



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management**

DFCM

## **Solicitation for Consultant Services**

Value Based Selection Method

May 2, 2006

# **STATEWIDE FACILITY CONDITION ASSESSMENTS AND INFRASTRUCTURE ASSESSMENTS**

## **DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**

DFCM Project No. 06147300

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Current copies of the following documents are hereby made part of this Solicitation for Consultants (SFC) by reference. These documents are available on the DFCM web site at <http://dfcm.utah.gov> or are available upon request from DFCM.

DFCM Design Manual dated May 25, 2005

DFCM General Conditions dated May 25, 2005

## NOTICE TO CONSULTANTS

The State of Utah - Division of Facilities Construction and Management (DFCM) is soliciting the services of qualified firms/teams to perform Statewide Facility and Infrastructure Assessment services:

**STATEWIDE FACILITY CONDITION ASSESSMENTS**  
**AND INFRASTRUCTURE ASSESSMENTS**  
**DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**  
**PROJECT NO. 06147300**

Description: DFCM is soliciting proposals to conduct condition assessments on approximately five to six million square feet of state-owned buildings and campus infrastructure over the next two years. Facilities to be assessed include colleges and universities, traditional multi-story office, academic and administrative structures, support facilities, youth correctional facilities, prison facilities, wildlife structures, etc. Infrastructure to be assessed includes utility tunnels, water, gas, electrical, steam lines, etc. at colleges and universities, large office complexes, correctional compounds, etc. The ages of the facilities range from 1 to 100 years old. Interested firms must have experience and a proven track record of performing facility condition assessments on state government facilities and demonstrate their ability to perform the following functions: (a) identify backloged facility deficiencies, deferred maintenance, capital renewal, and plant adaptation; (b) calculate the cost of all deficiencies, utilizing R.S. Means Corporation's published construction and remodeling cost estimating data and format; (c) rank and prioritize all items by severity and anticipated life cycle; (d) locate items with AutoCAD and Micro Station utilizing the existing facility floor plan drawings; and (e) input all information into FCA 32 database. DFCM currently uses FCA 32 to track building deficiencies. Firms must document their ability to accurately identify facility and infrastructure deficiencies including life safety and building code deficiencies; HVAC, electrical and structural deficiencies; and functional deficiencies. Additional requirements will be listed in the solicitation document.

The selection shall be under the Value Based Selection method. The Solicitation for Consultants (SFC) documents, including the submittal requirements and the selection criteria and schedule, will be available beginning on Tuesday, May 2, 2006 from DFCM at the State Office Building - Room 4110, Salt Lake City, Utah 84114 and on the DFCM web site at <http://dfcm.utah.gov>. For questions regarding this solicitation, please contact Kent Beers, DFCM, at (801) 538-3418. No others are to be contacted regarding this solicitation.

Submittal dates for the required references, management plans, statements of qualifications, and interviews will be based on the Project Schedule included in the SFC.

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

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT  
MARLA WORKMAN, CONTRACT COORDINATOR  
4110 State Office Bldg., Salt Lake City, Utah 84114

# PROJECT DESCRIPTION

## Overview

DFCM is soliciting proposals to conduct condition assessments on approximately five to six million square feet of state-owned buildings and campus infrastructure over the next two years. Facilities to be assessed include colleges and universities, traditional multi-story office, academic and administrative structures, support facilities, youth correctional facilities, prison facilities, wildlife structures, etc. Infrastructure to be assessed include utility tunnels, water, gas, electrical, steam lines, etc. at colleges and universities, large office complexes, correctional compounds, etc. The ages of the facilities range from 1 to 100 years old.

## Requirements

- Identify backlog of facility deficiencies, deferred maintenance, capital renewal, and plant adaptation.
- Calculate the cost of all deficiencies, utilizing R.S. Means Corporation's published construction and remodeling cost estimating data and format.
- Rank and prioritize all items by severity and anticipated life cycle.
- Locate items with AutoCAD and Micro Station utilizing the existing facility floor plan drawings.
- Input all information into FCA 32 database. DFCM currently uses FCA 32 to track building deficiencies.
- Assessments must identify facility and infrastructure deficiencies including: (a) life safety and building code deficiencies, (b) HVAC, electrical and structural deficiencies, and (c) functional deficiencies. Assessments must also include accurate cost estimates for the repairs and improvements required to cure each identified deficiency.
- Each facility condition assessment shall breakout and report deficiencies in the following categories.

All reports, summaries, totals, and models must illustrate each category individually.

1. Site (building proper, typically 50' out)
  2. Exterior structure
  3. Interior structure
  4. Handicapped accessibility
  5. Environmental health
  6. Life/fire safety
  7. Heating, ventilation, and air conditioning (mechanical)
  8. Plumbing
  9. Electrical
- Results from the condition assessments must label each deficiency within one of the following classifications according to the definition provided below. All reporting, summaries, totals, and models must illustrate these three types of backlog maintenance individually.

Plant Adaptation: Expenditure-required adapting, the physical needs to the evolving needs of the institution and to changing standards. These are expenditures in addition to normal maintenance. Examples include compliance with changing codes (e.g., handicapped accessibility), facility alteration required by changed teaching or research methods, and improvements occasioned by the adoption of modern technology (e.g., the use of personal computer networks).

Deferred Maintenance: Refers to expenditures for repairs which were not accomplished as a part of normal maintenance or capital repairs that have accumulated to the point that facility deterioration is evident and could impair the proper functioning of the facility. Costs estimated for deferred maintenance items should include compliance with applicable codes, even if such compliance requires additional expenditures essential to effect needed repairs. Deferred maintenance items represent catch-up expenses.

Capital Renewal: A subset of regular or normal facility maintenance which refers to major repairs or the replacement/rebuilding of major facility components (e.g., roof replacement at the end of its normal useful life is capital repair; roof replacement several years after its normal useful life is deferred maintenance).

- The facility condition assessments must identify all code violations (e.g. handicapped accessibility, fire protection, etc). All applicable national and local codes must be utilized to determine these problems. Each item must identify the particular code/chapter/section of the building standard being violated. This is to include code issues that surface because of major building renovations.
- Classification: All deficiencies must be classified as follows:

Priority 1 – Critical (Immediate) Projects in this category require immediate action to (a) return a facility to normal operation, (b) stop accelerated deterioration and (c) correct a cited safety hazard.

Priority 2 – Potentially Critical (Year One) Projects in this category, if not corrected expeditiously, will become critical within a year. Situations in this category include (a) intermittent interruptions, (b) rapid deterioration and (c) potential safety hazards.

Priority 3 – Necessary – Not Yet Critical (Years Two to Five) Projects in this category include conditions requiring appropriate attention to preclude predictable deterioration or potential downtime and the associated damage or higher costs if deferred further.

Priority 4 – Recommended (Years Six to Ten) Projects in this category include items that represent a sensible improvement to existing conditions. These items are not required for the most basic function of a facility; however, Priority 4 projects will either improve overall usability and/or reduce long-term maintenance.

- Each detailed item must include the following information:
  1. Unique title and project number
  2. Project priority classification
  3. Building system category (site, exterior structure, etc.)
  4. Specific building code violation or application
  5. Specific item extent (floor wide, item only, etc.)

6. Detailed narrative description of each project describing the condition needing to be corrected, the corrective action required, and the consequences of effect of this project on the building occupancy, maintainability, and reasons the original condition occurred.
- All projects must be identified on the building floor plans in AutoCAD release 12. Icons must be used to illustrate the location of projects. The icons used must reflect by shape, color, or both the priority class of each project. The attributes of each icon (AutoCAD “block”) must contain the same data as contained in each detailed calculation for the purpose of quick referral and amendment. All icon names must correspond to the unique project numbers recorded in the detailed project calculation.
  - All information referring to the condition of the facility, must be entered into the FCA 32 database, and hard copies delivered by the selected consultant or firm or one of their subcontractors by December 31, 2006.
  - Provide technical assistance in the following disciplines.
    1. Central high temp boiler systems
    2. Central chilled water systems
    3. HVAC systems
    4. Plumbing systems
    5. Electrical systems
  - Access to facilities should be scheduled through the user agency with respect to activities and needs of the building occupants.
  - Assessments should not use disassembly or special testing equipment. All assessments should be made through visual inspection of accessible equipment and building components. It is expected that the inspection team will, for example, lift ceiling tiles in suspended ceilings and open access doors to reveal hidden equipment and building components that are integral to the survey.

### **Conditions and Exclusions**

- Assessments should not include the condition of scientific equipment, furniture or moveable equipment. The study is limited to assessing and reporting on the condition of building shell elements, built-in features, building components, fixed equipment, service equipment and building systems.
- Assessments do not include asbestos inspection. However, when it is apparent that building repair will require attending to asbestos abatement, consideration must be given to the effect of the asbestos abatement on the repair cost.
- Assessments should not include excavation or demolition costs.

# 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. **Solicitation for Consultant Documents**

The Solicitation for Consultant (SFC) documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this SFC by reference. The SFC will be available at DFCM per the attached schedule and on the DFCM web site at <http://dfcm.utah.gov>.

## 2. **Contact Information**

Except as authorized by the DFCM Representative or as otherwise stated in the SFC or the pre-submittal meeting, communication during the selection process shall be directed to the specified DFCM Representative. In order to maintain the fair and equitable treatment of everyone, Consultants 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 SFC is issued, as the project is developed, and extends through the award of an agreement. Failure to comply with this requirement may result in a disqualification in the selection process. Consultants should be aware that selection committee members will be required to certify that they have not been contacted by any of the Consultants in an attempt to influence the selection process.

## 3. **Requests for Information**

Kent Beers  
Division of Facilities Construction and Management  
4110 State Office Building  
Salt Lake City, Utah 84114  
E-mail: [Kbeers@utah.gov](mailto:Kbeers@utah.gov)  
Facsimile: 801-538-3267

## 4. **Project Schedule.**

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

## 5. **Mandatory Pre-Submittal Meeting**

A mandatory pre-submittal meeting **IS NOT REQUIRED** on this project.

**6. 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 as recent construction activity has made the parking more difficult. Identification is required to enter the building.

**7. Last Day to Submit Questions**

All questions must be received at the office of DFCM no later than the time and dated listed in the Project Schedule. Questions must be submitted in writing to Kent Beers at DFCM.

**8. Addendum**

All references to questions and requests for clarification will be in writing and issued as addenda to the Solicitation for Consultant Services. Addenda will be provided to every entity that has registered for receiving documents. The addenda or notice of the Addendum will be posted on DFCM's web site.

Any addenda issued prior to the submittal deadline shall become part of the Solicitation for Consultant Services and any information required shall be included in your submittal.

**9. Past Performance and References**

As a Consultant completes each DFCM Facilities Condition Assessment Contract, DFCM will evaluate the Consultant. It is the intent of DFCM that this process will be the major source for evaluating past performance.

Consultants shall submit past performance and reference information by the time indicated on the Project Schedule.

For all DFCM Facility Condition Assessment Contracts completed in the last 5 years identify the project by name, number and DFCM project manager. Each Consultant wishing to compete for this project that has not completed at least three DFCM programming/master planning projects in the last 5 years, will be required to provide one copy of a list of references on additional similar projects for a total of 3 projects.

For non-DFCM programming/master planning 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 Company that purchased the programming/master planning services.  
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.  
Type: Type of the project (i.e.: School, Offices, Warehouse, etc)

### **10. Management Approach**

Each firm shall provide five (5) copies of a document describing their management approach by the time indicated on the Schedule. The document should include: (a) a detailed description of the firm's/team's overall approach to conducting condition assessments---list reasons why your approach has proven successful and why your approach would be best suited for the state of Utah; (b) a description of how the firm/team will be organized; (c) a description of the process used for scheduling and completing assessments including details on how your firm will work with state agencies and institutions of higher education to accommodate their work and class schedules; (d) any other information that will assist the selection committee in evaluating the firm's management approach. Include an organization chart of key personnel and a description of their duties. The management approach document should be concise (**limit 5 pages**) yet contain sufficient information for evaluation by the selection committee. The organization chart is a separate document and is not counted as one of the two pages.

### **11. Statements of Qualifications**

The submitting firm shall provide five (5) copies of the Statements of Qualifications by the time indicated on the Project Schedule.

The Statement of Qualifications is a short document that indicates the experience and qualifications of the firm, the project lead and other critical members of the team. It describes what talents their team brings to the programming/master planning 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 firm, project lead and other team members. Include the experience and special qualifications that are applicable to this project and/or are part of the project specific selection criteria. Document the following:

- Firm's history and experience over the last five years in performing facility and infrastructure condition assessments.
- List of assessment team members, their qualifications and experience.
- History of all facility evaluations performed in the past five years.
- Proof of professional license in the State of Utah.

- Ability to input data into FCA 32 database in required time frame.
- Provide one recent example (report) of a facility condition assessment completed by the firm within the last year.

**12. Selection Committee**

The Selection Committee will be composed of individuals from the Utah State Building Board, DFCM, the User Agency / Institution, representatives from the design and construction disciplines, and others deemed appropriate by the DFCM.

**13. Termination or Debarment Certifications**

The firm 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 firm must also certify that neither the firm nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the firm cannot certify these two statements the firm shall submit a written explanation of the circumstances for review by DFCM. Firms are encouraged to submit these certifications with their Statement of Qualifications but they may be submitted up until the time the selection is completed.

**14. Interviews**

Interviews will be conducted with all firms who have met all of the requirements except as follows. If more than six firms are eligible for interviews, DFCM may convene the selection committee to develop a short list of firms to be invited to interviews. This evaluation will be made using the selection criteria noted below base on the information provided by the past performance/references, performance plan and statement of qualifications.

The purpose of the interview is to allow the firm to present its qualifications, past performance and management approach. It will also provide an opportunity for the selection committee to seek clarifications from the firm. The proposed primary project lead should be in attendance. The project lead is the firm's representative who has overall job authority, will be in attendance at all job meetings, and is authorized by the firm to make decisions. Unless otherwise noted, the attendance of sub-consultants is at the discretion of the firm. The method of presentation is at the discretion of the firm. The interviews will be held on the date and at the place specified in the Project Schedule.

**15. Selection Criteria for VBS Professional Services**

The following criteria will be used in ranking each of the teams. The team 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/References. 30 Points. Each prime firm will be given a past performance rating. The rating will be based first on how well the firm did on past projects with DFCM. 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 references supplied by the firm.
- B. Strength of Team. 35 Points Based on the statements of qualifications and the interview, the selection team shall evaluate the expertise and experience of the team and the project lead as it relates to this project in size, complexity, quality, duration, etc. Consideration will also be given to the strength brought to the team by critical consultants including how they were selected and the success the team has had in the past in similar projects.
- C. Management Approach. 35 Points Based on the information provided in the management approach document and information presented in the interview the selection team shall evaluate each team's approach to managing this project including the proposed schedule.

**TOTAL POSSIBLE POINTS: 100 POINTS**

**16. Fee Negotiation**

Following selection of a Consultant by the Selection Committee and prior to the award of the agreement, DFCM will negotiate the final agreement fee with the selected firm. Should the DFCM be unable to agree to a satisfactory contract with the top ranked firm at a price that DFCM determines to be fair and reasonable to the State, discussions with that firm shall be formally terminated. Negotiations will then be undertaken with the second ranked firm.

This process will be repeated until an agreement is reached or DFCM determines that it is in the best interest of the State to initiate a new selection process.

**17. Form of Agreement**

At the conclusion of negotiations, the selected Consultant will be required to enter into an agreement using the attached form of the Professional Services Agreement.

**18. Licensure**

The Consultant shall comply with and require its subconsultants to comply with the license laws of the State of Utah.

**PROJECT SCHEDULE**

**PROJECT NAME: STATEWIDE FACILITY CONDITION AND INFRASTRUCTURE ASSESSMENTS  
DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT  
DFCM PROJECT #: 06147300**

Event	Day	Date	Time	Location
Advertisement Placed	Sunday	April 30, 2006		Multi-Media
Solicitation for Consultant Available	Tuesday	May 2, 2006	9:00 AM	DFCM, 4110 State Office Bldg, SLC, UT 84114 & DFCM web site*
Last Day to Submit Questions	Tuesday	May 23, 2006	4:00 PM	DFCM, 4110 State Office Bldg, SLC, UT 84114
Final Addendum Issued	Thursday	May 25, 2006	4:00 PM	By Fax or posted on DFCM web site *
References, Statements of Qualifications and Management Approach	Wednesday	May 31, 2006	12:00 Noon	DFCM, 4110 State Office Bldg, SLC, UT 84114
Short Listing by Selection Committee, if applicable.	Tuesday	June 6, 2006	4:00 PM	DFCM, 4110 State Office Bldg, SLC, UT 84114
Termination / Debarment Certifications Due		On or Before Date of Interview	NA	
Interviews	Thursday	June 8, 2006	TBA	To Be Announced
Announcement	Friday	June 9, 2006	4:00 PM	DFCM web site*

\* DFCM's web site address is <http://dfcm.utah.gov>.

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

THIS AGREEMENT, made this \_\_\_\_th day of \_\_\_\_\_, 20\_\_\_\_, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called the "DFCM", and \_\_\_\_\_, a corporation of the State of Utah, whose address is \_\_\_\_\_, Utah \_\_\_\_\_ 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 supercede 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 if fully set forth herein: the Solicitation

for Consultant Services, and the DFCM Design Manual dated May 25, 2005, 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 (OR LUMP) sum of \_\_\_\_\_ DOLLARS AND NO/100 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 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 (30) 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.

3.3 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 1<sup>st</sup> 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.

3.4 The acceptance by the Consultant of final payment without a written protest filed with DFCM within three (3) 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 (7) 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 (14) 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 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 dated May 25, 2005, on file with the DFCM as well as available on the DFCM website at <http://dfcm.utah.gov> and hereby incorporated by reference 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 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 (21) 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. Employer’s Liability Insurance shall provide the following limits of liability: \$100,000 for each accident; \$500,000 for Disease-Policy Limit; and \$100,000 for Disease-Each Employee.

**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 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 78-12-21.5(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 be 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:** \_\_\_\_\_

\_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

\_\_\_\_\_  
Please type/print name clearly

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me, \_\_\_\_\_, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the \_\_\_\_\_ (title or office) of the firm and that said document was signed by him (her) in behalf of said firm.

\_\_\_\_\_  
**Notary Public**

(SEAL)

My Commission Expires \_\_\_\_\_

APPROVED AS TO FORM:  
ATTORNEY GENERAL  
June 13, 2005  
By: ALAN S. BACHMAN  
Asst Attorney General

**DIVISION OF FACILITIES CONSTRUCTION  
AND MANAGEMENT**

\_\_\_\_\_  
F. Keith Stepan Date  
Director

Approved for expenditure:

Approved as to availability of funds:

\_\_\_\_\_  
Division of Finance Date

\_\_\_\_\_  
David D. Williams, Jr. Date  
DFCM Administrative Services Director