Request for Proposals for Construction Management / General Contractor Services

Value Based Selection Method

September 28, 2010

BEVERLEY TAYLOR SORENSON ARTS AND EDUCATION COMPLEX

UNIVERSITY OF UTAH
SALT LAKE CITY, UTAH

DFCM PROJECT NO. 09131750

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Current copies of the following documents are hereby made part of these contract documents by reference These documents are available on the DFCM web site at http://dfcm.utah.gov/StdDocs/index.html "Standard Documents" – "Reference Documents I" – "Item 7. Supplemental General Conditions" or are available upon request from DFCM:

DFCM Supplemental General Conditions dated July 1, 2010 *
DFCM Supplemental General Conditions revised May 11, 2010
DFCM Supplemental General Conditions dated July 1, 2009
DFCM Supplemental General Conditions dated July 15, 2008
DFCM General Conditions dated May 25, 2005
DFCM Application and Certification for Payment dated May 25, 2005.

*** NOTE: THE NEW SUPPLEMENTAL GENERAL CONDITIONS EFFECTIVE JULY 1, 2010 ADDRESSING DRUG AND ALCOHOL TESTING ARE REFERENCED AT THE LINK ABOVE.**

The Agreement and General Conditions dated May 25, 2005 have been updated from versions that were formally adopted and in use prior to this date. The changes made to the General Conditions are identified in a document entitled Revisions to General Conditions that is available on DFCM's web site at http://dfcm.utah.gov.

NOTICE TO CONTRACTORS

The State of Utah - Division of Facilities Construction and Management (DFCM) is requesting proposals for the construction of the following project:

BEVERLEY TAYLOR SORENSON ARTS AND EDUCATION COMPLEX
UNIVERSTIY OF UTAH – SALT LAKE CITY, UTAH
DFCM PROJECT NO. 09131750

This request for statements of qualification is for Construction Management/General Contractor (CM/GC) services. The spaces will include preconstruction services, and construction services for the development of the Sorenson Arts and Education Complex. The project includes construction of an education building with the following types of spaces: dance studios, art studio, offices, and work spaces, lobby, lounge, classrooms, limited food serving venue, and support spaces. The approximate size of the facility is 84,000 GSF. The FLCC is limited to $18,997,000.

The Request for Proposals (RFP) documents, including the selection requirements and the selection schedule, will be available at 4:00 PM on Tuesday, September 28, 2010 from DFCM, in electronic format only, on the DFCM web page at **http://dfcm.utah.gov**. For questions regarding this project, please contact Rick James, DFCM, at 801-541-7783. 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 and site visit will be held at 10:00 AM on Friday, October 8, 2010 in Room 201, Milton Bennion Hall, University of Utah, Salt Lake City, Utah. All prime contractors wishing to submit on this project must attend this meeting.

Proposals, including a cost proposal, management plan, references and statements of qualifications, must be submitted by 12:00 Noon on Tuesday, October 19, 2010 to DFCM at 4110 State Office Building, Salt Lake City, Utah 84114. Additional information will be required as stated on the Project Schedule. 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, made payable to the Division of Facilities Construction and Management on DFCM's bid bond form, shall accompany the cost proposal.

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
MARLA WORKMAN, CONTRACT COORDINATOR
4110 State Office Bldg., Salt Lake City, Utah 84114

DESCRIPTION OF WORK

Project Description

The new Beverley Taylor Sorenson Arts and Education Complex Building will become a notable part of the University of Utah's program to create integrated arts in education programs. The project will consolidate the currently dispersed outreach centers and integrate the Tanner Dance programs. The project will also become a laboratory for children's' arts education programs. The new facility will fulfill program needs. The facility will support teacher training, continuing education, research and outreach.

The project will also include LEED Certification requirements and energy efficient operations.

Spaces to be Provided

The spaces are described in Section 3 of the program. The spaces include: an estimated 84,000 GSF on five levels and approximately 53,126 NSF. Assignable spaces include: dance studios, an art studio, multi function hall, classrooms, offices, workstations, conference rooms, storage, dressing rooms, limited food services venue, and costume fabrication. Non-assignable areas will include: public circulation, mechanical and electrical shafts and rooms, restrooms, wall thicknesses and other requirements.

The program contains five primary divisions of space:

Division	Net Area
Public / Common Resources	3,880 NSF
Academic Instruction	23,640 NSF
Office Space	9,680 NSF
Support Resources	12,270 NSF
Building Resources	3,656 NSF
TOTAL	53,126 NSF

The program for the BTSAEC includes centers for eight outreach and research groups. The centers are planned in modules to allow each center to flex into an adjacent module. The program does not provide any unoccupied space for future expansion of centers. Modules consist of private offices, open work areas, collaborative work areas, and support spaces such as centralized reception, copy/mail/workrooms and conference rooms.

Distributed throughout the building are amenity spaces which include areas to support collaboration, interaction, and group study. Also lounge areas and an arts lobby are required.

Project Risk Factors

- There is a risk that the project may not provide adequate security elements required for programs and operations.
- There is a risk that the building design may not effectively address all the site requirements.
- There is a risk that the interests of all stake holders may not be adequately addressed.

PROCUREMENT PROCESS

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 free of charge at DFCM, 4110 State Office Building, Salt Lake City, Utah and at DFCM's internet web site at http://dfcm.utah.gov.

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

All requests for information regarding this project shall be in writing and directed to:

Rick James, DFCM Representative
Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114
E-mail: rjames@utah.gov
Phone: 801-541-7783
Facsimile: 801-538-3267

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 & 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 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 and suppliers are invited to attend this meeting but it is not mandatory for them.

THE PRIME CONTRACTOR'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 as recent construction activity has made the parking more difficult. Identification is required to enter the building.

8. Last Day to Submit Questions

All questions must be received at the office of DFCM no later than the time and date listed on the Project Schedule. Questions must be submitted in writing to Rick James at DFCM.

9. 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 DFCM's web site.

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.

10. Past Performance and References

As a contractor completes each DFCM project, DFCM will evaluate the Contractor with input from the A/E and using agency. It is the intent of DFCM that this process will be the major source for evaluating past performance. A sample rating form is attached to this package.

Contractors shall submit past performance and reference information for all DFCM and non-DFCM projects by the time indicated on the Project Schedule.

For all DFCM projects completed in the last five years identify the project by name, number and DFCM project manager. Each Contractor wishing to compete for this project that has not completed at least three DFCM projects in the last five years, will be required to provide one copy of a list of references on additional similar projects for a total of three projects.

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.)

11. 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 design meetings, estimating and cost control, schedule development, and drawing and constructability reviews. The Contractor shall assist DFCM and A/E in maintaining the cost of construction within the FLCC and the duration of the construction within the project's schedule.

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.

12. 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 subcontractor's bids. However a GMP may be negotiated at an earlier point as may be needed by the State.

13. 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, as indicated on the DFCM Bid Bond form provided along with this Instruction to Bidders, in the amount of 5% of the bid, shall accompany the bid submission to DFCM. THIS BID BOND MUST BE ON THE DFCM BID BOND FORM PROVIDED WITH THIS INSTRUCTION TO BIDDERS 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 will be accepted at the office of DFCM, 4110 State Office Building, Salt Lake City, UT 84114. Late proposals will be disqualified and returned to the proposer unopened. 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.** 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.

B. **Construction Management Fee.** 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**. This is a per month 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.). 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, expediters, commissioning agents etc. This cost does not include general conditions or people performing the actual construction activities.

E. **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.***

14. Self Performed Work

The Contractor will be allowed to self perform work. 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.

15. Management Plan

The Contractor shall provide seven copies of the Management Plan by the time indicated on the Project Schedule. The Management Plan should contain the following information:

A. How the construction will be managed including items such as security and safety controls, staging areas, delivery routes, crane locations and interfaces required at the site with the using agency.

B. Your proposed project schedule. Indicate critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable.

C. Please provide as a separate section in your Management Plan which portions of the work you plan on self-performing.

D. Address project 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.

E. Indicate all services that will be provided during the Preconstruction Phase of this project and the individuals who will be performing these services. Provide an organizational chart to clarify the Contractor's supervision and support structure during this phase.

F Indicate all services that will be provided during the Construction Phase and the individuals who will be performing these services. Provide a comprehensive organizational chart to clarify the Contractor's supervision and support structure during this phase. Clearly identify all personnel that will be considered as a

Construction Supervision Cost under the GMP. Any personnel not identified in this management plan to be a Construction Supervision Cost, will be considered a part of the lump sum Construction Management Fee and will not be allowed as either a future general conditions or Construction Supervision Cost except for those that are actually performing the construction activities. For those personnel identified as a Construction Supervision Cost, provide the following information in tabular form as part of the Management Plan:

- Description of the position (e.g. project manager, project superintendent, safety officers, commissioning agents, clerks, accountants, etc.).
- The positions reimbursable monthly rate.
- Based on the Project Schedule, the billing duration for the position

The Management Plan should be concise yet contain sufficient information for evaluation by the selection committee.

16. Statements of Qualifications

The CM/GC shall provide seven copies of the statement of qualifications. The statement of qualifications is a short document that indicates the experience and qualifications of the Contractor, and the project team key individuals as identified in the management plan. It should include information on similar projects that have been completed by the Contractor, and the project team individuals. When listing similar projects include information to indicate the dates, size, firm worked for at the time and what the responsibility of the individual was on the project. Include the experience and special qualifications of the team that are applicable to this project and/or are part of the project specific selection criteria.

17. 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 delivered or faxed to DFCM 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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. Cost. **20 Points.** The Contractor's Cost Proposal will be scored by the selection committee taking into account the total of all costs within the proposal. The more competitive overall cost will achieve a higher score. A summary of each cost proposal will be made available to the selection committee just prior to the interviews.

B. DFCM Past Performance Rating. **10 Points.** Each construction 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 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.

C. Strength of Contractor's Team. **25 Points.** Based on the statements of qualifications, the interview, and management plan, the selection team shall evaluate the expertise and experience of the construction firm the project manager and the superintendent as it relates to this project in size, complexity, quality and duration. Key personnel assigned to which task and their commitment to each phase of the work will be evaluated.

D. Project Management Approach. **30 Points.** Based on the information provided in the construction and management plan and information presented in the interview the selection team shall evaluate how each team has planned the project and determined how to construct the project in the location and in the time frames presented. The firm should present how they plan to move material and people into and out of the site, how they plan to adequately staff the project, keep the site safe, and minimize disruption to the facility etc. The construction firm shall also discuss what portions of the project they plan to self perform. The selection team will also evaluate the degree to which risks to the success of the project have been identified and a reasonable solution has been presented.

E. Project Specific Criteria. **15 Points.** Based on the information provided in the construction and management plan and information presented in the interview the selection team shall evaluate how each team has had experience in solving conditions found in this project including the following: (1) providing projects with requirements of security and safety concern related to the teaching of children in complex building types, (2) projects with complex and limited sites on college campuses, and (3) providing projects to meet the needs of numerous stake holder groups.

TOTAL POINTS POSSIBLE: 100 POINTS

23. 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.

24. 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.

25. 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, both bearing original signatures, upon the forms provided in the RFP. 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.

26. 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 DFCM's web site at http://dfcm.utah.gov. Neither the DFCM nor A/E will be responsible for any other explanations or interpretations of the proposed documents.

27. 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.

28. 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.

29. 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.

30. Withdrawal of Proposals

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

31. Time is of the Essence

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

32. Right to Reject Proposals

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

PROJECT SCHEDULE

PROJECT NAME: **BEVERLEY SORENSON ARTS AND EDUCATION COMPLEX**
UNIVERSITY OF UTAH – SALT LAKE CITY, UTAH
DFCM PROJECT NO. 09131750 **CM/GC**

Event	Day	Date	Time	Place
Request for Proposals Available	Tuesday	September 28, 2010	4:00 PM	DFCM 4110 State Office Bldg SLC, UT and DFCM web site*
Mandatory Pre-Proposal Site Meeting	Friday	October 8, 2010	10:00 AM	Room 201 Milton Bennion Hall University of Utah SLC, UT
Last Day to Submit Questions	Tuesday	October 12, 2010	4:00 PM	Rick James – DFCM E-mail: rjames@utah.gov Fax 801-538-3267
Addendum Deadline (exception for proposal delays)	Thursday	October 14, 2010	4:00 PM	DFCM web site *
Cost Proposals, Management Plans, References, Statements of Qualifications, and Termination/Debarment Certifications Due	Tuesday	October 19, 2010	12:00 NOON	DFCM 4110 State Office Bldg SLC, UT
Short Listing by Selection Committee, if applicable.	Tuesday	October 26, 2010	4:00 PM	DFCM web site *
Interviews	Wednesday	November 3, 2010	TBA	To Be Announced
Announcement	Thursday	November 4, 2010	4:00 PM	DFCM web site *
Requested Substantial Completion Date	Friday	October 1, 2012		

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

COST PROPOSAL FORM

NAME OF PROPOSER _____ DATE _____

To the Division of Facilities Construction and Management
4110 State Office Building
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 the **BEVERLEY TAYLOR SORENSON ARTS AND EDUCATION COMPLEX - UNIVERSITY OF UTAH – SALT LAKE CITY, UTAH - DFCM PROJECT NO. 09131750**, 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** - For all work during the pre-construction period, I/we agree to perform for the lump sum of:

_____ DOLLARS ($_____)
(In case of discrepancy, written amount shall govern)

B. **Construction Management Fee (including overhead and profit)** - For all work during the construction phase of the contract for the management of the project, I/we agree to perform for the lump sum of:

_____ DOLLARS ($_____)
(In case of discrepancy, written amount shall govern)

C. **Contractors Modification Factor** - The contractors insurance modification factor as currently rated is: _____

D. **Construction Supervision Cost** - For project supervision and support team costs not covered in the above management fee, I/we agree to perform for the sum of
_____ per month x _____ (total months) =
_____(total NTE Construction Supervision Cost)

E. **Self Performed Work Markup** - For all self performed work, I/we agree to add no more than ___% to our labor and material costs to perform the work.

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**/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 **$18,997,000**. 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 deliver 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 l00% 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

BID BOND

(Title 63, Chapter 56, U. C. A. l953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ hereinafter referred to as the "Principal," and_____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed, (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the STATE OF UTAH, hereinafter referred to as the "Obligee," in the amount of $_____ (5% of the accompanying bid), being the sum of this Bond to which payment the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted to Obligee the accompanying bid incorporated by reference herein, dated as shown, to enter into a contract in writing for the_____ _____ Project.

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said principal does not execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the principal, then the sum of the amount stated above will be forfeited to the State of Utah as liquidated damages and not as a penalty; if the said principal shall execute a contract and give bond to be approved by the Obligee for the faithful performance thereof within ten (10) days after being notified in writing of such contract to the Principal, then this obligation shall be null and void. It is expressly understood and agreed that the liability of the Surety for any and all defaults of the Principal hereunder shall be the full penal sum of this Bond. The Surety, for value received, hereby stipulates and agrees that obligations of the Surety under this Bond shall be for a term of sixty (60) days from actual date of the bid opening.

PROVIDED, HOWEVER, that this Bond is executed pursuant to provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated below, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

DATED this _____ day of _____, 20_____ .

Principal's name and address (if other than a corporation):

_____

_____

By:_____

Title: _____

Principal's name and address (if a corporation):

_____

_____

By:_____

Title: _____

(Affix Corporate Seal)

Surety's name and address:

_____

_____

By: _____

Attorney-in-Fact (Affix Corporate Seal)

STATE OF _____)
) ss.
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, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20_____.
My Commission Expires: _____
Resides at: _____

_____
NOTARY PUBLIC

Agency: _____
Agent: _____
Address: _____
Phone: _____

Approved As To Form: May 25, 2005
By Alan S. Bachman, Asst Attorney General

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

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	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.

STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

SUBCONTRACTORS LIST

PROJECT TITLE: _____

Caution: You must read and comply fully with instructions.

TYPE OF WORK	SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION"	SUBCONTRACTOR BID AMOUNT	CONT. LICENSE #

We certify that:

1. This list includes all subcontractors as required by the instructions, including those related to the base bid as well as any alternates.
2. We have listed "Self" or "Special Exception" in accordance with the instructions.
3. All subcontractors are appropriately licensed as required by State law.

FIRM: _____

DATE: _____ SIGNED BY: _____

NOTICE: FAILURE TO SUBMIT THIS FORM, PROPERLY COMPLETED AND SIGNED, AS REQUIRED IN THESE CONTRACT DOCUMENTS, SHALL BE GROUNDS FOR DFCM REFUSAL TO ENTER INTO A WRITTEN CONTRACT WITH PROPOSER. ACTION MAY BE TAKEN AGAINST PROPOSERS BID BOND AS DEEMED APPROPRIATE BY DFCM. ATTACH A SECOND PAGE IF NECESSARY.

___/___/____/___/____/_____/__/_
DFCM Project No. _____

CONSTRUCTION MANAGER/
GENERAL CONTRACTOR AGREEMENT

for

_____

_____

_____

hereinafter referred to as the "Project."

THIS AGREEMENT, made and entered into this _____ day of _____, 20___ by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called "DFCM," and _____, incorporated in the State of _____ and authorized to do business in the State of Utah, hereinafter called the "Construction Manager/General Contractor" or "CM/GC," whose address is _____.

WITNESSETH: WHEREAS, DFCM intends to have the Services and Work performed at _____, 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 dated May 25, 2005, (hereinafter referred to as the "DFCM General Conditions") and the DFCM Supplemental General Conditions ("also referred to as the DFCM General Conditions"), (http://dfcm.utah.gov/StdDocs/index.html) which are a part of the Contract Documents and hereby incorporated by reference as part of this Agreement 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 will be $_____. This includes the cost as outlined in the CM/GC's Management Plan dated _____, 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 not exceed the monthly amount submitted in the Proposal multiplied by the number of months in the DFCM-approved schedule.

i. This cost shall be paid in an amount based on the hourly rates in the CM/GC's management plan, to the CM/GC of such supervision but cannot exceed the total amount as indicated in Article 2.E.3.a. above, submitted with back-up documents that evidence the amount of hours, provided with the monthly pay request.

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 ____% 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 at actual cost incurred up to the line item amount for such costs in the approved GMP. Temporary Construction Costs means such items, to the extent used on the Project: construction trailer, office equipment, computers, phones, cranes, power, water, heat, temporary toilets, and safety precautions including site items such as snow removal, 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.

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. **Contactor'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. **<u>Preconstruction Phase</u>.** 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 it's 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. <u>Construction Phase</u>.

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, drawings, specifications, 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 can not 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: _____

_____
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
July 1, 2010
By Alan S. Bachman
Asst Attorney General

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

_____
Lynn A. Hinrichs Date
Assistant Director Construction Management

Approved for Expenditure:

_____
Division of Finance Date

Approved as to availability of funds:

_____
David D. Williams, Jr. Date
DFCM Administrative Services Director

PERFORMANCE BOND

(Title 63, Chapter 56, U. C. A. 1953, as Amended)

That _____ hereinafter referred to as the "Principal" and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ and authorized to transact business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah, hereinafter referred to as the "Obligee, " in the amount of _____ _____ DOLLARS ($_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 20____, to construct _____ in the County of _____, State of Utah, Project No. _____, for the approximate sum of _____ _____ Dollars ($_____), which Contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the Contract in accordance with the Contract Documents including, but not limited to, the Plans, Specifications and conditions thereof, the one year performance warranty, and the terms of the Contract as said Contract may be subject to Modifications or changes, then this obligation shall be void; otherwise it shall remain in full force and effect.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the state named herein or the heirs, executors, administrators or successors of the Owner.

The parties agree that the dispute provisions provided in the Contract Documents apply and shall constitute the sole dispute procedures of the parties.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the Provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20_____.

WITNESS OR ATTESTATION:

_____

PRINCIPAL:

_____

By: _____ (Seal)

Title: _____

WITNESS OR ATTESTATION:

_____

SURETY:

_____

By: _____

Attorney-in-Fact (Seal)

STATE OF _____)
) ss.
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, being by me duly sworn, did say that he/she is the Attorney in-fact of the above-named Surety Company and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20_____.

My commission expires: _____

Resides at: _____

_____

NOTARY PUBLIC

Agency: _____
Agent: _____
Address: _____
Phone: _____

Approved As To Form: May 25, 20050
By Alan S. Bachman, Asst Attorney General

PAYMENT BOND

(Title 63, Chapter 56, U. C. A. l953, as Amended)

KNOW ALL PERSONS BY THESE PRESENTS:

That _____ hereinafter referred to as the "Principal," and _____ _____, a corporation organized and existing under the laws of the State of _____authorized to do business in this State and U. S. Department of the Treasury Listed (Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies); with its principal office in the City of _____, hereinafter referred to as the "Surety," are held and firmly bound unto the State of Utah hereinafter referred to as the "Obligee," in the amount of _____ Dollars ($_____) for the payment whereof, the said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____, 20____, to construct _____ in the County of _____, State of Utah, Project No. _____ for the approximate sum of _____ _____ Dollars ($_____), which contract is hereby incorporated by reference herein.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay all claimants supplying labor or materials to Principal or Principal's Subcontractors in compliance with the provisions of Title 63, Chapter 56, of Utah Code Annotated, l953, as amended, and in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise it shall remain in full force and effect.

That said Surety to this Bond, for value received, hereby stipulates and agrees that no changes, extensions of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any way affect its obligation on this Bond, and does hereby waive notice of any such changes, extensions of time, alterations or additions to the terms of the Contract or to the Work or to the specifications or drawings and agrees that they shall become part of the Contract Documents.

PROVIDED, HOWEVER, that this Bond is executed pursuant to the provisions of Title 63, Chapter 56, Utah Code Annotated, 1953, as amended, and all liabilities on this Bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

WITNESS OR ATTESTATION:

_____

PRINCIPAL:

_____

By: _____
(Seal)

Title: _____

WITNESS OR ATTESTATION:

_____

SURETY:

_____

By: _____
Attorney-in-Fact (Seal)

STATE OF _____)
) ss.
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, being by me duly sworn, did say that he/she is the Attorney-in-fact of the above-named Surety Company, and that he/she is duly authorized to execute the same and has complied in all respects with the laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations, and that he/she acknowledged to me that as Attorney-in-fact executed the same.

Subscribed and sworn to before me this _____ day of _____, 20_____.

My commission expires: _____
Resides at: _____

_____
NOTARY PUBLIC

Agency: _____
Agent: _____
Address: _____
Phone: _____

Approved As To Form: May 25, 2005
By Alan S. Bachman, Asst Attorney General

STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT _____ PROJECT NO: _____

AGENCY/INSTITUTION _____

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.

The Owner 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).

The Owner 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:

_____

_____

A list of items to be completed or corrected 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 Contractor shall complete or correct the Work on the list of items appended hereto within _____ calendar days from the above date of issuance of this Certificate. The amount withheld pending completion of the list of items noted and agreed to shall be: $_____.

_____ by: _____
CONTRACTOR (include name of firm) DATE

_____ by: _____
A/E DATE

_____ by: _____
USING INSTITUTION OR AGENCY DATE

_____ by: _____
DFCM DATE

cc: Parties Noted
DFCM, Director

STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

PAST PERFORMANCE RATING EVALUATION

Date_____ Evaluator_____ FVN#_____

Reference checked for _____
Name of Contractor or A/E

- ☐ Corporation
- ☐ Partnership
- ☐ LLC
- ☐ Individual or Sole Proprietorship
- ☐ Other _____

Address _____ City _____ Zip _____

Phone _____ Fax _____ Firm Contact Name _____

Project referenced *(Name of Project, Agency, Location)* _____

Project Completion Date *(MM/YYYY)* _____ Contract Amount $ _____

Reference Contact *(Name/Title)* _____ Reference Contact Phone *(000-000-0000)* _____

What did the firm do for you? *(e.g. design work, construction service, cost auditing, studies, commissioning, other.)* _____

Rating Guideline	**QUALITY OF PRODUCT OR SERVICES**	**COST CONTROL**	**TIMELINESS OF PERFORMANCE**	**BUSINESS RELATIONS**
5-Exceptional	Contractor/AE has demonstrated an exceptional performance 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 "Very Good"			
4-Very Good	Contractor/AE is in compliance with contract requirements and/or delivers quality product/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-Satisfactory	Minor inefficiencies/errors have been identified	Contractor/AE is usually effective in managing cost	Contractor/AE is usually effective in meeting milestones and delivery schedules	Response to inquires technical/service/administrative issues is somewhat effective
2-Marginal	Major problems have been encountered	Contractor/AE is having major difficulty managing cost effectively	Contractor/AE is having major difficulty meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is marginally effective
1-Unsatisfactory	Contractor/AE is not in compliance and 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/administrative issues is not effective

Rate The Following	**Rating 1-5 (5 = Highest)**	**Comments**
Quality of Product or Service		
Cost Control		
Timeliness of Performance		
Business Relations		
OVERALL RATING		***Signature of Rater*:**_____

4110 State Office Building, Salt Lake City, Utah 84114 · telephone 801-538-3018 · facsimile 801-538-3267 · www.dfcm.utah.gov