the City to the Contractor. The City shall provide the Contractor with information about any problem(s) or concern(s) the City may have with the construction and/or with acceptance of 12300 South Street Pre-Emption for Pedestrian Signal upon completion of construction, and the Contractor shall undertake and complete all appropriate remedial actions.

(b) If the Contractor proposes any change(s) to 12300 South Street Pre-Emption for Pedestrian Signal in the Plans and Specifications previously approved by the City, the Contractor shall provide written notice of each proposal to the City. The City shall, in turn, communicate to the Contractor its approval or denial of each proposal within ten (10) business days following receipt of the Contractor's notice. If, however, applicable law or the City's policies and procedures preclude a response from the City within that ten (10) day period, the City shall have such longer time period as the law or policies/procedures may allow, but in no event more than thirty (30) days following receipt of the Contractor's notice.

6. The Contractor shall notify the City twenty-four (24) hours in advance of starting any construction work on 12300 South Street Pre-Emption for Pedestrian Signal.

7. The City shall be solely responsible for the total costs attributable to the construction of 12300 South Street Pre-Emption for Pedestrian Signal. The City shall reimburse the Contractor for 12300 South Street Pre-Emption for Pedestrian Signal as follows:

(a) The City shall pay the contractor for work performed based on the schedule of values for the betterments as defined in this agreement, plus the cost of change orders, if any, required by and approved by the City.

(b) The estimated total engineering and construction costs to construct 12300 South Street Pre-Emption for Pedestrian Signal are shown on attached Exhibit 1.

(c) The Contractor shall itemize all costs paid and/or incurred in the construction of 12300 South Street Pre-Emption for Pedestrian Signal, and shall provide a copy of the invoice to the City.

(d) The City shall review the invoice(s) and shall, within twenty (20) business days following receipt of the invoice(s), issue payment for the construction of 12300 South Street Pre-Emption for Pedestrian Signal. All funds tendered to the Contractor by the City under this Agreement shall constitute reimbursement of actual costs for construction of 12300 South Street Pre-Emption for Pedestrian Signal Widening and Frontage Improvements.

8. (a) The City shall, upon completion of the construction of 12300 South Street Pre-Emption for Pedestrian Signal, own and maintain it at no cost to the Contractor.

(b) The City, at its discretion and expense, and in addition to any other inspections authorized or allowed by this Agreement, may periodically inspect and test 12300 South Street Pre-Emption for Pedestrian Signal at any time within the one (1) year period following completion of the construction. If the City determines any defect in the materials or workmanship in 12300 South Street Pre-Emption for Pedestrian Signal, or that 12300 South

Street Pre-Emption for Pedestrian Signal was not constructed in accordance with the Plans and Specifications, then, notwithstanding any provision of the Agreement to the contrary, the City shall notify the Contractor and the Contractor shall (i) cause the Contractor, at the Contractor's expense, to remedy the defect or the variance from the Plans and Specifications within a reasonable amount of time; and/or, (ii) pursue a claim against any of the Contractor's bond(s) to complete the remedial work on 12300 South Street Pre-Emption for Pedestrian Signal.

9. This agreement, including exhibits, attachments, and references to incorporated documents, specifically including the Contractor's Plans and specifications, constitute the entire agreement between the parties regarding the subject matters contained in this Agreement.

10. The parties shall perform those acts and/or sign all documents required by this agreement or which may be reasonably necessary to effectuate the terms of this Agreement.

11. Neither party may assign this Agreement for any of its rights, duties, or obligations under this Agreement, without the prior written consent of the other, which consent shall not be withheld unreasonably, except that either party may make an assignment to its successor in interest. Any assignment made in violation of this paragraph or in violation of law shall be void. Notwithstanding the foregoing, either party may pledge or assign this Agreement as security for this bonding or other financing activities.

12. This agreement does not create any kind of joint venture, partnership, agency, or employment relationship between the parties.

13. The parties shall comply with all applicable federal, state and local laws and ordinances in the performance of this Agreement. Any terms which the parties as governmental entities are mandated by law to include in this Agreement shall be considered part of this Agreement.

14. This Agreement cannot be amended except by a written instrument signed by the parties.

15. If any legal action is brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action, in addition to any other relief to which it may be entitled.

16. In the event a court, governmental agency, or regulatory agency with proper jurisdiction determines that any provision of this Agreement is unlawful, that provision shall terminate. If a provision is terminated, but the parties can legally, commercially, and practicably continue to perform this agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

17. Neither party shall be deemed in violation for this Agreement if it is prevented from performing any of its obligations by reason of earthquakes or other natural disaster; strikes or other unrest; power failures; civil or military emergencies; acts of legislative, judicial, executive, or administrative authorities; or any other circumstances which are not within its reasonable control.

18. Any notice, communication, or payment required or allowed by this Agreement shall be mailed or hand-delivered to each party as follows:

If to the Contractor, to:

Kiewit/Herzog/Parsons, a Joint Venture
Attn: Spencer Cruse
392 East 12300 South, Suite C
Draper, UT 84020

If to the City, to:

City of Draper
Attn: City Recorder
1020 East Pioneer Road
Draper, UT 84020

With a copy to:

City of Draper
Attn: David Dobbins, Asst. City Manager
1020 East Pioneer Road
Draper, UT 84020

19. Each party may change the designation of the addressee or the address for that party by providing written notice of the change.

20. Each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified.

21. The parties intend that this Agreement benefit only them, and they do not intend there to be any third-party beneficiaries.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

"Contractor":

APPROVED:

KIEWIT/HERZOG/PARSONS,

A JOINT VENTURE

By: _____

By: _____

Its: _____

As Authorized Attorney for Kiewit/Herzog/Parsons, a Joint Venture

"City":

CITY OF DRAPER

APPROVED:

By: *Danell H. Smith*

By: *Danell H. Smith*
City Attorney

Attest: *Tracy M. Orr*

ACKNOWLEDGEMENT

STATE OF UTAH) SS.

COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____.

Dated: _____, 2012

Notary Public in and for the State of Utah

[SEAL]

STATE OF UTAH) SS.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 6 day of March,
2012, by Darrell Smith as Mayor of the City of Draper.

Dated: March 6, 2012

Meg Dudley

Notary Public for the State of Utah



REG. QUDLEY
NOTARY PUBLIC - STATE OF UTAH
COMMISSION # 881160
COMM. EXP. 12-31-2017



Exhibit 1: Estimated Costs for City's 12300 South Street Pre-Emption for Pedestrian Signal



Draper LRT D/B Project
RFP No. UT10-038VT
Job No. 464-14878



123rd Street Pre-Emption
KHP ROM Summary Sheet
1/26/2012

1.) Total Direct

a	Directs		\$	-
b	Sub		\$	26,402
c	Field Support		\$	1,151
d	Survey	(a+b+c)x1.5%	\$	413
e	Quality	(a+b+c)x2.0%	\$	551
f	Design		\$	-
g	Risks		\$	-
RISK INCLUDES:				
1				
2				
3				
			Directs Subtotal	\$ 28,517

2.) KHP Markup (a+b+c+d+e+f)		Allowable Markup Subtotal		\$ 28,517
	Direct Cost (a+c+d+e)	Design Cost	Sub Cost	Total
\$	2,115	\$ -	\$ 26,402	\$ 28,517
X	14.70% X	8.10% X	8.10%	
	\$311	\$0	\$2,139	\$2,449
			KHP Markup Subtotal	\$ 2,449
			Total	\$ 30,966

Subtotal	\$ 30,966
OCIP	
Bond	\$ 290
Total	\$ 31,257

SUBMITTED TO DRAPER CITY 1/26/2012