



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES
Division of Facilities Construction and Management

DFCM

Request for Team Proposals for
Construction Management / General Contractor
Services &
Architect & Engineering / Programming & Design
Services

Value Based Selection Method

May 10, 2019

Moab Academic Building
USU
Moab, Utah

DFCM Project No. 20149770

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NOTE: THIS IS IN AN EFFORT TO IMPROVE THE PROCESS FOR PROGRAMMING, DESIGN AND CONSTRUCTION FOR THE DFCM. DFCM HAS IMPLEMENTED THIS PILOT PROGRAM THAT MAY ALTER THE CM/GC & DESIGN TEAM REQUIREMENTS GOING FORWARD IN THE FUTURE. ALL INTERESTED PARTIES SHALL CAREFULLY REVIEW THIS RFP WITH THIS UNDERSTANDING.

Current copies of the DFCM General Conditions dated May 25, 2005, Design Manual, USU Design Standards, and all Supplemental General Conditions are available upon request at the DFCM office and on the DFCM web site at <https://dfcm.utah.gov/wp-content/uploads/DFCM-General-Conditions.pdf>, and are hereby made part of these contract documents by reference.

SciQuest Contact Information:

- **Project Specific Questions:** Refer to Project Schedule for deadline. All questions are to be submitted through SciQuest at (<https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>).
- **SciQuest Technical/Bidding Questions:** sciquestadmin@utah.gov.

NOTICE TO CONTRACTORS, ARCHITECTS / ENGINEERS

The State of Utah - Division of Facilities Construction and Management (DFCM) is requesting proposals for of qualified firms/individuals to perform programming, design services, and the construction of the following project:

Moab Academic Building
USU – Moab, UT
DFCM PROJECT NO. 20149770

For purposes of this solicitation, the term “Team” will be used to represent the CMGC Contractor and the AE/Engineer that are submitting together on the project. It should also be known that a design firm may only propose with one contractor and vice versa.

In a collaborative effort to increase the efficiency, communication and synergy amongst project team members, the State is requesting that the CMGC & AE/Engineer Design Team submit as a team for selection purposes only. It should be known that a separate professional services / design agreement & CMGC contract will be issued to the selected team.

Proposers are also made known that their individual DFCM Past Performance ratings between the two parties, AE/Engineer & CM/GC Contractor will be averaged together for selection purposes. The team with the highest averaged rating of the two firms will be awarded the most points in that category.

The Programming, Preconstruction Services, Design & Construction Management/General Contractor (CM/GC) project includes:

The programming, design and construction of a 20,500 sq ft classroom building that will provide an opportunity and educational resources to those living in the Grand County area.

The projected meeting locations for programming, precon services and design will be a combination of Moab, SLC, & Logan with 50% being in Logan / SLC & 50% in Moab.

Programming Fee:

The maximum amount that the programming team will be contracted for the services described below including all travel related reimbursables is **\$72,500.00**

Design Fee:

The DFCM and the University may choose to enter into a separate contract for the design services for this project under this procurement. If the programmatic team is chosen to do so, the maximum amount that the design team will be contracted for the services will be Classification C – 6.6% of the construction budget as determined by the DFCM fee schedule. Due to the complexity classification of this project, all predetermined complexities of scope or consultants as listed in the DFCM Fee policy will not be allowed at an additional fee – with the exception of Branding & FF&E. Design services will include landscape design, acoustical, and full AV/IT

design. A/E Teams must clearly identify any scope that will not fit within this fee structure within the proposals. The maximum fee for these services including all travel related reimbursements is **\$624,000.00**.

The initial contract award will be for programming only. After satisfactory completion of programming, DFCM may award design services to the programming / design consultant.

The FLCC is limited to \$7,200,000.00.

The Request for Proposals (RFP) documents, including the selection requirements and the selection schedule, will be available at 3:00 PM on Friday, May 10, 2019 on the DFCM web page at <http://dfcm.utah.gov>. For questions regarding this project, please contact Matt Boyer, DFCM, at mboyer@utah.gov or 801-541-0945. No others are to be contacted regarding this project.

The procurement shall be under the Value Based Selection RFP method. **A MANDATORY Pre-proposal Meeting will be held at 9:00 AM on Wednesday, May 22, 2019 in the Aspen Room of the Senate Building at the Capitol Hill Complex, SLC, Utah.** All prime contractors & programming / design firms wishing to submit on this project must attend this meeting.

*A single Proposal for both the CMGC and Architects & Engineers, including management plan, references, and statements of qualifications, must be submitted by 12:00 PM on Friday, May 31, 2019 to DFCM, Room 4110 State Office Building, Capitol Hill Complex, Salt Lake City, Utah 84114 and emailed to dfcmcontracts@utah.gov by 12:00 PM on Friday, May 31, 2019. **DO NOT SUBMIT VIA SCIQUEST.** Note: Submittals must be received at 4110 State Office Building by the specified times.*

The Contractor for the project must be a Utah licensed General Contractor. Association with other individuals or firms having appropriate professional expertise is acceptable. The State will enter into a single agreement with the successful Contractor.

A bid bond in the amount of five percent (5%) of the FLCC amount, made payable to the Division of Facilities Construction and Management on the AIA Document A310 – 2010 Bid Bond, or equivalent shall accompany the Cost Proposal delivered to DFCM, Room 4110 State Office Building, Capitol Hill Complex, Salt Lake City, Utah 84114

The Division of Facilities Construction & Management reserves the right to reject any or all proposals or to waive any formality or technicality in any proposal in the interest of the State.

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
Room 4110 State Office Building
Capitol Hill Complex
Salt Lake City, Utah 84114

DESCRIPTION OF WORK

Project Description

At the heart of the Master Plan for the USU Moab Campus is creating a 20,500 sq. ft. education facility that embodies a strong sense of place - integrated with the landscape aesthetically and functionally, being intrinsically a textbook in itself to the student body.

The building will accommodate an estimated 350 full time equivalent students (composed of a range of full and part-time as well as traditional and non-traditional/distance learning students). The spaces included in the proposed design are as follows:

ACADEMIC SPACES

- 6 Classrooms
- 2 Large Classrooms/Small Conference Rm.
- Wet Lab
- Dry Lab
- Computer Lab
- Online Classroom
- 6 Seminar Rooms

ADMINISTRATION/FACULTY

- Faculty Offices
- Administration Offices

STUDENT SERVICES

- Student Commons
- Coffee Bar
- Registrar
- Academic Support
- Testing

Sustainability measures for the building will be large part of the project, as the agency has expressed desires to further investigate measures beyond the USU LEED Silver standard such as LEED Platinum certification or meet the Living Building Challenge. Potential strategies to achieve these goals include exterior shading devices, improved envelope insulation, rainwater conveyance and storage systems, solar photovoltaic panels, and more.

It should be noted that additional venues are currently being investigated to enhance sustainability features along with funding sources to allow such.

This project will be required to achieve LEED Silver as a minimum per USU Design Standards.

It is anticipated that the programming phase will be two months. Upon successful completion of the programming phase, the project would move directly into design with design services starting in mid-August and completing design services by the middle of February. Construction would then commence after building code approval with a completion of May 2021.

Pre-Programming Services to be included, but not limited to:

- Review of existing Feasibility Study
- Review of existing Campus Master Plan

Site Analysis

- Master Plan analysis
- ALTA & topographical survey of the site
- Geotechnical evaluation, percolation evaluation, and analysis of the site – 5 borings minimum (4 within the building foot print & one within the parking lot footprint)
- Comprehensive utility impact and connection fee analysis along with any development standards of the utility companies or city / county (as applicable).
- Parking requirements
- Existing landscape assessment
- Future landscape considerations
- Storm water retention
- Fire water flow analysis

Facility Analysis:

- Summary of spaces
- Individual space list
- Individual space information (one for each space including building support & core spaces)
- Function and use of space
- Spatial relationships
- Programmatic relationships
- Power requirements
- Lighting requirements
- Mechanical / HVAC requirements – depending on the type of space
- Acoustical requirements

Project Development Requirements:

- Cost estimating (including a breakout for AV, telecommunications, and impact / connection fees – **TO BE COMPLETED BY THE CMGC**)
- Cost estimate for project soft costs – including FF&E
- A proposed schedule for all phases of the project

Deliverables:

Programming document

- Acknowledgments
- Table of contents
- Signature approval page
- Executive summary
- Program methodology/program format
- Introduction
- Site considerations
 - Site plan – with proposed facility – to scale
- Space considerations/facility analysis

- Space summary list
- Individual space lists
- Individual space diagrams with FF&E
 - FF&E mechanical and electrical requirements as needed
- Affinity and stacking diagrams
- Building code analysis
- Design considerations
 - Architectural requirements
 - Engineering requirements
 - Special requirements
- Development considerations
 - Project FF&E schedules/costs
 - Project design and construction costs
 - Project development options
 - Project design and construction schedule
 - Architectural Renderings – two (2) exterior views & two (2) interior views
 - Case Studies
- Appendix
 - Topographical & ALTA survey with all utilities
 - Geotechnical survey
 - Water flow analysis
 - Special FF&E reference material
 - Master plan
 - Other related documents

Deliverable Formats:

- Draft and final document (4 draft; 6 final) – full color, tabbed, single sided, bound hard copies
- Final document also in PDF with linked pages and files (4 thumb drives)
- The survey and other CAD work shall be furnished and delivered in DWG and PDF format

Programming Fee:

The maximum amount that the programming team will be contracted for the services described is **\$67,500.00.**

Success of the project will be identified by providing a highly sustainable building that meets the programmatic needs of the University while maintaining the set FLCC and quality control process for design and construction. To achieve this, it will be critical that the design team & CMGC work tirelessly together in all facets of the project. Prior to sub-consultants being selected, detailed conversations should be had for all to understand the scope that is being expected of them. Sub-consultants will be required to work with the CMGC & potential design assist subcontractors through rigorous life cycle cost analysis, cost to benefit analysis, & target value design.

Design Services:

It is anticipated that the design team will have an sound engineer as part of their team to mitigate sound mitigation between the various labs and classrooms. Design services will also include landscape design & full design of the IT and AV systems.

The maximum amount that will be awarded for design services for the requirements set forth in this solicitation including any travel reimbursements will be a not to exceed amount of **\$624,000.00**

It should be understood that the team (including sub-consultants) may be required, as need, to continue to hold meetings after construction begins with awarded subcontractors to streamline the submittal process and reduce RFIs.

Project Risk Factors

- Location – Off the Wasatch Front and availability of subcontractors
- Price escalation
- Site - Biological soil crust
- Special Inspections costs
- Change order work – managing sub’s travel expenses & per diem rates
- Tourist season
- Schedule

Health Insurance Statement of Compliance Applies to: (i) a prime contractor (and design professional) if the prime contract (or design professional contract) is in the aggregate amount of \$2,000,000 or greater; and (ii) applies to a subcontractor (and sub-consultant of design professional) if the subcontract is in the aggregate amount of \$1,000,000 or greater. Go to <http://www.health.utah.gov/chip/PDF/2016Benchmark.pdf>. for benchmark information.

CHECK BOX IF THIS PROJECT WILL HAVE AN ENERGY INCENTIVE. **Energy Incentive:** This project has been identified as having potential energy incentive(s) to be collected from the public utility. This will require some additional information be filled out and provided back to DFCM for submission to the utility company. Please reference the incentive information available on the Rocky Mountain Power and Dominion Energy websites.

Subcontractor Default Insurance

If SDI is agreed to by the team, then the project will contribute up to 1% of the participating subcontractor contract amount (not all subcontractors qualify for SDI). This amount would come out of the contractor’s contingency, therefore reducing the contractor’s contingency from 2% to 1% on the value of the subcontracted work.

PROCUREMENT PROCESS

The State of Utah intends to enter into an agreement with a firm to provide professional services as described.

The selection of the firm will be made using a Value Based Selection (VBS) system. The Project Schedule lists the important events, dates, times and locations of meetings and submittals. The terms of the project schedule are hereby incorporated by reference and must be met by the selected firm.

1. Request for Proposal Documents

The Request for Proposal (RFP) documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this RFP by reference.

2. Availability of Requests for Proposals

RFP documents will be available on the DFCM website as stated on the Project Schedule.

3. Contact Information

Except as authorized by the DFCM Representative or as otherwise stated in the RFP or the pre-proposal meeting, communication during the selection process shall be directed to the specified DFCM's Representative. In order to maintain the fair and equitable treatment of everyone, Contractors shall not unduly contact or offer gifts or gratuities to DFCM, any Board officer, employee or agent of the State of Utah, users or selection committee members in an effort to influence the selection process or in a manner that gives the appearance of influencing the selection process. This prohibition applies before the RFP is issued as the project is developed, and extends through the award of a contract. Failure to comply with this requirement may result in a disqualification in the selection process. Contractors should be aware that selection committee members will be required to certify that they have not been contacted by any of the Contractors in an attempt to influence the selection process.

4. Requests for Information and Questions

All requests for information regarding this project and questions must be submitted via SciQuest no later than the time and date listed on the Project Schedule.

5. Project Schedule

The Project Schedule lists the important events, dates, times and locations of meetings and submittals that must be met by the Contractor.

6. Mandatory Pre-Proposal Meeting and Registration

A mandatory pre-proposal meeting will be held on the date and time and at the location listed on the Project Schedule. A representative from each interested prime contractor & prime programming / design firm is required to attend. During the meeting, a presentation will be made to describe the overall scope of work and intended schedule. Interested prime contractors may ask questions and request clarification about the project and the procurement process. Subcontractors, sub-consultants and suppliers are invited to attend this meeting but it is not mandatory for them.

THE PRIME CONTRACTOR'S OR THE PRIME DESIGN / PROGRAMMER'S ABSENCE FROM THE PRE-PROPOSAL MEETING AND/OR FAILURE TO REGISTER PRECLUDES PARTICIPATION AS A PROPOSER ON THIS PROJECT.

7. Submittal Due Dates and Times

All required submittals must be delivered to, and be received by, the Division of Facilities Construction and Management previous to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery. If using a courier service, the submitting firm is responsible for ensuring that delivery will be made directly to the required location. It is your responsibility to allow for the time needed to park on Capitol Hill.

8. Addendum

All responses to questions and requests for clarification will be in writing and issued as addenda to the Request for Proposals. The addenda will be posted on SciQuest Any addenda issued prior to the submittal deadline shall become part of the Request for Proposals and any information required shall be included in your proposal.

9. Past Performance and References

DFCM will rate each firm's performance on every project worked (rating scale: 1 = low; 5 = high). The rating may include comments from agencies. Ratings on completed DFCM projects over the previous five years will be provided to the evaluation committee for their consideration in evaluating and scoring the past performance of each entity.

DFCM Past performance ratings are available for your review at your request from the DFCM project manager. Requests shall be made prior to the final questions deadline.

If a firm has not completed at least three DFCM projects in the last five years, they shall provide by the time indicated in the schedule, a list of references on all similar projects that were completed by the firm in the last five years. All references shall be for projects in which the firm was the prime firm, and held a contract directly with the owner.

The non DFCM ratings will be used to augment the DFCM ratings, if there are any, for a total of at least three past performance ratings.

It is the firm's responsibility to provide adequate references in compliance with this RFP. Firms that fail to meet the minimum of three ratings will be disqualified.

For non-DFCM projects provide the following information:

Point of Contact: Person who will be able to answer any customer satisfaction questions.
Phone Number: Phone number of the contact we will be surveying.
User Name: Name of the Company / Institution that purchased the construction work.
Project Name: Name of the project.
Date Completed: Date of when the work was completed.
Address: Street, city and state where the work was performed.
Size: Size of project in dollars.
Duration: Duration of the project / construction in months.
Type: Type of the project (i.e.: School, Offices, Warehouse, etc.)

10. CM/GC Work Phases

The CM/GC Work for the project consists of two phases: Preconstruction and Construction.

- A. Preconstruction Phase. This phase of the Work includes but is not limited to attending programming, design meetings, estimating and cost control, schedule development, and drawing and constructability reviews. The Contractor shall assist the DFCM, the College, and A/E in maintaining the cost of construction within the FLCC and the duration of the construction within the project's schedule. The CMGC will be expected to provide in depth, accurate, and timely cost data for a rigorous life-cycle cost assessment, as required by DFCM's Design Requirements, and the High Performance Building Standard, Section 5.5. This process began during programming and early schematic design phases of the project and the CMGC will be expected to review and verify the program and existing cost estimates for accuracy. This information will be coordinated with the Owner's contracted Energy Modeling Engineer, the College's Facilities Staff, and the design team to provide an accurate accounting of the upfront and replacement costs for various building systems and equipment, including but not limited to mechanical equipment, electrical equipment and building enclosure systems. Please note that the cost data needed will not be limited to energy performance equipment, it may also include data on various other building systems.

These costs will be provided based on programmatic level narratives and be revised as the design develops through the remaining design phases. This information will be used to help the project steering committee make an informed decision on the most life-cycle cost effective building systems and therefore needs to be as accurate as possible.

As part of the preconstruction phase, the CM/GC will also provide ongoing review of the design documents for constructability, clash detection, design errors and omissions. Any discovered error or omission will be tracked by the CM with the AE until said issue is resolved. The CM/GC will not be allowed mark up on any such issue related change order during the construction phase of the project as a result of the aforementioned items.

- B. **Construction Phase.** This phase of the Work consists of the Contractor furnishing and installing all Work as required in the Contract Documents. Please note that the Work of the Construction Phase may be bid in several packages, such as excavation, footings and foundations, structural steel, etc., however it is assumed that one bid package may be the best approach.

11. **FLCC and GMP**

- A. **FLCC.** The Fixed Limit of Construction Cost or FLCC is the project's construction budget as listed in the Notice to Contractors and this RFP's Description of Work section. The DFCM, the design team and the CM/GC Contractor agree to work together to keep the cost of construction as represented in the design within the FLCC.
- B. **Guaranteed Maximum Price (GMP).** The Guaranteed Maximum Price is the final price that the Contractor agrees to accept in full performance of the attached Construction Manager/ General Contractor Agreement (CM/GC Agreement) and is based on the final contract drawings and specifications. The GMP shall include all fees and percentages required by this RFP, as well as the costs for general conditions and all work as required in the Contract Documents. Please reference Articles 5, 6, and 7 of the CM/GC Agreement.

Please note that since the Work may be completed in project phases and bid packages, the successful Contractor will be required to submit a GMP for each of these phases and packages of the Work. The sum or total of all the GMP's for these phases of the Work shall be the final GMP. Except for the Preconstruction Fee, all other GMPs for the phases of the Work shall become part of the CM/GC Agreement by modification. The final GMP is normally determined at the completion of the contract documents and receipt of subcontractors bids. However a GMP may be negotiated at an earlier point as may be needed by the State.

12. Cost Proposal, Fees, and Markups

Before submitting a Cost Proposal, each Contractor shall carefully examine the RFP, shall visit the site of the Work, shall fully inform themselves as to all existing conditions and limitations, and shall include in the proposal the cost of all items required by the RFP. If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations or contain obvious erroneous or uncoordinated information, the Contractor shall promptly notify the specified DFCM Representative and the necessary changes shall be accomplished by Addendum.

The Cost Proposal, bearing original signatures, must be typed or handwritten in ink on the Cost Proposal Form provided in the procurement documents and submitted in a sealed envelope at the location specified below prior to the deadline for submission of cost proposals indicated on the Project Schedule.

A bid bond properly signed by a qualified surety, on the AIA Document A310 – 2010 Bid Bond, or equivalent, in the amount of 5% of the bid, shall accompany in the bid submission to DFCM. **THIS BID BOND MUST BE ON THE AIA DOCUMENT A310 – 2010 BID BOND, OR EQUIVALENT IN ORDER TO BE CONSIDERED AN ACCEPTABLE BID** unless only one bid is received by DFCM, or the failure to comply with the bid bond requirements is determined by the Director of DFCM to be nonsubstantial based on the following:

- A. the bid bond is submitted on a form other than DFCM's required Bid Bond form and the bid bond meets all other requirements including being issued by a surety firm authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement; and
- B. the contractor provides a bid bond properly signed by a qualified surety and on the required DFCM Bid Bond form by the close of business of the next succeeding business day after the DFCM notifies the bidder of the defective bid bond.

Cost Proposals and Bid Bonds will be accepted at the office of DFCM, Room 4110 State Office Building, Capitol Hill Complex, Salt Lake City, UT 84114 by the date and time listed on the project schedule. Late proposals will be disqualified and returned to the proposer unopened. Only one copy of the cost proposal is required.

All Contractors shall furnish the following fees and markups as part of the Cost Proposal.

- A. **Preconstruction Fee - \$45,000.00 .**

This lump sum fee consists of all costs for the CM/GC to provide the required services of the Preconstruction Phase except pre-authorized out-of-state travel. No other reimbursable costs will be allowed or considered in addition to this fee. The

CM/GC will be expected to provide in depth, accurate, and timely cost data for a rigorous life-cycle cost assessment, as required by DFCM's Design Requirements, including, but not limited to, the High Performance Building Standards, Section 5.5.

The CMGC will also be required to perform constructability reviews. The process will begin during the design development phase of the project. This information will be coordinated with DFCM's contracted Energy Modeling Engineer, User Agency/Institution's Facilities Staff, and the design team to provide an accurate accounting of the upfront and replacement costs for various building systems and equipment, including but not limited to mechanical equipment, electrical equipment and building enclosure systems. Please note that the cost data needed will not be limited to energy performance equipment, it may also include data on various other building systems. Clash detection of the CD level drawings will be part of the constructability review. It is the responsibility of the CM to track with the design teams any errors, omissions, or constructability issues to their resolution in the bid set. Change order mark ups will not be allowed for any such items that arise from such issues.

The aforesaid lump sum fee will also include programmatic level narratives and be revised as the design develops through the remaining design phases. This information will be used to help the project steering committee make an informed decision on the most life-cycle cost effective building systems and therefore needs to be accurate.

The DFCM may request the CM/GC to solicit Mechanical, Electrical and Plumbing sub-contractors on a design assist basis through a value based selection managed by the CM/GC. If the DFCM chooses to move forward with a design assist approach, the CM/GC shall promptly advertise for these sub-contractors after award of the CM/GC contract.

- B. **Construction Management Fee – 4.25 % of the FLCC.** This lump sum fee shall consist of and include overhead (e.g. home office), profit for the entire job based on the defined scope of work, represented by the FLCC, and home office personnel who will be managing the project during bidding, construction, and closeout, including the warranty period. This fee does not include general conditions.
- C. **Contractors Modification Factor.** Provide the insurance modification factor for the prime firm.
- D. **Construction Supervision Cost – 4.0 % of the FLCC.** This is a lump sum cost to the project from notice to proceed to final completion for the CM/GC's on-site management/supervision team (e.g. project manager, superintendent, etc.). The fee shall include but not limited to: employee burden including insurance, vacation and bonus; vehicle including gas, oil, maintenance and insurance; technology including iPad/tablet, cell phone, computer and software; travel, relocation expense or

subsistence. All services and personnel not specifically identified as a Construction Supervision Cost will be considered to be part of the lump sum Construction Management Fee. This includes receptionists, accountants, safety officers, expeditors, commissioning agents etc. This cost does not include general conditions or people performing the actual construction activities.

E. **Temporary Construction Cost (General Conditions) – 2.25 % of the FLCC.**

The CM/GC shall be compensated for temporary construction costs (commonly referred to in the industry as "general, conditions") and reimbursed by Lump Sum up to the line item amount for such costs in the approved GMP. The total amount of the Temporary Construction Costs shall not exceed the amount submitted in the Cost Proposal Form. Temporary Construction Costs means such items, to the extent used and necessary for the construction of the Project. This fee is inclusive of all such Temporary Construction Costs / General Conditions regardless of their inclusion in the list below. The purpose of the list is to assist in the communication process from Owner to CMGC Contractor as to the Owner's Intention with the fee. Items that are excluded from the General Condition fee are noted at the conclusion of the following list:

- i. On-site office, furnishings and office equipment. This includes trailer utility, telecom and internet connections, printers and copiers, fax machines, filing cabinets etc.
- ii. On-site temporary storage units/trailers, if any.
- iii. Computers, network connectivity, project related software and software licenses.
- iv. Mobilization/demobilization
- v. Jobsite radio and cell phone communications
- vi. Project sign and banners.
- vii. Progress photos and videos
- viii. Submittal expressage/shipping
- ix. Security
- x. All general labor for site and construction cleaning, material handling, traffic safety, site safety, quality assurance. Only personnel actually performing work will be allowed in the general conditions.
- xi. Safety requirements: hard hats, safety vests, safety glasses, gloves boots, fall protection, PPE (not listed here) and site safety not included in subcontracts, and any and all safety implements required by OSHA, local jurisdiction or other regulatory bodies.
- xii. Consumable office supplies\drinking water
- xiii. Portable toilets
- xiv. Finish protection
- xv. Construction cleanup
- xvi. SWPPP Management, plans and permits
- xvii. LEED management and tracking
- xviii. LEED waste recycling and tracking
- xix. Construction documents and hard copy plans

- xx. Small tools expenses – defined by any tool or equipment costs under \$500 before tax.
- xxi. Machinery and Equipment. This includes trucks, vans, golf carts/atvs, backhoes, forklifts, and small cranes, not included in subcontracts. All costs associated with these items and similar type items are included in the fee.
- xxii. As-built documentation / project close out.
- xxiii. Punchlist Administration

Excluded from the 2.25 % fee: Large cranes, temporary construction utilities (water, gas, power), and weather conditions (winter protection only). Any site specific items that are atypical and do not fit in the __temporary construction cost percentage fee shall be brought up during the RFP process and specifically excluded on the Contractors Proposal.

F. **Self Performed Work Markup.** This is a fixed percentage markup that will be applied to the cost for the CM/GC’s actual labor plus burden cost, material costs, and equipment costs for self-performed work. *A markup equal to or less than 7% will be considered. Proposals with markups above 7% will be deemed non-responsive and not considered.*

G. **Change orders and fees:** The CM/GC will not be allowed an increase in construction management fee, monthly supervision fee, or general conditions fee for proposed change orders that are determined by DFCM to be an omission or error.

Scope changes prior to the final GMP that exceed the FLCC will include an increase in the management fee, monthly supervision fee, and general conditions fee as defined in the RFP. Scope changes after the final GMP will include a 5% markup. Additional monthly management fee and general conditions fee may be increased only if DFCM approves an increase in contract days; and will be applied as a percentage of the fee identified in the RFP divided by the number of construction days in the contractors GMP schedule.

13. **Self-Performed Work**

The Contractor may be allowed to self-perform work if approved by DFCM. This work must be billed for at actual cost incurred plus the Self-Performed Work Markup. Actual costs for self-performed work will be subject to audit. No billing rates will be allowed. The Contractor must specifically state in the Management Plan proposal what self performed work that they intend to execute. The Contractor must bid its self-performed work.

The Contractor’s bid will then be evaluated by DFCM and the A/E and must be determined to be the best value bid for the work to be awarded to the Contractor. The Contractor can propose to self- perform work that was not proposed in the Management Plan, provided that this work is competed in a competitive bid or value based selection process and advertised as would normally be required. The cost of any work that is self-performed will be part of the established GMP.

14. Management Plan and Statement of Qualification Submittal

The submittal for management plan and statement of qualifications shall be combined into one document and shall be limited to 32 pages maximum (32 single-sided pages or 16 double-sided pages). Font size shall no smaller than 12 points. Six (6) hard copies delivered to DFCM *and an electronic copy emailed to dfcmcontracts@utah.gov* are required by the date and time listed on the project schedule. Late submittals will be considered nonresponsive and will be disqualified. **DO NOT SUBMIT VIA SCIQUEST.**

The submittal shall be organized as follows:

COVER PAGE: Shall include the project name and project number as well as the prime firms' names. The cover page may have a picture on it with a brief description of the picture.

TAB ONE: Letter of Introduction – including point of contact information.

TAB TWO: Statement of Qualification and Strength of Team – including: Project Specific Team Experience, Past Project Experience as a Team, Team Experience with DFCM/Agency (Utah State University), On-Site Management Teams (Project Director or Sr. Project Manager, Project Manager, Superintendent, Project Engineer) Experience, Preconstruction Team, and any other team member's project specific experience as required. Teams are encouraged to review the scoring criteria to make sure they attribute appropriate information based off of those topics that will be scored.

For any of the past projects listed within the Team's proposal, the following information shall be included:

1. Which proposed team members were part of the project and identify what their role was on the project referenced.
2. Identify the construction cost of the building.
3. Identify the construction delivery method.
4. Provide the building type – i.e. concrete tilt up, steel framing, etc.
5. Provide the year the project finished, and how long you worked in that role on said project.
6. Location of the building – i.e. City & State

The Statement of Qualifications is a short document that indicates the experience and qualifications of the firm, the project manager and other critical members of the team. It describes what talents their team brings to the project, how their knowledge of the subject will provide benefit to the process, how the team has been successful in the past and how that relates to this project. It should include information on similar projects that have been completed by the proposed team members. Include the experience and special qualifications that are applicable to this project and/or are part of the project specific selection criteria. Be concise in your responses.

TAB THREE: Management Plans – Firms are required to develop and submit a plan demonstrating how they will manage their responsibilities and scope of work outlined within this RFP. The Management Plan should be concise yet contain sufficient information for evaluation

by the selection committee and should include: *Programming, Preconstruction Services, Design, Project Communication Plan, Schedule Control Plan, Quality Control Plan, Cost Control Plan, and Project Closeout Plan.*

TAB FOUR: Project Schedule – 11” x 17” pages may be utilized for the proposed project schedule. Indicate critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable.

TAB FIVE: Project Risks, Tools, and Ideas – Address *Risk Identification and Mitigation Plan, Tools and Techniques, Value Added Ideas.* Specific criteria, risks that have been identified by the RFP, and additional risks that the team has identified. State how those risks will be mitigated.

TAB SIX: Past Performance and References – *DFCM past performance Rating and/or Non-DFCM References.*

TAB SEVEN: Termination and Debarment Statement and Miscellaneous Information.

SUMMARY SHEET: The DFCM is requesting that all General Contractors submit one 11” x 17” (double sided if need be) document that summarizes their statement of qualifications. This document is separate from the statement of qualifications and will not be counted against the maximum page requirement. The document must also be included with the electronic submission.

15. Listing of Subcontractors

Listing of Subcontractors shall be as required by the Request for Proposals and as summarized in the “Instructions and Subcontractor’s List Form”, which are included as part of this RFP.

The Subcontractors List shall be e-mailed to dfcmcontracts@utah.gov as subcontractors are selected and will be included in the Contract. Requirements for listing additional subcontractors are as follows: **NO ADDITIONAL REQUIREMENTS**

DFCM retains the right to audit or take other steps necessary to confirm compliance with requirements for the listing and changing of subcontractors. Any Contractor who is found to not be in compliance with these requirements is subject to a debarment hearing and may be debarred from consideration for award of contracts for a period of up to three years.

DFCM also retains the right to request all accounting receipts, certified payroll, or accounting documentation in relation to the project. By submitting on this proposal, the CMGC agrees to turn over any such information at the request of DFCM.

16. Schedule

The contract schedule will be evaluated as part of the Project Management Approach Criteria. Contractor will include in the Management Plan the schedule for completing the work including any items required by DFCM or the A/E.

An early completion date is encouraged unless otherwise stated in the Description of Work. The actual completion date will be based on the contractors proposed schedule. All plans, schedules, and the cost proposals are required to reflect the project construction time. Non-compliance with the schedule will not result in automatic disqualification; it will be evaluated by the selection committee in determining the final selection.

Of particular interest and concern are the management team and the ability of the prime contractors to deliver the project within the construction time. Contractors will need to demonstrate the method of delivery and the competency of the individuals who will manage its successful completion.

17. Termination or Debarment Certifications

The Contractor must submit a certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from soliciting work by any governmental department or agency. The Contractor must also certify that neither it nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the Contractor cannot certify these two statements the firm shall submit a written explanation of the circumstances for review by DFCM. These certifications are to be submitted with the Statement of Qualifications.

18 Selection Committee

The Selection Committee may be composed of individuals from DFCM, the User Agency/Institution, and a representative from the design or constructions disciplines.

19. Interviews

Interviews will be conducted with all responsive and responsible contractors except as follows. If more than four contractors submit proposals and meet other requirements, DFCM may convene the selection committee to develop a short list of contractors to be invited to interviews. This evaluation will be made using the selection criteria noted below except that cost will not be considered. The information provided by the past performance/references, performance plan and statement of qualifications will be the basis for this evaluation.

The purpose of the interview is to allow the Contractor to present its qualifications, past performance, management plan, schedule and general plan for constructing the project. It will also provide an opportunity for the selection committee to seek clarification of the Contractor's proposal.

The proposed primary project management personnel, including the project manager and superintendent, should be in attendance. The project superintendent is the contractor's representative who will be in daily control of the construction site. The project manager has overall job authority, will be in attendance at all job meetings, and is authorized by the Contractor to negotiate and sign any and all change orders in the field, if necessary. Unless otherwise noted,

the attendance of sub- contractors is at the discretion of the Contractor. The method of presentation is at the discretion of the Contractor. The interviews will be held on the date and at the place specified in the Project Schedule.

20. Selection Criteria for VBS Construction

The following criteria will be used in ranking each of the Contractors. The Contractor that is ranked the highest will represent the best value for the state. The criteria are not listed in any priority order. The selection committee will consider all criteria in performing a comprehensive evaluation of the proposal. Weights have been assigned to each criteria in the form of points.

- A. **DFCM Past Performance Rating. 50 Points.** Each team will be given a past performance rating. The rating will be based first on how well the firm did on past projects with DFCM within the last five years. If a minimum of three DFCM past performance ratings are not available, a rating will be established using any DFCM past performance ratings that are available, supplemented by non-DFCM owner references supplied by the contractor at the time the proposals are submitted. This score will be mathematically generated with the criteria points being determined by factoring the points available by the average performance percentage of the firm. The Programming AE/ Engineers past rating will be averaged with the CM/GC's past rating. The combined average of the team will be used to score the criteria.
- B. **Statements of Qualification and Strength of Team. 90 Points.**
- 40 Points. *Project Team Experience:* show the overall experience of the project team members in relation to projects of similar scope and cost.
 - 10 Points. *Team Experience with Agency/Institution:* show the amount of experience the team has on successful past projects with the Agency/Institution.
 - 15 Points. *Team Experience in Geographical Region:* show the experience the team has in the specific geographical region on recent projects and this experience will be a benefit.
 - 25 Points. *Team Member Commitment to the Project:* show the percentage of commitment level of the team members based on an average work week during each of the phases of the project. For example, if the project manager commits 100% of their time during construction, then the Owner would expect that PM to dedicate their work week solely to the project during said phase.
- C. **Project Management Approach. 120 Points.**
- 10 Points. *Change Control Plan:* show how the team will approach managing and controlling project costs, including bid packages (if used), RFIs, ASIs, PRs, PCOs, etc..
 - 10 Points. *Schedule Duration and Completion Date:* provide for Design/Bid/Build and Design/Build Delivery Only delivery only.
 - 20 Points. *Value Added Ideas:* provide added value ideas and or concepts that will attribute to a successful project.

- 30 Points. *Overall Understanding of Project*: show the overall understanding the project, the user, risks, and project specific needs including site conditions & plans.
- 40 Points. *Overall Sustainability Management Plan*: show how LEED will be managed and the experience of team members on past successful projects.
- 10 Points. *Project Closeout Plan*: provide a plan for project closeout to include warranty period.

TOTAL POSSIBLE POINTS: 260 POINTS

** Points will be totaled and the highest point total will determine the best value to the state**

21. Scoring and Justification

The selection committee will provide a unitary score per criteria for each firm. The firm with the highest total of points will represent the best value for the state and will be selected for the project. The selection committee will provide a justification statement that details conclusions supporting the selection.

22. Award of Agreement

The award of the CM/GC Agreement shall be in accordance with the criteria set forth in the Request for Proposals (RFP). The State of Utah intends to enter into an agreement with the prime Contractor to construct the project as outlined. Individual contractors or alliances between two or more contractors are allowed in this process. The State will contract with only one legal entity.

23. Agreement and Bond

The Contractor's Agreement will be the form attached to this RFP. The contract time will be as indicated in the proposal. The selected Contractor, simultaneously with the execution of the GMP, will be required to furnish a performance bond and a payment bond on the AIA Document A312 - 2010 Performance and Payment Bond, or equivalent. These fully executed/signed bonds are to be e-mailed to dfcmcontracts@utah.gov. The performance and payment bonds shall be for an amount equal to one hundred percent (100%) of the contract sum and secured from a company that meets the requirements specified in the requisite forms. Any bonding requirements for subcontractors will be specified in the Supplementary General Conditions.

24. Interpretation of Drawings and Specifications

If any person or entity contemplating submitting a bid is in doubt as to the meaning of any part of the drawings, specifications or other Contract Documents, such person shall submit to the DFCM Project Manager a request for an interpretation thereof. The person or entity submitting the

request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by addenda posted on SciQuest. Neither the DFCM nor A/E will be responsible for any other explanations or interpretations of the proposed documents.

25. Licensure

The Contractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

26. Permits

In concurrence with the requirements for permitting in the General conditions, it is the responsibility of the Contractor to obtain the fugitive dust plan requirements from the Utah Division of Air Quality and the SWPPP requirements from the Utah Department of Environmental Quality and submit the completed forms and pay any permit fee that may be required for this specific project. Failure to obtain the required permit may result in work stoppage and/or fines from the regulating authority that will be the sole responsibility of the Contractor. Any delay to the project as a result of any such failure to obtain the permit or noncompliance with the permit shall not be eligible for any extension in the contract time.

27. Financial Responsibility of Contractors, Subcontractors and Sub-subcontractors

Contractors shall respond promptly to any inquiry in writing by DFCM to any concern of financial responsibility of the contractor, subcontractor or sub-subcontractor.

28. Withdrawal of Proposals

Proposals may be withdrawn on written request received from proposer until the notice of selection is issued.

29. Time is of the Essence

Time is of the essence in regard to all the requirements of the contract documents.

30. Right to Reject Proposals

The DFCM reserves the right to reject any or all proposals.



**PROJECT SCHEDULE - VBS CM/GC
 SCIQUEST BID #MW19026**

PROJECT NAME: USU Moab Academic Classroom Building				
DFCM PROJECT NO. 20149770		CM/GC		
Event	Day	Date	Time	Place
Request for Proposals Available	Friday	May 9, 2019	3:00 PM	DFCM web site *
Mandatory Pre-Proposal Meeting	Wednesday	May 22, 2019	9:00 AM	Aspen Room, Senate Building, Capitol Complex, Salt Lake City, UT
Optional Site Visit	Thursday	May 23, 2019	11:00 AM	Building K on Master Plan, 1870 South Rim Rock Road, Moab, UT 84532
Last Day to Submit Questions	Friday	May 24, 2019	3:00 PM	SciQuest Web site**
Addendum Deadline (exception for proposal delays)	Tuesday	May 28, 2019	3:00 PM	SciQuest Web site**
Cost Proposals, Management Plans, References, Statements of Qualifications, and Termination/Debarment Certifications Due	Friday	May 31, 2019	12:00 PM	DFCM Room 4110 State Office Bldg. Capitol Hill Complex SLC, UT and emailed to dfcmcontracts@utah.gov DO NOT SUBMIT VIA SCIQUEST. Do NOT email Cost Proposal. Deliver one hard copy only.
Short Listing by Selection Committee, if applicable.	Wednesday	June 5, 2019	2:30	To Be Announced
Announcement of Finalists	Friday	June 7, 2019	3:00	SciQuest Web site**
Interviews	Wednesday	June 12, 2019	TBA	Suite 4112 -State Office Building, Capitol Complex, 3120 State Office Building Salt Lake City, UT
Announcement	Friday	June 14, 2019	2:00 PM	SciQuest Web site**
Requested Substantial Completion Date	Wednesday	May 12, 2021		TBD

* DFCM's web site address is www.dfc.utah.gov.

** SciQuest's web site <https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>

SciQuest Date Clarification:

- In a low-bid SciQuest Advertisement, the "Close" and "Sealed Bid Open" date is the date that the bids submitted in SciQuest are opened, the sourcing event is closed, and nothing else can be posted.
- In a VBS SciQuest Advertisement, since no bids are submitted in SciQuest, the "Close" and "Sealed Bid Open" date is the day after the last item listed on the Project Schedule is posted (usually the announcement), the sourcing event is closed, and nothing else can be posted. All



NAME OF PROPOSER _____ DATE _____

COST PROPOSAL FORM

To the Division of Facilities Construction and Management
Room 4110 State Office Building
Capitol Hill Complex
Salt Lake City, Utah 84114

The undersigned, responsive to the "Notice to General Contractors/Construction Managers" and in accordance with the "Request for Proposals" for: **USU Moab Academic Classroom Building, DFCM Project No. 20149770**, propose a pre-construction fee at the price stated below. This price is to cover all expenses incurred in performing the pre-construction services as outlined in our proposal of which this proposal is a part:

I/We acknowledge receipt of the following Addenda: _____

- A. **Preconstruction Fee** - \$45,000.00
- B. **Construction Management Fee** – 4.25% of the FLCC.
- C. **Construction Supervision Cost** – 4.00% of the FLCC.
- D. **Temporary Construction Cost (General Conditions)** – 2.25% of the FLCC.
- E. **Self Performed Work Markup** - For all self performed work, I/we agree to add no more than 7% to our labor and material costs to perform the work.
- F. **Contractors Modification Factor** - The contractors insurance modification factor as currently rated is: _____

Contractor Change Order Markup - For all work added to the contract by change order above and beyond the FLCC, I/we agree to add not more than 5% to the subcontractor/supplier costs for the additional work. (For clarification, please review Section 5.2 of the CM/GC Agreement.)

I/We guarantee that the Work will be Complete, including punchlist items, within the negotiated time frame after receipt of the Notice to Proceed, should I/we be the successful proposer, and agree to pay liquidated damages in the amount of **\$1,000.00** per day for each day after expiration of the Contract Time as stated in Article 1.4 of the CM/GC Agreement.

The FLCC for this project is **\$7,200,000.00**. Enclosed is a bid bond in the amount of 5% of the FLCC.

With the cooperation of DFCM and A/E, the undersigned will continue to work with due diligence to provide a Guaranteed Maximum Price (GMP) within the FLCC.

The undersigned Contractor's License Number for Utah is _____.

This bid shall be good for 45 days after bid submission.

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within fifteen (15) days, unless a shorter time is specified in the Contract Documents, and email to dfcmcontracts@utah.gov acceptable Performance and Payment bonds in the prescribed form in the amount of 100% of the Contract Sum for faithful performance of the contract upon final agreement of the GMP. The Bid Bond attached, in the amount not less than five percent (5%) of the FLCC shall become the property of the Division of Facilities Construction and Management as liquidated damages for delay and additional expense caused thereby in the event that the contract is not executed and/or acceptable 100% Performance and Payment bonds are not delivered within the time set forth.

Type of Organization:

(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

Respectfully submitted,

Name of Proposer

ADDRESS:

Authorized Signature

FOR A COPY OF THE DESIGN AGREEMENT, PROFESSIONAL SERVICES AGREEMENT, GENERAL CONDITIONS, OR CM/GC CONTRACT, PLEASE REFER TO THE DFCM WEBSITE LOCATED AT www.dfc.utah.gov. THESE DOCUMENTS AND OTHER RELATED STANDARDS & AGREEMENTS MAY BE FOUND UNDER THE DFCM STANDARD CONSTRUCTION DOCUMENTS LOCATED AT THIS LINK <https://dfcm.utah.gov/construction-management/#documents>. IF ANY OF THE DESIRED DOCUMENTS CANNOT BE FOUND ON THE WEBSITE, THEN THE INTERESTED PARTY MUST NOTIFY DFCM IMMEDIATELY. SUBMISSION OF A PROPOSAL WILL BE ACCEPTED AS ACKNOWLEDGEMENT OF AND ACCEPTANCE OF THE TERMS AND CONDITIONS DOCUMENTED WITHIN SAID AGREEMENTS OR STANDARDS.

Contractor will be responsible to make themselves aware of the site conditions and limitations thereof. A Contractor's forfeiture of the optional site visit does not relieve them of any of their contractual agreements.



INSTRUCTIONS AND SUBCONTRACTORS LIST FORM (VBS)

The three low bidders, as well as all other bidders that desire to be considered, are required by law to submit to DFCM within 24 hours of bid opening a list of **ALL** first-tier subcontractors, including the subcontractor's name, bid amount and other information required by Building Board Rule and as stated in these Contract Documents, based on the following:

DOLLAR AMOUNTS FOR LISTING

PROJECTS UNDER \$500,000: ALL FIRST-TIER SUBS \$20,000 OR OVER MUST BE LISTED
PROJECTS \$500,000 OR MORE: ALL FIRST-TIER SUBS \$35,000 OR OVER MUST BE LISTED

- Any additional subcontractors identified in the bid documents shall also be listed.
- The DFCM Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law.
- List subcontractors for base bid as well as the impact on the list that the selection of any alternate may have.
- Bidder may not list more than one subcontractor to perform the same work.
- If there are no subcontractors for the job that are required to be reported by State law (either because there are no subcontractors that will be used on the project or because there are no first-tier subcontractors over the dollar amounts referred to above), then you do not need to submit a sublist. If you do not submit a sublist, it will be deemed to be a representation by you that there are no subcontractors on the job that are required to be reported under State law. At any time, DFCM reserves the right to inquire, for security purposes, as to the identification of the subcontractors at any tier that will be on the worksite.

LICENSURE:

The subcontractor's name, the type of work, the subcontractor's bid amount, and the subcontractor's license number as issued by DOPL, if such license is required under Utah Law, shall be listed. Bidder shall certify that all subcontractors, required to be licensed, are licensed as required by State law. A subcontractor includes a trade contractor or specialty contractor and does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

'SPECIAL EXCEPTION':

A bidder may list 'Special Exception' in place of a subcontractor when the bidder intends to obtain a subcontractor to perform the work at a later date because the bidder was unable to obtain a qualified or reasonable bid under the provisions of U.C.A. Section 63A-5-208(4). The bidder shall insert the term 'Special Exception' for that category of work, and shall provide documentation with the subcontractor list describing the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost and why the bidder was unable to obtain a qualified subcontractor bid. The Director must find that the bidder complied in good faith with State law requirements for any 'Special Exception' designation, in order for the bid to be considered. If awarded the contract, the Director shall supervise the bidder's efforts to obtain a qualified subcontractor bid. The amount of the awarded contract may not be adjusted to reflect the actual amount of the subcontractor's bid. Any listing of 'Special Exception' on the sublist form shall also include amount allocated for that work.

GROUNDS FOR DISQUALIFICATION:

The Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law. Director may withhold awarding the contract to a particular bidder if one or more of the proposed subcontractors are considered by the Director to be unqualified to do the Work or for

INSTRUCTIONS AND SUBCONTRACTORS LIST FORM

Page No. 2

such other reason in the best interest of the State of Utah. Notwithstanding any other provision in these instructions, if there is a good faith error on the sublist form, at the sole discretion of the Director, the Director may provide notice to the contractor and the contractor shall have 24 hours to submit the correction to the Director. If such correction is submitted timely, then the sublist requirements shall be considered met.

CHANGES OF SUBCONTRACTORS SPECIFICALLY IDENTIFIED ON SUBLIST FORM:

Subsequent to twenty-four hours after the bid opening, the contractor may change its listed subcontractors only after receiving written permission from the Director based on complying with all of the following criteria.

- (1) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but not is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, and/or the subcontractor has requested in writing to be released.
- (2) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors.
- (3) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping.
- (4) Any increase in the cost of the subject subcontractor work is borne by the contractor.
- (5) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.
- (6) The Director will give substantial weight to whether the subcontractor has consented in writing to being removed unless the Contractor establishes that the subcontractor is not qualified for the work.

EXAMPLE:

Example of a list where there are only four subcontractors:

TYPE OF WORK	NAME OF SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION"	SUBCONTRACTOR BID AMOUNT	CONTRACTOR LICENSE #
ELECTRICAL	ABCD Electric Inc.	\$350,000.00	123456789000
LANDSCAPING	"Self" *	\$300,000.00	123456789000
CONCRETE (ALTERNATE #1)	XYZ Concrete Inc	\$298,000.00	987654321000
MECHANICAL	"Special Exception" (attach documentation)	Fixed at: \$350,000.00	(TO BE PROVIDED AFTER OBTAINING SUBCONTRACTOR)

* Bidders may list "self", but it is not required.

PURSUANT TO STATE LAW - SUBCONTRACTOR BID AMOUNTS CONTAINED IN THIS SUBCONTRACTOR LIST SHALL NOT BE DISCLOSED UNTIL THE CONTRACT HAS BEEN AWARDED.

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR AGREEMENT**

for

hereinafter referred to as the "Project."

THIS AGREEMENT, made and entered into this ___th day of _____, 201_ by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called "DFCM," and _____, incorporated in the State of Utah and authorized to do business in the State of Utah, hereinafter called the "Construction Manager/General Contractor" or "CM/GC," whose address is _____, Utah 84____.

WITNESSETH: WHEREAS, DFCM intends to have the Services and Work performed to construct the _____, in _____, Utah, and WHEREAS, the CM/GC agrees to perform Construction Management services and perform as a General Contractor for the sum herein stated.

NOW, THEREFORE, DFCM and the CM/GC for the consideration provided in this Agreement, agree as follows:

**ARTICLE 1.
CM/GC'S SERVICE AND RESPONSIBILITIES**

- A. **In General.** The CM/GC accepts the relationship of trust and confidence established by this Agreement and covenants with the DFCM as follows:
1. **Cooperation.** To cooperate with the DFCM, as well as the Architect/ Engineer (A/E) selected by DFCM for the design services for the Project;
 2. **Best Skills, Efforts and Judgments.** Use the CM/GC's best skills, efforts and Judgments in furthering the interest of the DFCM;
 3. **Efficient Business Administration and Supervision.** To furnish efficient business administration and supervision;
 4. **Perform the Services and Work.** To furnish at all times an adequate supply of workers, the appropriate materials and equipment, and perform the Services and Work in the best and most expeditious and economic manner in accordance with the Contract Documents; and
 5. **Inspection and Approval.** That the Work shall be subject to inspection and approval of DFCM or its authorized representative.
- B. **Independent Contractor.** In performing its obligations hereunder, the CM/GC shall be deemed an independent contractor and not an agent or employee of DFCM. The CM/GC shall have exclusive authority to manage, direct, and control the Services and Work; all of which must meet the Contract Documents.

- C. **General Contractor and Professional Service Duties.** 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 terms "General Contractor" and "Contractor" in the DFCM General Conditions (hereinafter referred to as the "DFCM General Conditions") and Supplemental General Conditions ("also referred to as General Conditions") which are current as of the date of this Agreement and on file at the office of DFCM and available on the DFCM website (<https://dfcm.utah.gov/wp-content/uploads/DFCM-General-Conditions.pdf>), and hereby incorporated by reference as part of the Contract Documents as well as the professional services of a business, administrative and management consultant to DFCM; including all budget, scheduling, quality, safety and all other services related to assuring compliance with this Agreement and the Contract Documents. The DFCM and CM/GC shall be bound by all the requirements and provisions of said DFCM General Conditions. The definitions in the General Conditions shall apply to this Agreement except as specifically modified by this Agreement. It is intended that this CM/GC's Agreement not reiterate all the applicable provisions of said DFCM General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated. If the CM/GC is selected prior to the selection of the A/E for the Project, the CM/GC shall assist in the selection of the A/E.
- D. **Standard of Care.** The Standard of Care for the Services and Work under this Agreement shall be as follows: The CM/GC and all those for whom the 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 that is the subject of this Agreement. The CM/GC shall be liable to DFCM or the State of Utah, less any "betterment" obtained by the Owner, for all Owner costs, damages, claims, liabilities, additional burdens, judgments, fines, penalties, damages, demolition, removal or modification of Work, any A/E or Owner delay damages, increased material costs, or third-party claims (i.e. an A/E claim against DFCM or the State of Utah), 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 in the Attachments hereto. Owner reserves the right to deduct from any payment otherwise due under this Agreement, the amount related to any such error or omission.

ARTICLE 2. FLCC AND BASIS OF COMPENSATION

Special Provision when Agreement is limited to only cover Preconstruction Services.

(USE ONLY ON AGREEMENTS FOR PRE-CONSTRUCTION SERVICES ONLY) This Agreement shall initially include only the scope of work (services) and compensation for the pre-construction phase for an initial contract Sum of _____ DOLLARS (_____).

- A. **Amount of FLCC.** The Fixed Limit of Construction Costs (FLCC) for this Agreement is \$ _____, which includes the CM/GC's fees. The FLCC may only be increased in advance and in writing by DFCM.
- B. **FLCC as Ultimate Limitation.** The scope of Work (including CM/GC services) must at all times be within the FLCC. The DFCM as well as the State of Utah shall not be liable to the CM/GC for any amount over the FLCC. The FLCC as stated herein may be modified in writing and in advance by the DFCM or as a result of the entitlement of the CM/GC for additional monies in accordance with the procedures and substantive requirements of the DFCM General Conditions and Contract Documents.
- C. **FLCC Reasonable.** By executing this Agreement and at the time of submittal of each GMP proposal, the CM/GC agrees that the FLCC is a reasonable limit for the total cost of the Project.
- D. **Pre-Construction Phase Compensation.** For Work (including services) performed as described in Article 5.A. (Pre-Construction Phase), the CM/GC will be compensated \$ _____. This shall include the cost of all labor and salaries as well as consumable materials required to perform the services. This compensation shall include insurance, benefits, employment taxes, overhead and profit.

E. Construction Phase Compensation.

1. **CM/GC Fee.** The CM/GC's Construction Management Fee for Services and Work performed during the entire construction phase, including punch list completion is a lump sum of _____% of the FLCC ($\$FLCC \times \text{_____}\% = \_____). This includes the cost as outlined in the CM/GC's Management Plan dated _____, 201____, which is hereby incorporated by reference.
 - a. **Fee Includes.** This Fee includes overhead (e.g. home office), profit for the entire job and home office 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 Article 2.E.3 below.
 - b. **Fee Does Not Include.** This fee does not include general conditions (temporary construction costs) or the monthly supervision cost described below. As used in this Article 2, "general conditions" means temporary construction costs directly related to the Services and Work.
 - c. **How Fee Modified.** This fee is subject to modification by DFCM 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. **Scope Changes Impact on Fee.** Following the establishment of the GMP, the CM/GC change order markup described in Article 6.B.7. of this Agreement, will compensate the 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 the CM/GC Fee, at the effective percentage rate established in the original 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 the CM/GC Fee at the effective percentage rate established in the original proposal, prorated for the amount of the Contract Time that is added to the original schedule.

Fee Not Increased Due to Material/Labor Costs. The CM/GC Fee shall not be increased due to an increase in cost of material, labor, general conditions or site supervision.
2. **Deemed Included in Fee.** Compensation for the following items is deemed already included in the CM/GC's fee and not subject to any additional payment beyond said fee by DFCM:
 - a. **Wrongful Acts or Negligence.** Costs, losses and expenses, including legal and consultant expenses, to the extent they have resulted from the act, fault or negligence of the CM/GC, any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable, including but not limited to 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. **Maintaining/Operating Offices.** All expenses related to maintaining and operating the CM/GC's principal and branch offices.
 - c. **Capital Expenses.** Any part of the CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.

- d. Overhead/General Expenses. Overhead or general expenses of any kind, except as may be expressly included in Article 3 of this Agreement.
 - e. Food/Refreshments. Food and refreshments for construction meetings or in association with the Project, unless approved in writing and in advance by DFCM based on a showing of benefit to the Project.
 - f. Incentive Awards. Incentive awards of any kind, unless approved in writing and in advance by DFCM based on a showing of benefit to the Project.
 - g. Training. Training costs either associated or not associated with the Project, unless approved in writing and in advance by DFCM based on a showing of benefit to the Project.
3. **Not Part of Fee, but Part of GMP Proposal.** The following items, while not part of the fee, are to be included in any GMP proposal or approved GMP:
- a. Supervision Costs. The total amount of the construction supervision costs shall be a lump sum of ____% of the FLCC ($\$FLCC \times \text{____\%} = \_____).
 - b. Self-Performed Work. If DFCM authorizes the CM/GC to self-perform portions of the Work, said Work shall be compensated as a Cost of the Work and reimbursed at actual cost incurred based on documentation (direct personnel expense, including labor burden, materials, equipment, etc.) plus a fixed negotiated fee that shall not exceed 7% of the cost of said Work.
 - i. Includes. Self performed work eligible for said fee shall only include labor, materials, and equipment provided directly by the CM/GC and not by subcontractors.
 - ii. Does not Include. Self-performed work eligible for said fee shall not include items furnished by the CM/GC as a general conditions (temporary construction cost) item.
 - c. Temporary Construction Costs (General Conditions). The CM/GC shall be compensated for temporary construction costs (commonly referred to in the industry as "general conditions") and reimbursed as a lump sum of ____% of the FLCC ($\$FLCC \times \text{____\%} = \_____). Temporary Construction Costs means such items, to the extent used on the Project: 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 temporary construction cost, such item must be necessary for the construction of the Project.
 - i. Rental Rates. Rental rates for all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the 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, and in no case greater than the applicable "R.S. Means Construction Cost Data." If the equipment is owned by the CM/GC, then the rental rate shall not exceed the demonstrated cost of ownership by the CM/GC for the applicable time period and in no case greater than the applicable "R.S. Means Construction Cost Data." Other than hand tools with a value under \$100, equipment that is necessary to be purchased for use on the Project by the CM/GC shall first be approved in writing by the DFCM. Following the completed use, the CM/GC may retain ownership of the

equipment upon credit of remaining market value compensated to DFCM, otherwise DFCM shall retain ownership.

- ii. Excluded from the 1.5% fee are large cranes, temporary construction utilities (water, gas, power), and weather conditions (winter protection).
- d. **Cost of Subcontractors.** Actual payments made by the CM/GC to Subcontractors for Work performed pursuant to subcontracts properly entered into under this Agreement.
- e. **Taxes.** Sales, use or similar taxes related to the Services and Work and for which the CM/GC is liable and imposed by any governmental authority.
- f. **Insurance Premiums.** Actual cost of premiums for insurance, which the CM/GC is required by the Contract Documents to purchase and maintain based on the amount of the approved GMP.
- g. **Bonds.** Actual cost of payment and performance bonds based on the amount of the approved GMP.

ARTICLE 3. CONSTRUCTION COST

- A. **Construction Cost Includes.** Construction Cost shall be the total of the following for the entire Project: the Preconstruction phase payment by DFCM to the CM/GC, the cost of separate subcontracts, the cost of self-performed Work, the CM/GC fee, eligible supervision costs, eligible general conditions (eligible temporary construction costs), allowed use of CM/GC's Contingency, as well as payment and performance bond costs.
- B. **Construction Cost Does Not Include.** Construction Cost does not include the compensation of the A/E and its consultants, or the cost of inspections or testing provided for by DFCM.
- C. **Standard of Care for Cost Estimate.** The cost estimate provided by the 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 DFCM that the CM/GC breached this standard of care in providing budget and cost estimates, DFCM reserves the right to seek all available appropriate remedies from the CM/GC.
- D. **CM/GC Incentive to Manage Within FLCC.** If the final costs of the Project are less than or equal to the final approved FLCC, then the CM/GC shall be entitled to 30% of the savings between the final approved GMP and the final costs, or \$100,000, whichever is less, and the balance shall belong to the State. For purposes of this paragraph, changes to the final GMP that are the responsibility of DFCM (i.e. DFCM initiated scope changes, unforeseen conditions and design error/ omissions) under the Contract Documents, shall not affect the CM/GC's entitlement herein.
- E. **Contingency for Undefined Design.** The CM/GC shall include an estimating contingency in their cost estimate for undefined design. The Contractor shall continue to reduce this estimating contingency as the design becomes more defined and ultimately shall be eliminated.
- F. **Guaranteed Maximum Price (GMP).** Prior to any construction, the CM/GC shall submit a GMP proposal for a specific scope of Work (including services) to DFCM, and have it approved by DFCM. Notwithstanding any other provision of this Agreement, the CM/GC guarantees that the construction cost for the agreed to scope of Work will not exceed the GMP for that scope of Work. The GMP may only be increased by a Change Order for circumstances described in Article 7 of the DFCM General Conditions. The 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, temporary construction costs, CM/GC fee,

supervision cost, bond and insurance. If there is to be more than one bid package, the GMP proposal must be calculated by the 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. The total of the CM/GC's Contingency for the entire project cannot exceed 2% of the FLCC.

1. **CM/GC's Contingency.** Any use of the CM/GC's Contingency shall be based on a documented proposal by the Contractor and approved by DFCM, which approval shall not be unreasonably withheld. This contingency fund shall only be used for the following types of Services and Work and for only direct cost of construction:
 - a. Where the procurement of the bid package(s) results in costs that are likely to, or does exceed the FLCC, the CM/GC's Contingency can be used to offset this increased cost;
 - b. For construction errors, or replacement of defective Work that is self-performed by the 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 the CM/GC in the line items of the approved GMP proposal. This may include such items as general conditions (temporary construction costs), self-performed Work and other items that are directly related to the CM/GC itself and not the subcontractor or suppliers.
2. **When CM/GC's Contingency Cannot Be Used.** This CM/GC's Contingency cannot be used for:
 - a. Errors by subcontractors, suppliers or manufacturers at any tier;
 - b. Coordination issues between subcontractors at any tier that are not related to CM/GC error; and/or
 - c. Replacement of defective Work installed by subcontractors at any tier.
3. **Contractor's Contingency Exhausted.** If the entire CM/GC's 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 the CM/GC.
4. **Carry Forward of CM/GC's Contingency.** At the end of the final completion (construction) of each bid package, where there are multiple bid packages, any remaining CM/GC's Contingency shall carry forward to the future bid package Work.
5. **CM/GC's Contingency at Final Completion.** At Final Completion of the Project, if there are any funds remaining in the CM/GC's Contingency the funds may qualify for distribution in accordance with Article 3. D.
6. **Issues Not Related to CM/GC's Contingency.** Design errors and omissions, unforeseen site conditions, and Owner requested scope changes do not apply to the CM/GC's Contingency.

ARTICLE 4.
PAYMENTS TO THE CM/GC

- A. **Payments for Basic Services.** Payments for Basic Services, approved additional services and reimbursable costs, upon proper invoicing, justification and documentation, shall be made monthly for Services and Work properly performed, all in accordance with this Agreement.
- B. **General Payment, Retainage and Accounting Provisions.**
1. **DFCM General Conditions Apply.** All applicable provisions of the DFCM General Conditions regarding payment, withholding of payment, retainage, certification of payment and other payment requirements and rights of DFCM and the CM/GC shall apply.
 2. **Retainage.** Retainage in the amount of 5% shall be withheld from each payment to the CM/GC for any Services or Work under this Agreement. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with Utah Code Ann. Sec. 13-8-5, as amended. The CM/GC shall also comply with the requirements of Utah Code Ann. Sec. 13-8-5, as amended, including restrictions of retainage regarding Subcontractors and the distribution of interest earned on the retention proceeds.
 3. **DFCM Not Responsible for CM/GC'S Retention Requirements.** The DFCM shall not be responsible for enforcing the CM/GC's obligations under Utah law in fulfilling the retention law requirements with Subcontractors at any tier.
 4. **Interest Bearing Account.** The CM/GC's retainage shall be held by DFCM, in an interest bearing account with said interest to accrue to the account of the CM/GC. Said interest shall be distributed by DFCM to the CM/GC upon release of retention funds.
 5. **DFCM'S Right to Withhold Certain Amount and Make Use Thereof.** DFCM may withhold from payment to the CM/GC such amount as, in DFCM's judgment, may be necessary to pay just claims against the CM/GC or Subcontractors at any tier for labor and services rendered and materials furnished in and about the Work. The DFCM may apply such withheld amounts for the payment of such claims in DFCM's discretion. In so doing, the DFCM shall be deemed the agent of the CM/GC and payment so made by the DFCM shall be considered as payment made under this CM/GC's Agreement by the DFCM to the CM/GC. DFCM shall not be liable to the CM/GC for any such payment properly made. Such withholdings and payments may be made without prior approval of the CM/GC and may also be made prior to any determination as a result of any dispute, PRE, Claim or litigation. However, the CM/GC shall be notified prior to any such withholding and will be given an opportunity to inform DFCM as to any reason why the withholding shall not occur.
 6. **Final Payment.** Before final payment is made, the CM/GC must submit evidence satisfactory to the DFCM 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 the DFCM as well as compliance with the applicable provisions of the DFCM General Conditions.
 7. **CM/GC Respond to Financial Responsibility and Related Requests; Waivers, Releases, Bonds.** The CM/GC shall respond immediately to any inquiry in writing by DFCM as to any concern of financial responsibility and DFCM reserves the right to request any waivers, releases or bonds from the CM/GC in regard to any rights of Subcontractors (including suppliers) at any tier or any third-party prior to any payment by DFCM to the CM/GC.
 8. **Reimbursement to DFCM.** Notwithstanding any other provision of this Agreement, the CM/GC shall reimburse DFCM for the portion of any expenses paid by DFCM to the CM/GC, which is

attributable to the CM/GC's breach of its duties under this Agreement, including the breach of any duty by any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable.

ARTICLE 5. BASIC SERVICES

The 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. The CM/GC shall perform the following:

- 1. Project Schedule.** Provide for DFCM's review and acceptance, and periodically update a Project critical path schedule that coordinates and integrates the CM/GC's services, the A/E's services and DFCM's responsibilities with anticipated construction schedules.
- 2. Detailed Estimate.** Prepare for DFCM's approval a detailed estimate of Construction Cost, as defined in Article 3 of this Agreement. Provide in CSI or other DFCM-approved format, including a square foot (SF) cost analysis of each trade. The CM/GC shall update and refine this estimate throughout the design and construction process, including working with the A/E during each of the A/E design phases, including Schematic Design, Design Development & Construction Document phases. The overall objective is for the CM/GC and the A/E 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 Fixed Limit of Construction Cost (FLCC) defined in Article 2 of this Agreement, then the CM/GC shall, as part of its basic preconstruction services, cooperate with the A/E to present to the DFCM a mutually agreed upon value-engineering of the Project back within the FLCC.

- 3. Consultation with DFCM and A/E and Construction Document Review.** The CM/GC shall conduct a complete review and consult with DFCM and the A/E 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. The 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. Phases.** Advise on the separation of the Project into separate bid packages/phases for various categories of Work.
- 5. Schedule of Purchases.** Investigate and recommend a schedule of all purchases, including State provided, of materials and equipment requiring long lead-time procurement, and coordinate this schedule with the early preparation of portions of the Contract Documents by the A/E. Expedite and coordinate delivery of these purchases.
- 6. Bidding (including proposals) Services.**
 - a. "Bid" and "Proposal" Meaning.** 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. **Prequalification Criteria.** The CM/GC shall prepare, when appropriate, prequalification criteria for bidders. Subcontractors 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. **Ensure Bids are Received.** The CM/GC is responsible for the procurement of subcontractors and suppliers for the Project. The CM/GC shall develop Subcontractor interest to ensure bids are received.
- d. **Pre-Bid Conferences.** The CM/GC shall conduct pre-bid conferences to familiarize potential bidders with the bidding documents. The CM/GC shall ensure that the Construction Documents are available to all potential bidders.
- e. **Procure Subcontractors Similarly as DFCM.** All procurements recommended and conducted by the CM/GC shall be in accordance with one of the source selection methods provided for in the Utah Procurement Code, UCA 63-56, "Part 4, Source Selections and Contract Formation," and the applicable rules of the Utah State Building Board in Utah Administrative Code, Title R23, in the same manner as if the subcontract Work was procured directly by DFCM. This is met by compliance with the CM/GC Procurement Manual (located on the DFCM Website) in administering the selection process for the Subcontractors, which Manual is hereby incorporated by reference as part of this Agreement.
- f. **Selection of Bidders.** The CM/GC shall receive bids, prepare bid analyses and award subcontracts or reject bids. DFCM, the Using Agency and the A/E shall be consulted during this procurement process, however, the determination and responsibility for the procurement of the subcontractors and suppliers is that of the CM/GC. The CM/GC shall conduct pre-award conferences with bidders that have been recommended for award by any selection committee.
- g. **Manage Scope to be within FLCC.** The CM/GC shall consult with the A/E 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 DFCM determines as a result of the bidding process that the FLCC is exceeded or will likely be exceeded, DFCM reserves the right, in its sole discretion to: (1) give written approval of an increase in FLCC, including applying the CM/GC's Contingency to such increase; (2) authorize re-bidding; (3) revise the scope of the Work; and/or (4) terminate the Project.
- h. **Bidders Contract with CM/GC Only.** There shall be no contractual relationship between the subcontractors/suppliers and the DFCM or A/E. The CM/GC shall prepare and execute the required subcontractor/supplier agreements. The CM/GC shall be fully responsible for the performance of its Subcontractors and suppliers at any tier similar to a General Contractor under the DFCM General Conditions.

7. Self-Performed Work.

- a. Per UCA 63-56-501(2) and applicable Utah law, the CM/GC may request that it be allowed to self-perform portions 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 DFCM as part of the CM/GC selection process; or

- ii. When the CM/GC has been selected for the self-performed Work through a selection process that is similar to the selection of subcontractors by DFCM.
 - b. Savings in self-performed Work may be eligible for the incentive described in Article 3.D.
- 8. **Termination.** If it is reasonably determined by the DFCM Director or designee that the CM/GC has not provided satisfactory preconstruction services, the DFCM Director or designee may determine to terminate this Agreement upon ten (10) days notice to the 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 DFCM under the DFCM General Conditions for a termination for cause shall be so transferred or delivered promptly by the CM/GC to DFCM. Upon such termination, the CM/GC 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 paragraph, the CM/GC is not entitled to receive: (1) any fee related to Work not properly performed; (2) any fee related to Work not yet performed; or (3) any amount related to lost profits. The CM/GC shall be liable to DFCM for all damages and liabilities provided for in this Agreement, the DFCM General Conditions and the Contract Documents.

B. Construction Phase.

- 1. **Written Authorization to Commence Construction.** The CM/GC shall complete construction in accordance with Contract Documents prepared by the A/E and approved by DFCM. Upon receipt of a fully executed Change Order that includes a GMP for a specific Scope of Work, the CM/GC is authorized to commence the Construction Phase. All the requirements of this Article 5.B. shall be included as part of any approved GMP.
- 2. **Payment and Performance Bonds.** Concurrent with the authorization to proceed with the Construction Phase, the CM/GC shall provide 100% Payment and Performance Bonds for the amount of the Guaranteed Maximum Price (GMP) and meeting the requirements contained in the Contract Documents
- 3. **Administrative and Management Services.** Provide administrative and management services as required to coordinate the Work of the Subcontractors with each other and the CM/GC, DFCM and the A/E.
- 4. **Team Members.** The CM/GC's team must be consistent with the team members designated in the CM/GC's 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 the CM/GC's Team submitted in the selection process of the CM/GC, shall be removed from the Project unless said team member shall leave the employ of the CM/GC or unless DFCM requests or approves the change. Any request to replace a team member shall be submitted to DFCM in writing and subject to approval of DFCM upon a showing that such replacement is consistent with the qualifications provided in the selection process of the CM/GC.
- 5. **Supervision.** The CM/GC shall provide competent supervision of the Work and shall cause the Work to be performed in accordance with the Contract Documents.
- 6. **Meetings.** The CM/GC shall schedule and conduct pre-construction, construction and progress meetings. The CM/GC shall prepare and promptly distribute minutes of all such meetings. Said minutes shall not be considered official minutes until approved by DFCM. 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. **Critical Path Scheduling.** The 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. The CM/GC shall comply with all scheduling requirements in the Contract Documents and the DFCM General Conditions.
8. **Construction Cost Management.** The 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. The CM/GC shall promptly identify in writing to the DFCM and A/E, variances between actual/estimated costs in regard to the budget for the FLCC. The CM/GC shall use its best efforts to work with the A/E as a team in an effort to have designs presented to the Owner be properly determined in advance by the CM/GC to meet the FLCC. The 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 DFCM, 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 Subcontractors for progress and final payments.
9. **Safety.** The CM/GC shall be responsible for the overall safety of the Project and shall review the safety programs developed by each of the subcontractors as required by the Contract Documents. The CM/GC shall fulfill the safety responsibilities provided for in the DFCM General Conditions.
10. **Assist in Selection Processes.** If required by DFCM or the Contract Documents, the CM/GC shall assist DFCM in selecting and retaining the professional services of surveyors, special consultants and testing laboratories and coordinate their services.
11. **Manage Subcontractors and the Work.** The CM/GC shall determine that the Work of each subcontractor is being performed in accordance with the Contract Documents. The CM/GC shall promptly remediate any defects or deficiencies in the Work. The CM/GC is solely responsible for the performance of all subcontractors at any tier. Subject to review by the A/E and DFCM, the CM/GC shall reject Work that does not conform to the requirements of the Contract Documents.
12. **Inspections.** The CM/GC shall timely arrange for all code inspections, special inspections or testing needed to assure compliance with the Contract Documents.
13. **Requests for Interpretations.** The CM/GC shall promptly submit to the A/E and DFCM, any subcontractor requests for interpretations of the drawings and specifications, and promptly assist in the resolution of such requests.
14. **Forward Insurance Certificates.** The CM/GC shall receive Certificates of Insurance from the Subcontractors, and upon specific request by the DFCM Project Manager, forward such to DFCM.
15. **Review of Submittals.** The CM/GC shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals. The CM/GC shall receive from the subcontractors all shop drawings, product data, samples and other submittals, and review such for conformance with the Contract Documents. After review by the CM/GC, the CM/GC shall deliver the submittals to the A/E for review.

16. **Logs, Records.** The CM/GC shall keep a daily log containing a record of weather conditions, subcontractors' Work on the site, number of workers, Work accomplished, all necessary data for verification of subcontractor performance, including, but not limited to, unit quantities, problems encountered, and other data as DFCM may require. The CM/GC shall make the log available to DFCM and the A/E promptly upon request.

The 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. The CM/GC shall make all records promptly available to DFCM upon request.

17. **Operation and Maintenance (O&M) Records, Record Drawings.** At the completion of the Project, the CM/GC shall promptly submit to the A/E, all O & M manuals and as-built (record drawings). The A/E will review these submittals for accuracy and then promptly forward the submittals to DFCM.
18. **Manage DFCM-Purchased Items.** The CM/GC shall arrange for delivery, storage, protection/security for DFCM-purchased items that are delivered to the CM/GC.
19. **Assist with Commissioning.** With the DFCM's designated Commissioning Agent, the A/E and DFCM's maintenance personnel, the CM/GC shall observe the subcontractors' testing and operation of utilities, control systems and equipment.
20. **Substantial Completion.** The CM/GC shall notify the A/E when the Project, or a portion thereof, is ready for a Substantial Completion inspection. Upon Substantial Completion, the CM/GC shall promptly complete the punch list items as provided for in the DFCM General Conditions.

ARTICLE 6. ADDITIONAL SERVICES/WORK

- A. **In General.** It is understood and agreed by the parties hereto that no money will be paid to the CM/GC for additional labor or materials furnished unless a new contract in writing or a Modification hereof in accordance with the DFCM General Conditions and the Contract Documents for such additional labor or materials has been executed. The DFCM 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. **Specific Additional Services.** The following Additional Services shall be performed by the CM/GC upon authorization in advance and in writing from DFCM and shall be paid for as provided in this Agreement:
 1. **DFCM Provided Furnishings/Equipment.** Services related to DFCM-provided furnishings and equipment not specified in the Contract Documents.
 2. **Certain Replacement of Work.** To the extent not the fault of the 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. **Certain Post-Warranty Services.** To the extent not the fault of the CM/GC, inspections of, and services related to, the Project after the end of the warranty period.

4. **DFCM-Approved Extras.** Other services that are not part of the CM/GC's basic services and not otherwise specified in this Agreement, upon advance written direction from DFCM.
5. **Infringement of Copyright, Patents.** Other than for those matters caused by the fault or negligence of the CM/GC, royalties, damages for infringement of patents and costs of defending suits related thereto; all at the actual cost to the CM/GC. Advance authorization by DFCM is not needed for the CM/GC to be entitled to these costs.
6. **Emergencies.** Other than for those matters caused by the fault or negligence of the CM/GC, actual costs incurred due to an emergency affecting the safety of persons and property. Advance authorization by DFCM is not needed for the CM/GC to be entitled to these costs.
7. **Mark-up for Subcontractor Additional Work.**
 - a. **CM/GC Markup.** For additional Work performed by Subcontractors that was not part of the scope of Work related to the GMP, the CM/GC will be compensated 5% of the subcontract or material price in lieu of the markups otherwise provided for in the DFCM General Conditions. This compensation is for home office coordination as well as CM/GC overhead and profit.
 - b. **Subcontractor Markup.** Subcontractors shall receive a markup for additional Work in accordance with the DFCM General Conditions.

**ARTICLE 7.
TIME AND DELAY REMEDY**

- A. **Time of Essence, Standard of Care.** Time is of the essence for the performance required by this Agreement. The CM/GC shall perform basic and additional services in an expeditious manner and consistent with the Standard of Care requirements of this Agreement.
- B. **Completion Date.** At the time a bid date is set for a particular subcontract, the DFCM and CM/GC will jointly establish a completion date (or dates) for the Work of that subcontract, which shall be consistent with the DFCM-approved Project Schedule for the entire Project.
- C. **Liquidated Damages.** The CM/GC agrees to pay liquidated damages in the amount of \$_____ per day for each day after expiration of the Contract Time until the CM/GC achieves Substantial Completion in accordance with the Contract Documents, if CM/GC's delay makes the damages applicable. This provision for liquidated damages: (a) is to compensate DFCM for delay only; (b) is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Agreement; (c) is not a penalty; and (d) shall not prevent DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.
- D. **Delay/Hindrance Claim Limitation.** No PRE, Claim or action shall be maintained by the CM/GC, Subcontractors or suppliers at any tier, against DFCM for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of DFCM or its officers, employees or agents, except as expressly provided in the DFCM General Conditions.
- E. **Extensions of Time.** Extension of Time requests must comply with the DFCM General Conditions.

**ARTICLE 8.
THE DFCM'S RESPONSIBILITIES**

- A. **DFCM-Provided Requirements.** The DFCM has provided the requirements for the Project in the Request for Proposals, which is part of the Contract Documents.
- B. **Budget.** DFCM has advised the CM/GC of the budget of the Project, which is the FLCC identified in this Agreement. DFCM is responsible for maintaining its own Owner's Contingency, which shall be used for unforeseen conditions, design omissions/errors and other matters that increase the cost of the Project to the extent any such costs are not due to the fault or responsibility of the CM/GC under the Contract Documents.
- C. **DFCM Representative.** The DFCM shall designate a representative authorized to act upon behalf of DFCM with respect to the Project. The DFCM shall examine documents submitted by the CM/GC and shall render decisions pertaining thereto in a timely manner in order to avoid unreasonable delay in the progress of the CM/GC's Work as indicated by the DFCM-approved critical path schedule.
- D. **DFCM-Provided Tests, Inspections, Reports.** The DFCM may furnish structural, mechanical, chemical and other laboratory tests, inspections and reports. The CM/GC shall cooperate with any such tests or inspections.
- E. **Audit Rights.** The DFCM may audit applications for payments or any other aspect of the Services and Work of the CM/GC and of the subcontractor or suppliers at any tier. The CM/GC shall cooperate with DFCM in providing all necessary information for any DFCM audit.
- F. **Provide Construction Documents.** The DFCM shall assure that the CM/GC is provided the Construction Documents in a digital format. The CM/GC shall be responsible for making any further copies of the Construction Documents, subject to the copyright requirements in the DFCM General Conditions.
- G. **Right to Perform.** The DFCM reserves the right to perform Work related to the Project with DFCM's own forces, and to award contracts to other entities in connection with the Project, which are not part of the CM/GC's responsibilities under this Agreement. The CM/GC shall coordinate the CM/GC's Work with work of DFCM's separate contractors as required by the Contract Documents. The CM/GC shall promptly notify DFCM in writing if any such independent action will in any way compromise the CM/GC's ability to meet the CM/GC's responsibilities under this Agreement.

**ARTICLE 9.
INDEMNIFICATION**

The CM/GC shall comply with the indemnification provisions of the DFCM General Conditions.

**ARTICLE 10.
TERMINATION, SUSPENSION OR ABANDONMENT**

This Agreement may be terminated, suspended or abandoned in accordance with the DFCM General Conditions.

**ARTICLE 11.
DISPUTE RESOLUTION**

Any dispute, PRE or Claim between the parties shall be subject to the provisions of Article 7 of the DFCM General Conditions. DFCM reserves all rights to pursue its rights and remedies as provided in the DFCM General Conditions.

**ARTICLE 12.
SUCCESSORS AND ASSIGNS**

The DFCM 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. The CM/GC shall not assign this Agreement without the prior written consent of DFCM, nor shall the CM/GC assign any money due or to become due as well as any rights under this Agreement, without prior written consent of DFCM.

**ARTICLE 13.
EXTENT OF AGREEMENT**

- A. Agreement Includes the Following.** This Agreement includes this Agreement, the Request for Proposals for this Project, including the Instructions to Proposers and the CM/GC's Proposal (including Management Plan) to the extent not in conflict with the other Contract Documents, said DFCM General Conditions, Supplemental General Conditions, final drawings, specifications, Addenda and Modifications as approved by DFCM for this Project, the CM/GC's Proposal for this Project, the CM/GC's bonds submitted to DFCM, and all the attachments (including schedules) and documents incorporated by reference into this Agreement; all of which are hereby incorporated by reference as a part of this Agreement and are also referred to as the "Contract Documents." This Agreement represents the entire and integrated Agreement between DFCM and the 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 DFCM and the CM/GC.
- B. Hierarchy.** 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, Addendum to drawings and specifications, drawings and specifications (as approved by DFCM), this Agreement including the attachments to this Agreement, the CM/GC's Proposal for this Project (including Management Plan) as may be modified by DFCM and indicated in the attachment to this Agreement, the DFCM's Request for Proposal for this Project, and the DFCM General Conditions.

**ARTICLE 14.
AUTHORITY TO EXECUTE AND PERFORM AGREEMENT**

The CM/GC and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers. Each signatory below represents that he/she is duly authorized by their respective entity to execute this Agreement on behalf of their respective entity.

**ARTICLE 15.
ATTORNEY FEES AND COSTS**

Except as otherwise provided in the dispute resolution provisions of the DFCM General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in any court of competent jurisdiction and/or appellate body to enforce this Agreement or recover damages or any other action as a result of a breach thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CM/GC:

APPROVED AS TO AVAILABILITY
OF FUNDS:

*/S/ David D. Williams, Jr.
David D. Williams, Jr.
DFCM Financial Director

**DIVISION OF FACILITIES
CONSTRUCTION AND MANAGEMENT**

*/S/ DFCM
DFCM

APPROVED AS TO FORM:
ATTORNEY GENERAL
July 10, 2017
By: MICHAEL J. KELLEY
Asst Attorney General

APPROVED FOR EXPENDITURE:
*/S/ Division of Finance
Division of Finance

*Electronic signatures are effective when the AIM Status History page is attached to this agreement following this signature page. The AIM Status History page identifies the State signatures

**DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, made this ___th day of _____, 201_, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called the "DFCM", and _____ a corporation of the State of _____, whose address is _____, Utah 84____, hereinafter called the "Consultant."

WITNESSETH: That whereas, the DFCM intends to have services performed by Consultant as follows:

WITNESSETH, WHEREAS the DFCM intends to have Consultant fully complete the objectives of this Agreement, and

WHEREAS, the Consultant, for the sum herein stated, agrees to perform the Scope of Work of this Agreement,

THEREFORE, the DFCM and the Consultant, for the consideration hereinafter provided, agree as follows:

ARTICLE 1. EXTENT OF AGREEMENT AND SCOPE OF WORK. This Agreement includes the provisions of the Solicitation for Consultant Services dated ___ and all documents attached thereto and all of which are hereby incorporated by reference as a part of this Agreement as if fully set forth herein. Except as noted in an Attachment hereto, the Consultant's services shall include all work described in the Consultant's proposal dated ___ which is attached hereto as Exhibit "A" and incorporated as part of this Agreement. In case of conflict, the following documents supersede each other in accordance with the following hierarchy: codes and applicable law, the body of this Agreement, attachments to this Agreement, and the following documents on file with DFCM and incorporated by reference as a part of this Agreement is fully set forth herein: the Solicitation for Consultant Services, and the current DFCM Design Manual, which Design Manual is applicable to Architect/Engineer (A/E) programming and similar A/E consultation/studies that may be used later by an A/E in design work. Any reference in the DFCM Design Manual to A/E shall be deemed to refer to the Consultant under this Agreement.

ARTICLE 2. TIME FOR SERVICES. The Consultant shall complete the scope of work in a manner to achieve any milestones identified in the Solicitation for Consultant Services or the attachments to this Agreement. The full scope of work shall be completed by _____

ARTICLE 3. PAYMENT.

3.1 In accordance with the provisions and considerations set forth in this Agreement, the DFCM agrees to pay the Consultant a not-to-exceed sum of ___ DOLLARS AND ____ CENTS (\$ _____) for the full and complete services included under the terms of this Agreement at the rates specified. This sum may be changed only by written authorization from the DFCM in the form of a modification to this Agreement properly executed by the DFCM.

3.2 **Incidental Services/Reimbursements.** Consultant shall provide all services as established by standard professional custom and practice. The Consultant reimbursements for this project have been estimated as a NOT-TO-EXCEED part of the fee and are allowed on (with no mark-up) as follows:

1. Travel/Lodging/Meals: only for the members whose distance of travel from their office to the site is greater than 100 miles from the servicing office location:

a. Travel: flights shall be coach on commercial airlines; personnel vehicle use will be reimbursed at the current Federally allowed reimbursement rate per mile; and incidental travel (taxi, bus, airport long term parking only, and other ground transportation) submit an original receipt for each item (tips for taxi, baggage, etc. are not reimbursable);

b. Lodging may be booked through the state and will be reimbursed at either the actual cost or the state rate (whichever is less). Tips for baggage, maid service, doormen, etc. are not reimbursable. The state rates are located at the following web address: <http://fleet.utah.gov/state-travel-a/>;

c. For in-state travel, meal per diems are allowed at the state rate as identified at the following web address (tips and tax on meals are included in the per diem amount): <http://fleet.utah.gov/state-travel-a/>;

d. For consultants traveling from out-of-state, meal per diems are allowed at the state rate as identified at the following address (tips and tax on meals are included in the per diem amount): <http://fleet.utah.gov/state-travel-a/>;

2. **Miscellaneous:** e.g. express mail, photos, long distance calls. An original invoice must be submitted for each item.

Exceptions to the above shall be approved by the DFCM Director in writing.

3.3 The DFCM agrees to pay the Consultant from time to time as the work progresses, but not more than once each month after the date of the notice to proceed, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested. Payment shall be made within thirty days of the DFCM's receipt of the Consultant's invoice except that this requirement shall not apply to any amount: (a) for which the Consultant's invoice does not provide sufficient detail to demonstrate is due, (b) that the DFCM disputes is due under the terms of the Agreement, or (c) reasonably withheld by the DFCM to cover any default or failure to perform by the Consultant. The DFCM shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

3.4 Except as otherwise provided by law, if any payment is late based upon the provisions of this Agreement, the Consultant shall be paid interest in an amount equal to the published Wall Street Journal prime rate plus 2%. The published Wall Street Journal Prime Rate shall be determined using such rate that is published closest to the 1st of the month for each month of the late period. The amount of payment of interest shall be apportioned using such rate(s) for the late period.

3.5 The acceptance by the Consultant of final payment without a written protest filed with DFCM within three calendar days of receipt of final payment, shall release the DFCM from all claims and all liability to the Consultant for fees and costs of the performance of the services pursuant to this Agreement.

ARTICLE 4. CHANGES IN WORK. Any changes in the scope of the services to be performed under this Agreement shall be in the form of a written modification to this Agreement, mutually agreed to and signed by

duly authorized representatives of both parties, specifying any such changes, fee adjustments resulting therefrom, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.

ARTICLE 5. CAD REQUIREMENTS. The Consultant shall follow the requirements, as applicable, of the DFCM CAD requirements provided in the DFCM Design Manual for any submissions.

ARTICLE 6. DOCUMENT OWNERSHIP. All work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents supplied to or produced by Consultant under this Agreement are the property of the DFCM, whether the work for which they are made is executed or not. Said documents and the information contained therein are the exclusive property of the DFCM and are not to be used by Consultant on any other projects with any other parties except by the advance written agreement of the DFCM.

ARTICLE 7. LEGAL RELATIONSHIP.

7.1 **Independent Contractor.** This Agreement is for the performance of services and not the sale of goods, and is to be construed according to the laws of the State of Utah. Consultant's relationship to the State is that of an independent contractor. No partner or employee of Consultant shall, by reason of this Agreement, become an employee of the State of Utah.

7.2 **No Authority to Bind State; Exceptions.** The Consultant shall have no authorization, expressed or implied, to bind the State of Utah, or the Division of Facilities Construction and Management to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or DFCM, except as specifically set forth in this Agreement.

ARTICLE 8. ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

ARTICLE 9. TERMINATION BY CONSULTANT. This Agreement may be terminated by Consultant upon seven calendar days written notice should the DFCM fail substantially to perform, through no fault of the Consultant and the DFCM has failed to cure the failure to perform within fourteen calendar days of the DFCM's receipt of written notice of its failure to perform. Upon termination of this Agreement, the Consultant shall deliver all work performed to the DFCM. In the event of such termination, the Consultant shall be compensated for services properly performed under this Agreement up to date of the notice of termination. The Consultant agrees that in the event of such termination for default and such default is not successfully challenged by DFCM, its total remedy and monetary recovery from the DFCM is limited to full payment for all work properly performed, reimbursables, under this Agreement up to the date of termination as well as any reasonable monies owed as a result of the Consultant having to terminate contracts necessarily entered into by the Consultant pursuant to this Agreement. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

ARTICLE 10. TERMINATION BY DFCM. The performance of service under this Agreement may be terminated by the DFCM in whole or in part at any time, whenever the DFCM shall determine that such termination is in the best interest of the DFCM. This includes any termination by DFCM for convenience or for cause. Any such termination shall be effected by delivery to Consultant of a written notice of termination specifying the extent to which performance of work under this Agreement is terminated and the date upon

which such termination becomes effective. The Consultant agrees that in the event of such termination, its total remedy and monetary recovery from the DFCM is limited to full payment for all work properly performed, plus reimbursables, under this Agreement up to date of termination. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

ARTICLE 11. HOLD HARMLESS REQUIREMENT. To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and save harmless the State of Utah, the Division of Facilities Construction and Management, their officers, agents and employees and anyone for whom DFCM may be held liable from and against any and all claims, damages or liabilities arising from wrongful or negligent acts, errors or omissions of the Consultant, any of Consultant’s subconsultants or subcontractors at any tier and anyone for whom Consultant may be liable.

ARTICLE 12. PRELIMINARY RESOLUTION EFFORTS, CLAIMS AND DISPUTES; GENERAL CONDITIONS REQUIREMENTS APPLY.

12.1 **General Conditions Requirements Apply.** The provisions of Articles 7.7 through and including 7.14 of the DFCM General Conditions (“General Conditions”) which are current as of the date of this Agreement and all Supplemental General Conditions (“also referred to as General Conditions”) on file at the office of DFCM and available on the DFCM website (<https://dfcm.utah.gov/wp-content/uploads/DFCM-General-Conditions.pdf>), shall apply to Preliminary Resolution Efforts, Claims and Disputes under this Agreement. References in said Articles 7.7 through and including 7.14 to the term “Contractor” and “Subcontractor” shall refer to the Consultant and Subconsultants or Subcontracts at any tier under this Agreement, respectively. Unless inconsistent with the provisions of this Agreement, definitions in the DFCM General Conditions and Supplemental General Conditions shall apply to this Agreement.

12.2 **Time For Filing.** Notwithstanding paragraph 12.1 above, the PRE must be filed in writing with the DFCM Representative within twenty-one days of any of the following:

1. Issuance of a denial by DFCM of a Consultant request for additional monies or other relief under this Agreement;
2. In the case of a Subconsultant, after the expiration of the time period for the Consultant/ Subconsultant PRE process under Paragraph 7.7.5 of DFCM General Conditions; or
3. When the Consultant knows or should have known about any other issue where the Consultant seeks additional monies, time or other relief from the State of Utah or DFCM.

12.3 **Not Limit DFCM Rights.** As stated in Rule R23-26-1(6), this does not limit the right of DFCM to have any of its issues, disputes or claims considered. DFCM reserves all rights to pursue its issues, disputes or claims in law or equity including, but not limited to, any or all of the following: damages, delay damages and impacts, losses, liability, patent or latent defects, or failure to perform under this Agreement. If the Director appoints an expert or a panel to consider any such issue(s), dispute(s) or claims(s) of DFCM, the Consultant shall cooperate with such expert or panel process.

ARTICLE 13. INSURANCE. To protect against liability, loss and/or expense in connection with the performance of services described under this Agreement, the Consultant shall obtain and maintain in force during the entire period of this Agreement without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah. The following are minimum

coverages that may be supplemented by additional requirements contained in Solicitation for Consultant Services or any other document used to procure Consultant’s services.

13.1 Worker’s Compensation Insurance and Employers’ Liability Insurance. Worker’s Compensation Insurance shall cover full liability under the Worker’s Compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction’s laws.

13.2 Commercial General Liability Insurance. Commercial General Liability Insurance shall be on an “occurrence basis” and shall include insurance for premises and operations, independent contractors, projects/completed operations, and contractual liability coverage with limits not less than listed below. The State of Utah shall be named as an additional insured party, as primary coverage and not contributing, and the policy shall be endorsed to include a waiver of subrogation in favor of the State of Utah.

\$1,000,000	General Aggregate
\$1,000,000	Products-Completed Operations Aggregate
\$500,000	Personal and Advertising Injury
\$500,000	Each Occurrence

13.3 Other Insurance Coverages. Consultant shall maintain the following insurance at levels Consultant determines: Professional Liability Insurance (an Attachment to this Agreement may be more specific in regard to Professional Liability Insurance), Comprehensive Automobile Liability Insurance, Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage, and Aircraft Use. Any minimum requirements for these insurance coverages will be identified in the Solicitation for Consultant Services or any other document used to procure Consultant’s services. Any type of insurance or any increase of limits of liability not described in this Agreement which the Consultant requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility and at its own expense.

13.4 The carrying of insurance required by this Agreement shall not be interpreted as relieving the Consultant of any other responsibility or liability under this Agreement or any applicable law, statute, rule, regulation or order.

ARTICLE 14. STANDARD OF CARE. The services of Consultant and its Subconsultants, if any, shall be performed in accordance with and judged solely by the standard of care 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 that is the subject of this Agreement. The Consultant shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. a Contractor claim against DFCM or the State of Utah), to the extent caused by errors or omissions that do not meet this standard of care.

ARTICLE 15. USE OF “SALES AGENTS.” The Consultant warrants that no sales agent has been employed or retained except as indicated in writing to DFCM.

ARTICLE 16. LAWS, CODES AND REGULATIONS. Consultant and its Subconsultants shall use their best efforts consistent with the Standard of Care stated herein to comply with all applicable laws, codes, rules, regulations, ordinances and quality requirements applicable to the Project.

ARTICLE 17. DFCM REVIEWS, LIMITATIONS. The right of the DFCM or any entity/user to perform plan checks, plan reviews, other reviews and/or comment upon the work of the Consultant, as well as any approval by the DFCM, shall not be construed as relieving the Consultant from its professional and legal

responsibility for services required under this Agreement. No review by the DFCM or any entity/user, approval or acceptance, or payment for any of the services required under this Agreement shall be construed to operate as a waiver by the DFCM of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the Consultant shall be and remain liable to the DFCM in accordance with applicable law for all damages to the DFCM caused by the Consultant's acts, errors and/or omissions.

ARTICLE 18. DISCRIMINATION AND SEXUAL HARASSMENT PROHIBITED. Pursuant to the laws of the State of Utah, the Consultant, or any person acting on behalf thereof, will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, ancestry or national origin. To the extent applicable, said persons will comply with all provisions of Executive Order No. 11246 dated September 24, 1965 and rules, regulations, orders, instructions, designations and other directives promulgated pursuant thereto. The Consultant, or anyone for whose act the Consultant may be liable, shall not act in any manner as would violate the laws, regulations and policies of the United States or the State of Utah prohibiting sexual harassment.

ARTICLE 19. PERFORMANCE EVALUATION. DFCM may conduct a performance evaluation of the Consultant's services, including specific personnel of Consultant or any Subconsultant at any time. Results of any evaluation will be made available to the Consultant.

ARTICLE 20. STATUTE OF LIMITATION AND STATUTE OF REPOSE. An action by or against the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable, shall comply with and be bound by the applicable and lawful statute of limitation and statute of repose provisions. Notwithstanding this, any action by or against the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable, that is based in contract or warranty shall be commenced within six (6) years of the date of substantial completion of the improvement or abandonment of construction except that such period of limitation shall be modified as follows:

20.1 **Fraudulent Concealment.** In the event that the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable has fraudulently concealed the act, error, omission or breach of duty, or the injury, damage or other loss caused by the act, error, omission or breach of duty, the six year period shall not begin to run until such time as the DFCM discovers or, through the exercise of reasonable diligence, should have discovered its claim.

20.2 **Willful and Intentional.** In the event that the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable commits a willful or intentional act, error, omission, or breach of duty, the six year period shall not begin to run until such time as the DFCM discovers or, through the exercise of reasonable diligence, should have discovered its claim.

20.3 **Unintentional and Nonfraudulent Latent Acts, Errors, Omissions or Breaches of Duty.** In the event of an unintentional and nonfraudulent latent act, error, omission or breach of duty, the DFCM shall have the time period allowed by Utah law and the Utah Code, unless a longer period is provided for in an attachment to this Agreement.

20.4 **"Different Period of Limitation" from Utah Code.** These provisions are understood and agreed to by the Consultant as establishing a "different period of limitations" as that term is used in UCA 78B-2-225(3)(a) or any other similar statute of the Utah Code. These provisions are not intended to shorten any time period allowed by Utah law and code for non-contract actions, including but not limited to, those based in tort.

ARTICLE 21. WAIVERS. No waiver by the DFCM or Consultant of any default shall constitute a waiver of the same default at a later time or of a different default.

ARTICLE 22. APPLICABLE LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Utah. Venue for any legal proceeding regarding this Agreement shall in the Salt Lake County, State of Utah.

ARTICLE 23. AUTHORITY TO EXECUTE. The Consultant and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first above written.

CONSULTANT:

APPROVED AS TO FORM:
ATTORNEY GENERAL
July 10, 2017
By: MICHAEL J. KELLEY
Asst Attorney General

**DIVISION OF FACILITIES CONSTRUCTION
AND MANAGEMENT**

*/S/ DFCM _____
DFCM

Approved for expenditure:

*/S/ Division of Finance _____
Division of Finance

Approved as to availability of funds:

*/S/ David D. Williams, Jr. _____
David D. Williams, Jr.
DFCM Financial Director

*Electronic signatures are effective when the AIM Status History page is attached to this agreement following this signature page. The AIM Status History page identifies the State signatures.

DESIGN AGREEMENT BETWEEN DFCM AND ARCHITECT / ENGINEER

This AGREEMENT is made this ____th day of _____, 201_ between the Division of Facilities Construction and Management, hereinafter referred to as "DFCM", and the "Architect / Engineer", _____, a corporation of the State of Utah, whose address is _____, Utah 84____, hereinafter called the "A/E", agree to all the provisions of this Agreement for the Project identified as:

ARTICLE I. DOCUMENTS INCORPORATED BY REFERENCE

A. DFCM GENERAL CONDITIONS.

1. The DFCM General Conditions ("General Conditions") and Supplemental General Conditions ("also referred to as General Conditions") which are current as of the date of this Agreement and on file at the office of DFCM and available on the DFCM website (<https://dfcm.utah.gov/wp-content/uploads/DFCM-General-Conditions.pdf>), are incorporated by reference as if fully set forth in this Agreement.

2. The A/E and DFCM shall be bound by the definitions and terms described in the General Conditions.

3. Unless the context provides otherwise, all definitions and interpretations of provisions of this Agreement shall be as stated in the General Conditions. In case of conflict between the provisions of this Agreement and the General Conditions, the provisions of this Agreement shall control.

B. SOLICITATION / PROCUREMENT DOCUMENTS AND REQUIREMENTS.

The A/E shall comply with the following:

1. State Procurement requirements.
2. The DFCM solicitation documents and A/E submitted documents for this project are hereby incorporated by reference as part of this Agreement. Attachment "C" hereto indicates changes to the A/E's response, if applicable.
3. The procurement documents and Contract Documents.

C. DFCM DESIGN MANUAL.

1. The current DFCM Design Manual (“Design Manual”) on file with the DFCM is incorporated by reference as if fully set forth in this Agreement.

2. The A/E and DFCM shall be bound by the definitions and terms described in the Design Manual.

D. ATTACHMENTS TO THIS AGREEMENT

All attachments to this Agreement are incorporated by reference as if fully set forth in this Agreement. Unless the context requires otherwise, any reference in this Agreement to an “Attachment” means such an incorporated by reference attachment to this Agreement.

E. HIERARCHY OF DOCUMENTS.

In case of conflict, the following documents supersede each other in accordance with the following respective hierarchy:

1. Codes and applicable law;
2. The attachments hereto;
3. The solicitation documents issued by DFCM for the selection of the A/E;
4. Any response by A/E to the procurement documents attached to this Agreement;
5. The body of this Agreement;
6. The General Conditions; and
7. The Design Manual.

**ARTICLE II.
GENERAL REQUIREMENTS**

A. GENERAL OBJECTIVES. The objectives of the Work under this Agreement include, but are not limited to the following:

1. Comply with the requirements of the Predesign Program;
2. Provide designs that comply with applicable laws, codes, rules, regulations and quality requirements;
3. Comply with this Agreement including the General Conditions and Design Manual;

4. Meet the established Construction Budget in Attachment “A”;
5. Maintain the Project Schedule in Attachment “A”; and
6. To work with DFCM and the Contractor to accomplish all these objectives.

B. SCHEDULE. Time is of the essence. The A/E shall commence and prosecute the work diligently so as to be in compliance with the Project Schedule in Attachment “A.” However, the A/E shall not be responsible for failure to comply with the Project Schedule or any portion thereof to the extent such noncompliance is not due to the fault of the A/E or anyone for whom the A/E is liable.

C. STANDARD OF CARE; RESPONSIBILITY. The services of A/E and its Subconsultants, if any, shall be performed in accordance with and judged solely by the standard of care 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 that is the subject of this Agreement. The A/E shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. a Contractor claim against DFCM or the State of Utah), to the extent caused by errors or omissions that do not meet this standard of care.

D. PUBLIC INFORMATION RELEASE. A/E shall not make any public information release in connection with the Project without advance written permission of DFCM. A/E shall require of its Subconsultants the same agreement to maintain the confidentiality of information. Notwithstanding this provision, the A/E does not need DFCM’s consent to respond to any information release which is needed to defend the A/E’s interest, or to the extent such public information release is protected by constitutional free speech rights.

E. CONFLICT OF INTEREST. A/E and the A/E’s Subconsultants shall not have any member that has a conflict of interest that may reasonably affect the A/E or Subconsultants professional judgment in regard to the Project, unless such conflict is disclosed to the DFCM and approved by the DFCM in writing. It is the A/E’s duty to enforce this provision with the Subconsultants.

1. **Use of “Sales Agents.”** The A/E warrants that no person or selling agency has been employed or retained except as indicated in writing to DFCM.

F. LAWS, CODES AND REGULATIONS. A/E and its Subconsultants shall use their best efforts consistent with the Standard of Care stated herein to comply with laws, codes, rules, regulations, ordinances and quality requirements applicable to the Project as established by State statute, codes adopted by State law, administrative rule and/or deemed applicable to the Project pursuant the express terms of this Agreement including those documents incorporated by reference. A/E or DFCM may request, and will be granted, a meeting with the other to discuss any additional codes or requirements that are applicable to the Project. In the case of change(s) or conflicts in the applicable code requirements, laws, rules or regulations, during the work of the Scope of A/E’s Services, when and if the A/E becomes aware of such change(s) or conflicts, the A/E shall promptly notify the DFCM in writing. If the DFCM determines that work that has

already been properly performed must now be changed, such change will be considered additional work under this Agreement and the A/E shall then prepare all documents to comply with the needed change(s).

G. ESTABLISH CONSTRUCTION BUDGET. The A/E shall prepare a construction budget (including cost estimate) for each phase of work under this Agreement in accordance with the Design Manual.

H. IF BIDS/PROPOSALS EXCEED CONSTRUCTION BUDGET. If no acceptable bid or proposal is received within the Construction Budget, the DFCM in its sole discretion may elect any one or more of the following options:

1. Give written approval of an increase in the Construction Budget; and/or
2. Rebid or renegotiate the construction contract within a reasonable time; and/or
3. Revise the Project scope and/or quality as necessary to meet the Construction Budget; and/or
4. Abandon the Project and terminate this Agreement.

If the DFCM elects an option or options which does not abandon the Project, the A/E shall perform the A/E's services to implement the selected option or options at no additional cost to the DFCM.

I. STAFFING. The A/E shall maintain the human, physical and other resources reasonably necessary to timely meet its obligations under this Agreement.

J. DFCM REVIEWS, LIMITATIONS. The right of the DFCM or any entity/user to perform plan checks, plan reviews, other reviews and/or comment upon the work of the A/E, as well as any approval by the DFCM, shall not be construed as relieving the A/E from its professional and legal responsibility for services required under this Agreement. No review by the DFCM or any entity/user, approval or acceptance, or payment for any of the services required under this Agreement shall be construed to operate as a waiver by the DFCM of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the A/E shall be and remain liable to the DFCM in accordance with applicable law for all damages to the DFCM caused by the A/E's acts, errors and/or omissions.

K. USE OF PROTOTYPICAL DESIGNS OR DESIGNS PROVIDED BY DFCM. A/E shall use prototypical designs or other design drawings, specifications or calculations provided by DFCM in the request for proposal. A/E shall recheck such designs and any other design data, drawings, specifications and calculations provided by DFCM. A/E shall correct any error or omission as deemed necessary thereafter, and shall be responsible therefore to the same extent as if such materials had been provided by A/E under this Agreement. A/E shall be provided with all change orders, proposed change orders, and clarifications, from previous projects that are applicable to this Project. A/E shall incorporate all pertinent material into the new plans and specifications. If A/E has provided design services to DFCM on previous projects and has designed buildings similar to the components of this Project, which are in A/E's charge, at the

direction of DFCM, A/E shall modify and reuse existing design as much as possible. Where existing designs are being reused, drawings are required to conform to DFCM graphic/CAD standards unless prior written approval is given by DFCM.

L. SUBCONSULTANTS. The A/E shall be responsible and liable to the DFCM for the services of any Subconsultant of A/E. Any reference in this Agreement to Subconsultant shall refer to any subcontractor, consultant or subconsultant of the A/E at any tier. A/E shall, without additional expense to DFCM, be responsible for obtaining any business and professional licenses and for complying with any applicable Federal, State, and local laws, codes, and regulations, as necessary for the performance of the A/E's services.

M. HAZARDOUS MATERIALS. The A/E shall comply with the General Conditions and Design Manual provisions regarding hazardous materials.

N. DISCRIMINATION AND SEXUAL HARASSMENT PROHIBITED. Pursuant to the laws of the State of Utah, the A/E, or any person acting on behalf thereof, will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, ancestry or national origin. To the extent applicable, said persons will comply with all provisions of Executive Order No. 11246 dated September 24, 1965 and rules, regulations, orders, instructions, designations and other directives promulgated pursuant thereto. The A/E, or anyone for whose act the A/E may be liable, shall not act in any manner as would violate the laws, regulations and policies of the United States or the State of Utah prohibiting sexual harassment.

ARTICLE III. PROJECT TEAM.

A. DFCM REPRESENTATIVE. The DFCM Representative is the person assigned by the Director of DFCM to manage the Project and is the sole person authorized to act on behalf of DFCM or the State of Utah.

B. A/E AND SUBCONSULTANTS.

1. **Need DFCM Permission to Change Organizational Chart.** The A/E and Subconsultants have been selected to perform the services of this Agreement because of the skills and expertise of designated key personnel. Attachment "B" to this Agreement provides the organization chart of the A/E and Subconsultants. The identified persons and entities in the organizational chart cannot be changed without advance written approval by DFCM.

2. **A/E's Representative.** The A/E's Designated Representative identified in the organization chart is and shall be authorized to act on the A/E's behalf and bind the A/E in regard to the Project.

ARTICLE IV. DFCM RESPONSIBILITIES AND RIGHT TO EVALUATE A/E

A. DFCM RESPONSIBILITIES. Unless otherwise expressly agreed herein, DFCM shall at its sole cost and expense shall:

1. Place advertisements for bids or proposals;
2. Conduct bid or proposal openings and interviews;
3. Timely provide and update A/E with available “public” information in DFCM’s possession regarding the Project, including but not limited to, legal descriptions, topographic surveys, ALTA or other boundary surveys, utility surveys, record drawings, reports, project objectives, budgets, and other material requirements and limitations.
4. Notify A/E of any known fault, known defect, or known deficiency in the Project, including but not limited to acts, errors, omissions, or inconsistencies in A/E’s services and Deliverable Instruments of Service. Notwithstanding this provision, any failure to notify the A/E, shall not relieve the A/E of any responsibility or liability for such fault, defect or deficiency.
5. The DFCM Representative shall timely render decisions so as to avoid unreasonable delays in the orderly progress of the Project.

B. PERFORMANCE EVALUATION OF A/E. The DFCM may conduct a performance evaluation of the A/E’s services, including specific personnel of A/E or any Subconsultant at any time. Results of any evaluation will be made available to the A/E upon request.

ARTICLE V. SCOPE OF A/E’S BASIC SERVICES.

A. IN GENERAL. The A/E's Basic Services consist of those described in this Agreement, the General Conditions, and Design Manual, and include normal structural, mechanical, electrical, and architectural as well as other consulting services reasonably necessary to fulfill the A/E's duties under this Agreement. Any additional scope of service requirements are provided in Attachment "A" and the Design Manual.

1. Incidental Services/Reimbursements. Not included in the Basic Services are amounts to cover Direct and Reimbursable costs such as travel and printing. These costs are reimbursed at 1.05 % of cost and travel will be determined as per State Travel Guidelines.

a. **Travel/Lodging/Meals:** only for the members whose distance of travel from their office to the site is greater than 100 miles from the servicing office location:

i. Travel: flights shall be coach on commercial airlines; personnel vehicle use will be reimbursed at the current Federally allowed reimbursement rate per mile; and incidental travel (taxi, bus, airport long term parking only, and other ground transportation) submit an original receipt for each item (tips for taxi, baggage, etc. are not reimbursable);

ii. Lodging may be booked through the state and will be reimbursed at either the actual cost or the state rate (whichever is less). Tips for baggage, maid service, doormen, etc. are not reimbursable. The state rates are located at the following web address:

<http://fleet.utah.gov/state-travel-a/>;

iii. For in-state travel, meal per diems are allowed at the state rate as identified at the following web address (tips and tax on meals are included in the per diem amount): <http://fleet.utah.gov/state-travel-a/>;

iv. For consultants traveling from out-of-state, meal per diems are allowed at the state rate as identified at the following address (tips and tax on meals are included in the per diem amount): <http://fleet.utah.gov/state-travel-a/>;

b. **Miscellaneous:** e.g. express mail, photos, long distance calls. An original invoice must be submitted for each item.

Exceptions to the above shall be approved by the DFCM Director in writing.

2. **Direction from DFCM Representative Only.** A/E has neither the responsibility nor the authority to accept directives or determinations from any person other than the DFCM Representative. The A/E shall not take any direction from the end User's of the Project, Contractor or any other third party's representative.

3. **Review Requests for Information.** The A/E shall review properly prepared and timely Requests for Information by the Contractor.

4. **Issue ASI's and Supplemental Drawings and Specifications.** If approved by the DFCM Representative, the A/E shall issue an ASI, and prepare, reproduce, and distribute supplemental and/or corrected drawings and/or specifications in response to Requests for Information by the Contractor.

B. SCHEMATIC DESIGN PHASE.

1. **Review Program and Statement of Scope.** The A/E shall review the program or other "statement of scope" furnished by DFCM to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the DFCM Representative. The term "program" as referred to in this Agreement shall be deemed to include any "statement of scope" provided by DFCM.

2. **Preliminary Evaluation.** The A/E shall provide a preliminary evaluation of DFCM's program, schedule and construction budget requirements.

3. Documents and Drawings.

a. Based on the mutually agreed upon program, or scope of work, schedule and construction budget requirements, the A/E shall prepare, for written approval by DFCM, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

b. The Schematic Design Documents shall comply with this Agreement and the Design Manual.

c. The Schematic Design narrative shall include the A/E's proposed design and construction budget which shall be within the DFCM budget provided to the A/E.

4. **Alternative Approaches.** The A/E shall review with DFCM, alternative approaches to design and construction of the Project. Several options shall be submitted for DFCM's evaluation.

5. **Land Use Approval Assistance.** The A/E shall cooperate with DFCM in obtaining applicable permits, and land use approvals, so as to allow for construction of the Project. However, appearances as an expert as well as the preparation of necessary drawings, visual aids and any other design work solely prepared for an appearance with zoning boards or planning commissions or other governmental meetings or hearings, shall be considered as Additional Services, if not included in Attachment "A".

C. DESIGN DEVELOPMENT PHASE.

1. **General Description of Design Development Submittal.** A/E shall prepare, for written approval by the DFCM Representative, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The narrative shall include the A/E's proposed design and construction budget which shall be within the DFCM budget provided to the A/E. The Design Development submittals shall comply with the following:

a. The DFCM approved Schematic Design Documents and any adjustments authorized by DFCM in the program, scope of work, schedule or construction budget; and

b. The provisions of this Agreement and the Design Manual.

2. **Authorization to Proceed Required in Writing from DFCM.** The A/E may proceed on and be paid for Design Development work only after a written authorization to proceed to the Design Development Phase is provided by the DFCM Representative.

3. Should DFCM initiate or require a material change from the approved Design Development Documents and there is no fault or responsibility of the A/E related to DFCM's initiation or requirement of the change, A/E's effort implementing said change(s) shall be compensated as an Additional Service and the schedule for delivery of A/E's services shall be equitably adjusted if/as appropriate.

D. CONSTRUCTION (CONTRACT) DOCUMENTS PHASE.

1. **General Description of Construction Documents Submittal.** A/E shall prepare, for written approval by the DFCM Representative, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The narrative shall include the A/E's proposed design and construction budget which shall be within the DFCM budget provided to the A/E. The A/E shall advise the DFCM of any

adjustments to previous preliminary estimates of Construction cost indicated by changes in requirements or general market conditions. The Construction Documents shall comply with the following:

- a. The DFCM approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by DFCM;
- b. The Construction Documents shall comply with and identify all applicable codes, tests and inspections; and
- c. The provision of this Agreement and the Design Manual.

2. **Authorization to Proceed Required in Writing from DFCM.** The A/E may proceed on and be paid for Construction Documents work only after a written authorization to proceed to the Construction Documents Phase is provided by the DFCM Representative.

3. **Assistance with Procurement Documents.** The A/E shall assist DFCM in the preparation of the necessary procurement documents to obtain a Contractor and other entities needed to complete the Project.

4. **Assist with Filing for Governmental Approval.** When requested by DFCM, A/E shall assist DFCM in preparation and filing of documents required for the approval of governmental authorities having jurisdiction over the Project.

E. PROCUREMENT OR NEGOTIATION PHASE.

1. **In General.** The A/E, after written authorization is provided by the DFCM Representative, shall assist DFCM in obtaining bids or negotiated proposals and assist in awarding contracts for construction.

2. **Pre-Bid (including pre-proposal) Conference.** The A/E shall attend any pre-bid conference as requested by the DFCM. DFCM shall control all advertising, bid openings, publishing of bid results, awarding of the Contract.

3. **Available for Interpretations.** The A/E shall at all reasonable times be available personally, or have available, a responsible member of his or her staff to make such interpretations of the Construction Documents as are necessary to facilitate completion of the construction contract.

F. CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT.

1. **Commencement and Termination.** The A/E's responsibility to provide Basic Services for the Construction Phase commences with DFCM's written authorization to proceed on to this Phase and terminates upon the completion of the guaranty period of the Contractor's work,

unless extended by written agreement of the A/E and DFCM. Any final payment made prior to the end of the guaranty period does not terminate A/E's obligation to provide full performance of the A/E's services throughout the guaranty period for the fee already paid for basic services.

2. **A/E's General Assistance During Construction and One-Year Guaranty Period.** A/E shall advise and assist DFCM (1) during the Construction Phase, and (2) during period of the Contractor's guaranty obligations under the Contract Documents. During the One-Year Guaranty Period, the A/E shall make a qualified representative available to answer questions and to perform a 1-year guaranty walk through. A/E shall have authority to act on behalf of DFCM only to the extent provided in this Agreement unless otherwise modified in writing by DFCM and A/E. The A/E shall be liable for any representations made by the A/E or anyone for whose acts the A/E may be liable, not consistent with the provisions of the Contract Documents, unless DFCM has given written approval in advance.

3. **Site Visits.**

a. **In General.** Site visits shall be conducted in accordance with Attachment "A" and the Contract Documents.

b. **Compliance with Contract Documents, Reporting Defects and Deficiencies.** Site visits shall require the A/E to examine the Work of the Contractor in progress to assist the DFCM in identifying any lack of compliance with the Construction Documents, defects or deficiencies in the Work and to determine whether the Work is proceeding in a manner such that, when completed, will likely be in accordance with the Construction Documents. Except as may otherwise be provided in Attachment "A", the A/E's on-site construction-phase services are (i) not full-time, continuous, or exhaustive; (ii) do not include a duty to discover latent defects in the Work; and (iii) do not constitute a guarantee of the A/E's Work or relieve the Contractor of its responsibilities. A/E is not responsible for the Contractor's selected means, methods, or sequences of work. The A/E shall cooperate and assist the DFCM in enforcement of the Construction Documents. The A/E shall promptly report known or obvious defects to the DFCM. This provision does not relieve the Contractor of its responsibility to comply with the Construction documents.

c. **Written Report.** A/E shall promptly submit to DFCM a written report subsequent to each site visit.

d. **Limitations.** A/E shall not be required to make exhaustive or continuous on-site inspections or observations to check the quality or quantity of the Work unless specified elsewhere in this Agreement including the Attachment(s).

4. **Submittals.** Contractor submittals shall be addressed in accordance with the Contract Documents.

5. **Modifications.** A/E shall prepare Change Orders, or Construction Change Directives, with supporting documentation and data for DFCM's approval and execution in accordance with the Contract Documents, and may issue ASI's not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of

the Contract Documents. ASI's must be approved by the DFCM Representative prior to being issued. When approved by DFCM, the A/E shall prepare Statements of Justification, detailed cost and time estimates of the proposed change in the work, Requests for Proposals, Construction Change Directives, and Change Orders. A/E shall prepare, reproduce, and distribute Drawings and Specifications to completely describe Work to be added, deleted, and/or modified. The preparation of all such documentation shall not be considered additional services unless the change in the Work is determined by DFCM to be a scope change and/or an unknown condition.

6. **Record Drawings (As-Builts).** The A/E shall monitor the Contractor's efforts to regularly update the redline drawings during construction. Upon completion of the Construction Phase, A/E shall prepare Record Drawings based upon redline construction drawings and/or other information provided by Contractor. A/E has no duty to verify the accuracy or completeness of said information and, unless A/E knows that said information is on its face inaccurate and/or incomplete, A/E is entitled to rely upon said information in preparing Record Drawings. If and to the extent A/E knows that said information is on its face inaccurate and/or incomplete, A/E shall promptly advise DFCM in reasonable detail of the inaccurate and/or incomplete information. Subject to said obligation to advise and its obligation to transcribe the Contractor's redline construction drawings and/or other information provided by Contractor in a manner consistent with the Standard of Care, A/E makes no representation regarding the accuracy or completeness of its Record Drawings.

7. **Review Process.** A/E shall comply with any review process required by DFCM. A/E shall make submissions to the reviewing entity in a timely manner so as not to delay the reviewing entity.

8. **Specific Delay Liability of A/E.** The A/E shall be liable to DFCM for damages incurred to DFCM or the State of Utah as a result of impact on the Contractor's critical path schedule to the extent due to A/E's error, act or omission.

9. **Notification of Impacts on Critical Path.** The A/E shall promptly notify DFCM in writing of facts, events or circumstances of which the A/E is or should be aware and which have or likely will adversely impact the critical path schedule.

ARTICLE VI. DELIVERABLE INSTRUMENTS OF SERVICE

A. DEFINED. "Deliverable Instruments of Service" as used in this Agreement shall mean the drawings, specifications, addendum, attachments, calculations, manuals, reports, official project meeting minutes, project observation reports and/or other information, regardless of medium, identified in and required to be delivered or submitted to the DFCM under this Agreement.

B. OWNERSHIP. It is acknowledged and agreed that all documents developed pursuant to this Agreement are Instruments of Service. Deliverable Instruments of Service are the sole property of DFCM. DFCM shall have unlimited rights, for the benefit of DFCM, in all said deliverable instruments of service, including, but not limited to use, re-use, modification, and transferability for reference only related to the site.

C. PROMOTIONAL ISSUES. The A/E shall have the right to include photographic or artistic representations of the design of the Project among the A/E's promotional and professional materials, provided that the A/E appropriately gives recognition to the State of Utah regarding the Project. The A/E shall be given reasonable access to the completed Project to make such representations. However, the A/E's materials shall not include the DFCM confidential or proprietary information. The DFCM shall provide professional credit for the A/E in the DFCM's promotional materials that relate to the A/E's work for the Project. Except to the extent related to the A/E's defense of any statements made by others in regard to the A/E's performance, and notwithstanding any other provision of this Agreement, the A/E shall not make any public information release in connection with services performed under this Agreement without the advance written approval of the Director of the Division of Facilities Construction and Management.

D. LICENSE. A/E hereby grants DFCM a nonexclusive license for governmental purposes to any copyrighted portion of Deliverable Instruments of Service. Such license shall include, but not be limited to, the right to use and reuse such copyrighted materials to construct the buildings, facilities, or other matters covered by such copyrighted materials for additional use and to license such copyrighted materials for reuse. DFCM's rights and licenses in and to said Deliverable Instruments of Service are conditioned upon A/E receiving all sums related to DFCM approved deliverables due under this Agreement.

E. INDEMNIFICATION RELATED TO CERTAIN DFCM'S ACTION WITH DELIVERABLES. DFCM's use on other projects, DFCM's re-use, or DFCM's modification of the Deliverable Instruments of Service shall be at DFCM's sole risk and without recourse against A/E, its Subconsultants at any tier, and their principals, agents and employees. DFCM shall hold harmless, indemnify and defend A/E, its Subconsultants at any tier and their respective principals, agents and employees from and against any and all actions, claims, loss, or damages of any nature whatsoever to the extent related to and resulting from any said use, re-use, or modification of all or any portion of the Deliverable Instruments of Service by or on behalf of DFCM, or under any license issued by, through, or on behalf of DFCM, irrespective of any actual or alleged fault on the part of the indemnitee(s). Under no circumstances shall A/E be indemnified for the use of the Deliverable Instruments of Service for the Project that is the subject of this Agreement. For purposes of this paragraph, DFCM includes the State of Utah or any department, division or agency of the State of Utah.

F. ACCESS TO DELIVERABLES. A/E, for a period of three (3) years after completion of the Project, agrees to furnish and to provide access to all the aforesaid Deliverable Instruments of Service upon the request of DFCM. DFCM shall pay all costs for labor, reproduction and/or shipping of requested documents. DFCM agrees to make no demand on A/E for responsibility for DFCM use of such material for any other DFCM work which is not the subject of an Agreement between DFCM and the A/E for such use.

G. STAMP. If the A/E is not the same A/E commissioned for the project within the Deliverable Instruments of Services, DFCM shall reasonably remove all indications of authorship, including the title blocks, names, initials, signatures, and professional stamps of A/E, its Subconsultants at any tier, and their agents and employees.

**ARTICLE VII.
COMPENSATION, PAYMENTS
TO THE A/E, AND DAMAGES**

- A. FEES IN ATTACHMENT “A.”** Payment shall be in accordance with the schedule of lump sum payments for each phase listed under this Agreement as shown in the Schedule of A/E’s and Subconsultant Fees (Attachment “A”). Progress payments with respect to such lump sum amounts shall be based upon percentage of such services completed.
- B. PAYMENT IN FULL.** The fee for any particular phase or activity described in Attachment “A” shall be the full payment owing by DFCM for such phase or activity.
- C. WITHHOLDING OF PAYMENT; LIABILITY OF EXCESS OWING.** Should the A/E fail to perform any of its obligations hereunder, be in default of this Agreement, or otherwise fail to complete the services of this Agreement within the time established by the Project Schedule (Attachment “A”), the A/E shall be liable to the DFCM for the actual damages incurred and such amount, may be deducted from any amount due or that may become due the A/E. To the extent that the damages exceed any amount that would otherwise be due the A/E, the A/E shall be liable for such excess to the DFCM. The DFCM may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees. Notwithstanding the above, the DFCM agrees that the A/E is not responsible for damages arising directly or indirectly from any delays for causes beyond the A/E’s control.
- D. OTHER PREREQUISITES TO RECEIVE PAYMENT:** In addition to any other requirements under this Agreement, the following is required before any payment shall be made and/or deemed owed by the DFCM:
1. **Invoices.** The A/E shall submit invoices for progress payments not more than once a month. Invoices shall include the DFCM project and contract number, and be signed by the A/E. Each invoice shall include a detailed description by line item showing the contract prices, percentage of the services completed for the period, payments received to date, payment requested for the period, the overall percentage of completion, any lien waivers or releases previously requested by DFCM.
 2. **Adjustments of Progress Payments.** The DFCM may, at its discretion, adjust any progress payments so that it corresponds to the percentage of completion as estimated by the DFCM. Notice shall be given to the A/E prior to making any such adjustments.
- E. ACCEPTANCE OF FINAL PAYMENT.** The acceptance by the A/E of final payment without a written protest filed with DFCM within three (3) days of receipt of final payment, shall release the DFCM from all claims and all liability to the A/E for fees and costs of the performance of the services pursuant to this Agreement.
- F. INTEREST ON LATE PAYMENTS.** Except as otherwise provided by law, if any payment is late based upon the provisions of this Agreement, the A/E shall be paid interest in an amount equal to the published Wall Street Journal prime rate plus 2%. The published Wall Street

Journal Prime Rate shall be determined using such rate that is published closest to the 1st of the month for each month of the late period. The amount of payment of interest shall be apportioned using such rate(s) for the late period.

**ARTICLE VIII.
REQUIREMENTS FOR ADDITIONAL SERVICES.**

A. ADDITIONAL SERVICES; IN GENERAL.

1. **Not Allowed when Correcting an Error, Omission or is Already Part of this Agreement.** Notwithstanding any provision of this Agreement, the A/E shall not be entitled to any additional compensation or the considering of any work as an additional service when such work is being performed in order to resolve an error or omission of the A/E or is otherwise required to meet the terms of this Agreement.

2. **Written Modification in Advance of Work Required.** The A/E shall perform additional services when authorized by a written modification to this Agreement in advance of the performance of the subject work. Failure of the A/E to obtain a written approval from the DFCM of the cost and authorization to proceed shall result in the A/E's forfeiture of the right to seek additional compensation for the contended additional service. A/E shall have no obligation, and shall not, begin or provide any additional services unless and until such written modification has been provided by the DFCM.

**ARTICLE IX.
INSURANCE AND INDEMNIFICATION**

A. INSURANCE. To protect against liability, loss and/or expense arising in connection with the performance of services described under this Agreement, the A/E shall obtain and maintain in force during the entire period of this Agreement without interruption, at its own expense, the following stated insurance from insurance companies authorized to do business in the State of Utah, in a form and content satisfactory to the DFCM, and rated "A-" or better with a financial size category of (a) Class X or larger where the applicable Construction Budget is \$1,000,000 or greater; or (b) Class VII or larger where the applicable Construction Budget is under \$1,000,000. All said ratings and financial size categories shall be as published by A.M. Best Company at the time this Agreement is executed. The A/E shall require all Subconsultants to have and maintain similarly required policies. All of the following listed insurance coverages shall be provided by the A/E:

1. **A/E's Professional Liability Insurance.** The A/E shall maintain a policy on a claims made basis, annual aggregate policy limit based on the following chart, unless modified in Attachment "A" to this Agreement.

Construction Budget	Minimum Liability Coverage
\$50,000,000 and above	\$2,000,000 per claim, \$4,000,000 aggregate
\$25,000,000 and above, but under \$50,000,000	\$2,000,000 per claim, \$2,000,000 aggregate

\$1,500,000 and above but under \$25,000,000	\$1,000,000 per claim, \$1,000,000 aggregate
Under \$1,500,000	\$ 500,000 per claim, \$ 500,000 aggregate

The DFCM reserves the right to require additional coverage from that stated in the chart herein above, at the DFCM's expense for the additional coverage portion only. DFCM also reserves the right to require project specific insurance, and if such right has been exercised it shall be indicated as an exhibit to this Agreement. Unless project specific insurance is required by the DFCM, the coverage may be written under a practice policy with limits applicable to all projects undertaken by the firm but must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the A/E under this Agreement. All policies provided by the A/E must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of the A/E's Agreement or the commencement of the A/E's services. The A/E's policy must also include contractual liability coverage applicable to the indemnity provision of this Agreement for those portions of the indemnity provisions that are insured under the A/E's policy and in accordance with this Agreement, including the attachments hereto.

2. **Commercial General Liability Insurance.** A/E shall provide, at its own expense, Commercial General Liability Insurance, on an "occurrence basis", including insurance for premises and operations, independent Subconsultants, projects/ completed operations, and contractual liability coverage including specifically designating the indemnity provisions of this Agreement as an insured contract on the Certificate of Insurance. Such Commercial General Liability Insurance must provide coverage for explosion, collapse and underground hazards. Insurance required by this paragraph shall provide for limits that are not less than the following:

\$2,000,000	General Aggregate
\$2,000,000	Products-Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence
\$ 50,000	Fire Damage (any one fire)
\$ 5,000	Medical Expense (any one person)

3. **Workers' Compensation Insurance and Employers' Liability Insurance.** Worker's Compensation Insurance shall cover full liability under the Worker's Compensation Laws of the jurisdiction in which the Project is located at the statutory limits required by said jurisdiction's laws.

4. **Automobile.** Automobile liability insurance for claims arising from the ownership, maintenance, or use of a motor vehicle. The insurance shall cover all owned, non-owned, and hired automobiles used in connection with the work, with the following minimum limits of liability: \$1,000,000 – Combined Single Limit Bodily Injury and Property Damage Per Occurrence.

5. **Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage.** The A/E and all Subconsultants of the A/E shall provide coverage for the

physical loss of or destruction to their work product including drawings, specifications and electronic data and media.

6. **Aircraft Use.** A/E using its own aircraft, or employing aircraft in connection with the work performed under this Agreement shall maintain Aircraft Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence. Said certificate shall state that the policy required by this paragraph has been endorsed to name the State of Utah and DFCM as Additional Insureds.

7. **Certificates.** Before this Agreement is executed, the A/E shall submit certificates in form and substance satisfactory to the DFCM as evidence of the insurance requirements of this Article. Such certificates shall contain provisions that no cancellation, or non-renewal shall become effective except upon thirty (30) days prior written notice by US Mail to DFCM as evidenced by return receipt, certified mail sent to DFCM. The A/E shall notify the DFCM within thirty (30) days of any claim(s) against the A/E which singly or in the aggregate exceed 20% of the applicable required insured limits and the A/E shall, if requested by DFCM, use its best efforts to reinstate the policy within the original limits and at a reasonable cost. The State of Utah and DFCM shall be named as an insured party, as primary coverage and not contributing, on all the insurance policies required by this Article except the professional liability and workers' compensation policies. The DFCM reserves the right to request the A/E to provide a loss report from its insurance carrier.

8. **Maintain Throughout Agreement Term.** The A/E agrees to maintain all insurance required under this Agreement during the required term. If the A/E fails to furnish and maintain said required insurance, the DFCM may purchase such insurance on behalf of the A/E, and the A/E shall pay the cost thereof to the DFCM upon demand and shall furnish to the DFCM any information needed to obtain such insurance.

9. **Waivers of Subrogation.** All policies required, except Practice Professional Liability Insurance and Workers Compensation Insurance, shall be endorsed to include waivers of subrogation in favor of the State of Utah and DFCM.

10. **Excess Coverages.** Any type of insurance or any increase of limits of liability not described in this Agreement which the A/E requires for its own protection or on account of any statute, rule or regulation, shall be its own responsibility and at its own expense.

11. **Not Relieve A/E of Liability.** The carrying of any insurance required by this Agreement shall in no way be interpreted as relieving the A/E of any other responsibility or liability under this Agreement or any applicable law, statute, rule, regulation or order.

12. **A/E Compliance with Policies.** A/E shall not violate or knowingly permit to be violated any of the provisions of the policies on insurance required under this Agreement.

B. INDEMNIFICATION

1. **“Indemnitees”** as that term is used in this Article IX-B means the State of Utah, its institutions, agencies, departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

2. **“A/E”** as that term is used in this Article IX-B, means the A/E, its Subconsultants at any tier, or any of their agents, employees including those employed directly or indirectly, or other persons or entities for whose acts the A/E or its Subconsultants at any tier may be liable.

3. **Indemnification Requirements.**

a. **A/E’s Indemnification of Indemnities.** To the fullest extent permitted by law, A/E shall indemnify and hold harmless the Indemnities from and against every kind and character of claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, to the extent caused by any negligent or wrongful act, error or omission of the A/E.

b. **Defense by A/E.** A/E shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the State of Utah shall have the right, at its option and its own expense, to participate in the defense of any such action without relieving the A/E of any obligation hereunder. A/E shall be reimbursed by DFCM their reasonable costs and expenses incurred under this provision to the extent such costs and expenses relate to the fault of DFCM and not the A/E.

c. **Not Affect Other Indemnification Rights or Obligations.** Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under this Agreement.

d. **Not Affected by Workmen’s Compensation or Certain Benefit Acts.** In claims against any person or entity indemnified under this paragraph by the A/E, the indemnification obligation under this paragraph shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the A/E under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

e. **Affect of Written Directives by DFCM.** Notwithstanding any of the above, to the extent A/E is complying with a written directive from DFCM, that is not based on the A/E’s recommendation, the A/E shall not be held liable under the indemnification provisions of this Agreement if the A/E has promptly disagreed with the written directive by delivering such objection to DFCM in writing.

f. **Specific Waiver for Damages Covered by Builder’s Risk.** DFCM and A/E waive all rights against each other for damages, but only to the extent covered by the State of Utah's Builder's Risk Policy concerning damage to the Work during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions. DFCM and A/E each shall require similar waivers from their Subconsultants and agents at any tier.

ARTICLE X. LIMITATIONS OF ACTIONS

A. STATUTE OF LIMITATION AND STATUTE OF REPOSE. An action by or against the A/E, the A/E's Subconsultant, agent, independent Subconsultant, or anyone for whom the A/E may be liable, shall comply with and be bound by the applicable and lawful statute of limitation and statute of repose provisions. Notwithstanding this, any action by or against the A/E, the A/E's Subconsultant, agent, independent Subconsultant, or anyone for whom the A/E may be liable, that is based in contract or warranty shall be commenced within six (6) years of the date of substantial completion of the improvement or abandonment of construction except that such period of limitation shall be modified as follows:

1. **Fraudulent Concealment.** In the event that the A/E, the A/E's Subconsultant, agent, independent Subconsultant, or anyone for whom the A/E may be liable has fraudulently concealed the act, error, omission or breach of duty, or the injury, damage or other loss caused by the act, error, omission or breach of duty, the six year period shall not begin to run until such time as the DFCM discovers or, through the exercise of reasonable diligence, should have discovered its claim.

2. **Willful and Intentional.** In the event that the A/E, the A/E's Subconsultant, agent, independent Subconsultant, or anyone for whom the A/E may be liable commits a willful or intentional act, error, omission, or breach of duty, the six year period shall not begin to run until such time as the DFCM discovers or, through the exercise of reasonable diligence, should have discovered its claim.

3. **Unintentional and Nonfraudulent Latent Acts, Errors, Omissions or Breaches of Duty.** In the event of an unintentional and nonfraudulent latent act, error, omission or breach of duty, the DFCM shall have the time period allowed by Utah law and the Utah Code, unless a longer period is provided for in an attachment to this Agreement.

4. **"Different Period of Limitation" from Utah Code.** These provisions are understood and agreed to by the Consultant as establishing a "different period of limitations" as that term is used in UCA 78B-2-225(3)(a) or any other similar statute of the Utah Code. These provisions are not intended to shorten any time period allowed by Utah law and code for non-contract actions, including but not limited to, those based in tort.

ARTICLE XI. PRELIMINARY RESOLUTION EFFORTS, CLAIMS AND DISPUTES

A. GENERAL CONDITIONS REQUIREMENTS APPLY. The provisions of Articles 7.7 through and including 7.14 of the General Conditions shall allow to Preliminary Resolution Efforts, Claims and Disputes under this Agreement. References in said Articles 7.7 through and including 7.14 to the term "Contractor" and "Subcontractor" shall refer to A/E and Subconsultant under this Agreement, respectively. Unless inconsistent with the provisions of this Agreement, definitions in the General Conditions shall apply to this Agreement.

B. TIME FOR FILING. Notwithstanding paragraph A above, the PRE must be filed in writing with the DFCM Representative within twenty-one (21) days of any of the following:

1. Issuance of a denial by DFCM of an A/E request for additional monies or other relief under this Agreement;
2. In the case of a Subconsultant, after the expiration of the time period for the A/E / Subconsultant PRE process under Paragraph 7.7.5 of the General Conditions; or
3. When the A/E knows or should have known about any other issue where the A/E seeks additional monies, time or other relief from the State of Utah or DFCM.

C. NOT LIMIT DFCM RIGHTS. As stated in Rule R23-26-1(6), this does not limit the right of DFCM to have any of its issues, disputes or claims considered. DFCM reserves all rights to pursue its issues, disputes or claims in law or equity including, but not limited to, any or all of the following: damages, delay damages and impacts, losses, liability, patent or latent defects, or failure to perform under this Agreement. If the Director appoints an expert or a panel to consider any such issue(s), dispute(s) or claims(s) of DFCM, the A/E shall cooperate with such expert or panel process.

ARTICLE XII. TERMINATION OR SUSPENSION

A. TERMINATION FOR CAUSE. The DFCM or A/E may terminate this Agreement for cause should the other party fail to substantially perform the material covenants herein contained at the time and in the manner herein provided, including the failure to design the project within the Construction Budget. In such event, the party seeking termination shall give the other party fourteen (14) calendar days written notice of intent to terminate for cause. If the other party cures said default, or is diligently pursuing a cure, within said fourteen (14) day period, there shall be no termination for cause.

1. **DFCM May Proceed; Liabilities.** In the event of such termination for cause by the DFCM, the DFCM may proceed with the work in any manner deemed proper by the DFCM. The cost to the DFCM or damage to the DFCM as a result of the failure to perform shall be deducted from any sum due the A/E under this Agreement, and the balance, if any, shall be paid to the A/E upon demand. If the cost or damage to the DFCM exceeds the sums due the A/E, such costs or damages shall be paid to the DFCM by the A/E.

2. **Paid Sums Owing Through Date of Termination.** In the event of such termination for cause by the A/E, the A/E shall be paid all sums owing A/E through the date of termination. Under no circumstances, shall A/E be paid for any other sums related to the termination for cause, including but not limited to, lost profits or consequential damages.

B. TERMINATION FOR CONVENIENCE. The DFCM reserves the right to terminate this Agreement for convenience or any reason upon fourteen (14) calendar days written notice to A/E. The DFCM may also suspend the services of the A/E for a period not to exceed 180 days and pay the A/E all sums owing through the date of suspension. For any period beyond 180 days,

the A/E may consider it a termination for convenience. Should said termination occur during or upon completion of the Schematic Design Phase, A/E shall be entitled to receive and shall be paid all fees stated herein through the Schematic Design Phase, together with reimbursable expenses incurred to date, less the amount of said fees and expenses paid by DFCM and received by A/E through said date. Should said termination occur during the Design Development Phase or any subsequent phase, A/E shall be entitled to receive and shall be paid the greater of: (i) all fees earned and reimbursable expenses incurred through the effective date of said termination, less said fees and expenses paid by DFCM and received by A/E through said date; (ii) the actual, reasonable cost to A/E and its Subconsultants (regardless of tier) of the authorized services provided, plus a profit thereon of 10%, plus reasonable reimbursable expenses incurred under this Agreement through the effective date of said termination, less said fees and expenses paid by DFCM and received by A/E through said date; or such other amount as agreed to by A/E and DFCM.

C. DEATH OR INCAPACITY. If the A/E transacts business as a sole proprietorship, the A/E's death or incapacity shall automatically terminate this Agreement as of the date of such event. Under these circumstances, neither the A/E nor the A/E's estate shall have any further right to perform hereunder and the DFCM shall pay the A/E or the estate shall be paid through the date of termination.

D. DELIVERABLES PROVIDED TO DFCM. Promptly after termination and payment of any sums owing the A/E, the A/E shall deliver all of the Deliverable Instruments of Services, including those in progress, to the DFCM as hereinbefore described.

E. RIGHT TO COMPLETE. Subject to the above termination provisions of this Agreement, DFCM shall have the right to complete the work or any portion thereof by itself or others, and to modify and/or use the A/E's work in part or in its entirety as hereinabove described.

ARTICLE XIII. GENERAL LEGAL REQUIREMENTS

A. SEVERABLE AGREEMENT. This Agreement is severable. Authorization to perform one of the design phases or activities under this Agreement shall not be considered as creating any obligation of DFCM to authorize any further phase(s) or activity(ies).

B. INDEPENDENT CONTRACTOR. A/E is an independent contractor and not an employee of DFCM or the State of Utah. A/E shall have no authorization, express or implied, to bind the State of Utah or DFCM to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or DFCM, except as specifically set forth in this Agreement.

C. THIRD PARTIES. Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against the State of Utah and DFCM and/or A/E or its-Subconsultants at any tier.

D. AGREEMENT BINDING AND ASSIGNMENT LIMITATIONS. This Agreement shall be binding upon DFCM, A/E, and their respective partners, employees, agents, joint ventures, successors and assigns. Neither the performance of this Agreement, a right or claim, nor any part thereof including any monies to be paid, may be assigned by the A/E or DFCM without the prior written consent and approval of the other party. The DFCM may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the DFCM's rights and obligations under this Agreement. The A/E shall execute all consents reasonably required to facilitate such assignment.

E. ENTIRE AGREEMENT AND AMENDMENT LIMITATION. This Agreement represents the entire and integrated agreement between the DFCM and the A/E and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both DFCM and A/E.

F. NOTICES. Any notice required by this Agreement shall be served upon the recipient's designated representative by hand delivery at the last known business address, or by mail with "delivery confirmation" to the last known address. Notwithstanding any other provision of this Agreement, written notice shall also be deemed to have been duly served by verified use of a FAX system by using the known and operative calling number. Service by use of the FAX system is encouraged when timely notice will benefit the DFCM, A/E, or Subconsultant. Notice shall be considered complete and verified upon the sending and confirmation of delivery using the FAX system, if on the same day notice is also sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice, confirming the FAX delivery.

G. WAIVERS. No waiver by the DFCM or A/E of any default shall constitute a waiver of the same default at a later time or of a different default.

H. APPLICABLE LAW AND VENUE. This Agreement shall be construed in accordance with the laws of the State of Utah. Venue for any legal proceeding regarding this Agreement shall be in the Salt Lake County, State of Utah.

I. AUTHORITY TO EXECUTE. The A/E and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first written above.

A/E:

APPROVED AS TO AVAILABILITY
OF FUNDS:

*/S/ David D. Williams, Jr.
David D. Williams, Jr.
DFCM Financial Director

**DIVISION OF FACILITIES
CONSTRUCTION AND MANAGEMENT**

*/S/ DFCM
DFCM

APPROVED AS TO FORM:
July 10, 2017
By: MICHAEL J. KELLEY
Assistant Attorney General

APPROVED FOR EXPENDITURE:
*/S/ Division of Finance
Division of Finance

*Electronic signatures are effective when the AIM Status History page is attached to this agreement following this signature page. The AIM Status History page identifies the State signatures

(Project Name)

Attachment "A"

1. **BASIC SERVICES:** Basic Services Fee: \$ _____ .00. Construction Budget: \$ _____ 0.00.
(See attached A/E's proposal dated _____, 201_ for schedule of A/E's and A/E's subconsultant's fees and further breakdown). **The following services are provided in the basic fees:** architectural, mechanical, electrical, structural, civil, and landscape design as required for the project. Services shall also include Value Engineering Session participation; meeting minute production and distribution for design and construction period duration; cost estimating; fire/water flow analysis; plan reviews with the Building Official, the Fire Marshal and the Health Department; Construction Procurement Phase services; travel as outlined in Item A below; document reproduction as outlined in Item B below; and Construction Period services as outlined in Item C below.

Please reference Attachment D for changes to meeting minute production and cost estimating services for CM/GC projects.

- A. Travel reimbursement requirements: As outlined in A/E's attached proposal.
B. Document reproduction requirements (needs for review sets, bidding, construction, etc.):
Note: Printing for use by design team in presentations and for coordination is included in basic services fee. As outlined in A/E's attached proposal.
C. Construction Period site visits: As outlined in A/E's attached proposal.
D. Record drawings: 5% up to \$50,000 of contract amount will be held for record drawings.

The Basic Services Fee is divided into the following percentages for the different phases of Work: schematic design - 15%; design development - 20%; construction documents - 40%; bidding - 5%; and construction closeout/warranty period - 20%.

Exceptions to this list of basic services are:

2. **ADDITIONAL SERVICES / REQUIREMENTS:**

- Complexity of Consultant Fee: \$
- Complexity of Scope Fee: \$

3. **TOTAL FEE FOR AGREEMENT** (Total of Items 1 and 2)

- Total Guaranteed Fee \$

4. **MILESTONES / SCHEDULE:** Required project milestones and A/E's project schedule.

- Design complete ready for bidding;
- Construction complete and ready for occupancy permit;
- Project closeout complete (punch lists, O&M, record drawing, warranties, certificate of occupancy and other requirements):

(Project Name)

Attachment “B”

The A/E's Organization Chart is hereby identified and attached.

(Project Name)

Attachment “C”

Any additional explanation of the A/E's response to the DFCM's submittal documents are hereby identified and attached. None

(Project Name)

**Attachment “D”
Attachment to Design Agreement for CM/GC Projects**

1. The CM/GC Agreement with the selected firm for this Project, is hereby incorporated by reference. The A/E shall abide by all A/E responsibilities identified in that Agreement.
2. As per Article 5 of the CM/GC Agreement, the A/E shall cooperate with the CM/GC to present mutually agreed upon designs, estimates and value engineering.
3. Article II.G. of the Design Agreement shall be omitted and replaced with the following: The A/E shall review the estimates of the CM/GC for concurrence, and shall design within the estimates approved by DFCM.
4. Schedule. The A/E is required to cooperate with the CM/GC schedule for delivering bid packages in the scope required by the CM/GC and agreed to by DFCM. It is the intent of DFCM to keep the number of bid packages to the practical minimum.
5. Minutes. The A/E is responsible for meeting minutes throughout the design phase. The CM/GC is responsible for meeting minutes throughout the construction phase, except that the A/E shall ensure that accurate meeting minutes are managed by the CM/GC and make any necessary comments on the minutes prior to approval by DFCM.
6. Incentive. If the final costs of the Project are equal to or less than the final approved FLCC, then the A/E shall be entitled to 10% of the savings between the final approved GMP and the final cost, or \$30,000, whichever is less.

For purposes of this paragraph, changes to the final GMP that are the due to DFCM initiated scope changes or unforeseen conditions under the Contract Documents, shall not affect the A/E's entitlement herein. A/E errors or omissions that increase the GMP will affect the amount of the A/E's entitlement.



Division of Facilities Construction and Management

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT: _____ PROJECT #.: _____

AGENCY/INSTITUTION: _____ CONTRACT #.: _____

AREA ACCEPTED: _____

The Work performed under the subject Contract has been reviewed on this date and found to be Substantially Completed as defined in the General Conditions; including that the construction is sufficiently completed in accordance with the Contract Documents, as modified by any change orders agreed to by the parties, so that the State of Utah can occupy the Project or specified area of the Project for the use for which it is intended.

DFCM accepts the Project or specified area of the Project as Substantially Complete and will assume full possession of the Project or specified area of the Project at _____ (time) on _____ (date).

DFCM accepts the Project for occupancy and agrees to assume full responsibility for maintenance and operation, including utilities and insurance, of the Project subject to the itemized responsibilities and/or exceptions noted below:

The Owner acknowledges receipt of the following closeout and transition materials:

- Record Drawings
- O & M Manuals
- Warranty Documents
- Completion of Training Requirements

A list of items to be completed or corrected (Punch List) is attached hereto. The failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents, including authorized changes thereof. The amount of _____ (Twice the value of the punch list work) shall be retained to assure the completion of the punch list work.

The Contractor shall complete or correct the Work on the list of (Punch List) items appended hereto within _____ calendar days from the above date of issuance of this Certificate. If the list of items is not completed within the time allotted the Owner has the right to be compensated for the delays and/or complete the work with the help of independent contractor at the expense of the retained project funds. If the retained project funds are insufficient to cover the delay/completion damages, the Owner shall be promptly reimbursed for the balance of the funds needed to compensate the Owner.

PAST PERFORMANCE RATING EVALUATION

DATE		Address		
Firm Name		City, State & Zip Code		
Firm Contact		Phone Number		
Project Number & Name				
Project Manager		Completion Date		
Service Provided		Contract Amount		
RATINGS GUIDE	Quality of Product or Service	Cost Control	Timeliness of Performance	Business Relations
5-exceptional	Contractor/AE has demonstrated an exceptional level in any of the above four categories that justifies adding a point to the score. Contractor performance clearly exceeds the performance levels described as "Above Average"			
4-Above Average	Contractor/AE is in compliance with contract requirements and delivers quality product or service	Contractor/AE is effective in managing costs and submits current, accurate, and complete billings	Contractor/AE is effective in meeting milestones and delivery schedule	Response to inquiries, technical, service, administrative issues is effective
3-Average	Minor inefficiencies/errors have been identified	Contractor/AE is usually effective in managing cost effectively	Contractor/AE is usually effective in meeting milestones and delivery schedules.	Response to inquiries, technical, service, administrative issues is somewhat effective
2-Below Average	Major problems have been encountered	Contractor/AE is having major difficulty managing cost.	Contractor/AE is having major difficulty meeting milestones and delivery schedule.	Response to inquiries, technical, service, and administrative issues is marginally effective.
1-Unsatisfactory	Contractor/AE is not in compliance & is jeopardizing achievement of contract objectives.	Contractor/AE is unable to manage costs effectively.	Contractor/AE delays are jeopardizing performance of contract objectives	Response to inquiries, technical, service, and administrative issues is not effective.
Rate the Following		COMMENTS		
Quality of Product or Service	0			
Cost Control	0			
Timeliness of Performance	0			
Business Relations	0			
Overall Rating	0.00			