Request for Proposals for Design/Build Services

SINGLE-STAGE COMPETITION

Value Based Selection Method

March 8, 2010

UTAH SHAKESPEARIAN FESTIVAL METAL STORAGE BUILDING

SOUTHERN UTAH UNIVERSITY

CEDAR CITY, UTAH

DFCM Project No. 09221730

TABLE OF CONTENTS

	Page Numbers
Title Sheet	1
Table of Contents	2
Notice to Design / Build Teams	3
Description of Work	4
Procurement Process	5
Project Schedule	14
Cost Proposal Form	15
Bid Bond	17
Instructions and Subcontractors List Form	18
Design / Build Agreement	21
Performance Bond	38
Payment Bond	39
Certificate of Substantial Completion	40

Current copies of the following documents are hereby made part of this Request for Proposals for Design/Build Services. These documents are available on the DFCM web site at http://dfcm.utah.gov/StdDocs/index.html "Standard Documents" – "Reference Documents I" – "Item 6. Supplemental General Conditions" or are available upon request from DFCM:

DFCM Supplemental General Conditions dated July 1, 2009 *
DFCM Supplemental General Conditions dated July 15, 2008
DFCM Design Manual dated March 15, 2006
DFCM General Conditions dated May 25, 2005
DFCM Application and Certificate for Payment dated May 25, 2005

*** NOTE: THE NEW SUPPLEMENTAL GENERAL CONDITIONS EFFECTIVE JULY 1, 2009 ADDRESSING HEALTH INSURANCE AND IMMIGRATION 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 DESIGN / BUILD TEAMS
SINGLE-STAGE COMPETITION

The Division of Facilities Construction and Management (DFCM) intends to hire a Design/Build Team comprised of a General Contractor supported by subcontractors and an A/E with supporting technical consultants to design and construct the following project:

UTAH SHAKESPEARIAN FESTIVAL - METAL STORAGE BUILDING
SOUTHERN UTAH UNIVERSITY – CEDAR CITY, UTAH
DFCM PROJECT NO. 09221730

The project estimated cost is $200,000.00. This design/build project will include providing a pre-engineered metal building 100' x 60' of open storage space. The 6000 SGF facility will have unobstructed open floor space, a 16' minimum clear ceiling height and a level concrete slab floor. In addition, a required pipeline and fire hydrant for fire suppression and a 12' wide hard surface (asphalt) driveway.

The RFP documents will be available at **12:00 PM on Monday March 8, 2010** distributed in electronic format only on CDs from DFCM, 4110 State Office Building, Salt Lake City, Utah 84114 and on the DFCM web page at http://dfcm.utah.gov For questions and directions regarding this project, please contact Jeff Reddoor *Project Manager*, DFCM, at 801-971-9830. No others are to be contacted regarding this project.

The Design/Build Team for this work will be selected by a Value Based Selection RFP method. A **MANDATORY** Pre-Proposal Meeting for all Design/Build Teams (A/E's & General Contractors) will be held at **1:00 PM on Monday March 22, 2010,** at Southern Utah University – Facilities Building 385 S. 1275 W. Cedar City, Utah 84720. All prime Contractors, Architects and Engineers wishing to submit on this project must attend this meeting.

The proposal documents that are requested in the RFP must be submitted to DFCM at 4110 State Office Building, Salt Lake City, Utah, by the dates and times shown in the Project Schedule.

A Bid Bond in the amount of five percent (5%) of the proposal amount, made payable to the Division of Facilities Construction and Management on the DFCM 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
JOANNA REESE, CONTRACT COORDINATOR
4110 State Office Bldg., Salt Lake City, Utah 84114

DESCRIPTION OF WORK

Construct a “cold” storage pre engineered metal building 100’ x 60’ (6000 SGF)unobstructed open floor space a 16’ minimum clear ceiling height and level concrete slab floor. The facility will be insulated but not heated or air-conditioned. Minimal entry requirements will consist of one passage door and one garage type door. Minimal electrical services consisting of interior lighting, convenience outlets and exterior security lighting.
The building will require a pipeline and fire hydrant for fire suppression.
Over excavating of existing site soils for both the footings and slab will be required
A 12’ wide hard surface (asphalt) driveway will be required

Project Risk Factors

(Include in this area the risks that have been identified for the project)

The Design/Build Team will be selected using a Single Stage Value Based Selection method. Each Design/Build Team will submit a preliminary design and cost proposal that demonstrates compliance with project scope and budget as outlined in the RFP.

Following the VBS Selection Committee’s determination of the Design/Build Team whose proposal provides the greatest value to the State a stipend of $ 2,100.00 will be awarded to the other short listed finalists who met all submittal requirements but were not selected. In return for accepting the stipend, the State can incorporate portions or ideas of all three design/construction solutions. Upon successful completion of contract negotiations, a Notice to Proceed will be provided to the selected team.

PROCUREMENT PROCESS

The State of Utah intends to enter into an agreement with a firm to provide Design/Build services as described. The selection of the Design/Build Team will be made using a Value Based Selection (VBS) system.

1. Request for Proposals Documents for Design/Build Team

The Request for Proposals for Design/Build Services (RFP) consists of all of the documents listed in the Table of Contents and all said documents are incorporated in this RFP by reference. The RFP will be available at DFCM per the attached schedule and on the DFCM web site at http://dfcm.utah.gov.

2. Contact Information

Except as authorized by the DFCM Representative or as otherwise stated in the 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.

3. Requests for Information

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

Jeff Reddoor (DFCM Representative)
Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114
E-mail: jreddoor@utah.gov
Facsimile: 435-743-6624

4. Project Schedule

The Project Schedule lists the important events, dates, times and locations of meetings and submittals. The terms of the project schedule are hereby incorporated by reference and must be met by the selected team.

5. Mandatory Pre-Proposal Meeting

A mandatory pre-submittal meeting will be held on the date and time and at the location listed on the Project Schedule. A representative from each interested general contractor firm and each interested prime design firm is required to attend. During the meeting, a presentation will be made to describe the overall scope of work and

intended schedule. Interested firms may ask questions and request clarification about the project and the procurement process.

Sub-consultants and subcontractors are invited to attend this meeting, but it is not mandatory for them.

The prime construction and prime design firms absence from the pre-submittal meeting and/or failure to register precludes participation as a submitting firm on this project.

6. Submittal Due Dates and Times

All required submittals must be delivered to, and be received by DFCM prior to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. If using a courier service, the Design/Build Team is responsible for ensuring that delivery will be made directly to the required location. It is your responsibility to allow for the time needed to park on Capitol Hill as recent construction activity has made the parking more difficult. Identification is required to enter the building.

7. Last Day to Submit Questions

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

8. Cost Proposal

Cost Proposals are required to be within the stated design/build budget of $ 200,000.00. Before submitting a proposal, each Design/Build Team shall carefully examine the RFP, visit the site of the Work, fully inform themselves as to all existing conditions and limitations, and shall include in the Cost Proposal the cost of all items required by the RFP. The Team is responsible for complying with all applicable laws, building codes, rules and regulations.

The Cost Proposal, bearing original signatures, must be typed or handwritten in ink on the cost proposal form provided in the RFP 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, Utah 84114. Late proposals will be disqualified and returned to the proposer unopened. One copy of the cost proposal is required.

9. Compliance with Construction Budget

The stated budget is a "Guaranteed Maximum Price/Not to Exceed" (GMP/NTE) and DFCM expects to receive cost proposals that are within the stated construction budget. While all contractors are generally encouraged to submit cost reduction proposals as appropriate, those who are not able to submit a cost proposal within the budget are particularly requested to submit cost reduction proposals to bring the cost within the budget. Contractors may, however, submit cost proposals that exceed the budget but they will be addressed in the manner explained below.

After the deadline for submitting cost proposals, DFCM staff will open proposals to identify those contractors whose cost proposals, net of any potentially acceptable cost reduction proposals, are within the stated budget. Cost proposals will be kept confidential and will not be disclosed to the selection committee until after the interviews and preliminary deliberations are completed. No information regarding a contractor's cost and cost reduction proposals will be disclosed to competing contractors prior to the completion of the selection process.

Only contractors whose cost proposals, less any potentially acceptable cost reduction proposals, are within the stated budget for the contract will be invited to an interview. If no proposals are received from responsive and responsible contractors whose cost proposal, less any potentially acceptable cost reduction proposals, are within the stated budget for the contract, DFCM will determine which of the following actions to take:

A. DFCM may increase the stated budget for the contract and proceed with the selection process with only those contractors whose cost proposals, less any potentially acceptable cost reduction proposals, are within the revised budget for the contract. The determination of sources of additional funding and how much the budget will be increased is solely at the discretion of DFCM.

B. DFCM may reduce the scope or requirements of the contract. This will be evidenced in an addendum to the RFP which will also set a new deadline for submitting revised cost proposals and cost reduction proposals. Only qualified contractors who had previously submitted a cost proposal in accordance with the RFP may be considered in this extended procurement process.

C. DFCM may reject all proposals.

10. Cost and Scope Adjustment Proposals

Design/Build Teams may submit Cost and Scope Adjustment Proposals by the deadline indicated on the Project Schedule. Sufficient description of the adjustment as well as the impact on the Cost Proposal must be provided to allow for evaluation by the Selection Committee of the impact on scope, functionality, durability, long term cost efficiency and initial cost. The amount shown on the base Cost Proposal should not include the impact of the Cost and Scope Adjustment Proposals.

The Cost and Scope Adjustment Proposals will be evaluated by DFCM and the user to determine if they are potentially acceptable. Prior to the interviews, each contractor will be notified as to which of their Cost or Scope Adjustment Proposals are determined to be potentially acceptable and which ones will not be considered in the selection process. Only those Cost and Scope Adjustment Proposals that are determined to be potentially acceptable may be presented in the interview. Design/Build Teams may not submit additional Cost and Scope Adjustment Proposals after the deadline. Any new Cost and Scope Adjustment Proposal that is raised in the interview process that was not submitted prior to the deadline will not be considered in the selection process. The Cost and Scope Adjustment Proposals that are accepted will be included in the original contract. DFCM retains the right that, if it determines that a cost reduction proposal is desirable but the proposed change is so substantial that its consideration in the selection process would not allow for the fair and equitable treatment of all contractors, DFCM may, at its option, include the proposed change of contract requirements in an addendum and allow all qualified contractors to submit a new proposal.

11. Listing of Subcontractors

A listing of subcontractors is not required at the time of submission in a design/build delivery, but is required to be submitted to DFCM at the time subcontractor selection is completed by the general contractor or within 24 hours of written notice from the DFCM representative. The subcontractors required to be listed are as specified in the Instructions and Subcontractors List Form which are included as part of this RFP. Requirements for listing additional subcontractors are as follows: **NO ADDITIONAL REQUIREMENTS**

As additional subcontractors are identified, the subcontractor list shall be updated and submitted to the DFCM representative. 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.

12. 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.

13. Past Performance and References

As each DFCM project is completed, DFCM, the Contractor and A/E will evaluate each other and will also be evaluated by the using agency/institution. It is the intent of DFCM that this process will be the major source for evaluating past performance.

Contractors and A/Es shall submit past performance and reference information 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 prime contractor and each prime design firm 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 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)

14. Statements of Qualifications

The submitting Design/Build Team shall provide seven copies of the Statements of Qualifications. The Statement of Qualifications is a short document that addresses the selection criteria. It indicates the experience and qualifications of the Design/Build Team, the construction project manager, the lead designer, and other critical members of the team. It describes what talents their team brings to the project, how their knowledge of the subject will provide benefit to the process, how the team has been successful in the past and how that relates to this project. It should include information on similar projects that have been completed by the Design/Build Team, construction project manager, lead designer, and other team members. Include the experience and special qualifications that are applicable to this project and/or are part of the project specific selection criteria.

15. Design Proposal

The following is a list of all items to be submitted by the Design Proposal due date:

- Presentation Boards (one of each required drawing). Each board will be 24” x 36”.
- Required Drawings (six sets). Each drawing sheet will be sized sufficient to demonstrate the detail of the drawings.
    - Site Drawing, including but not limited to:
        - Plan showing all site development: building footprints and floor elevations, roads, parking, drainage - Scale 1”=50'-0" (minimum).
        - Circulation showing entries, exists, service access, site fire access lane, pedestrian paths, building entries, Scale 1”=50'-0" (minimum).
        - Landscaping, Scale 1”=50’-0” (minimum).
    - Floor Plans for each floor of the building(s), Scale 1/8"=1'-0" (minimum).
    - Elevations, including but not limited to:
        - All four elevations of the building(s), Scale 1/8"=1'-0" (minimum).
        - Unique elevations of other sections of the building(s), Scale 1/8"=1'-0" (minimum).
    - Transverse and longitudinal sections, Scale 1/8"=1'-0" (minimum).
    - Details as required to show design approach, and to demonstrate quality.
    - One perspective view drawing
- Complete outline specifications (6 sets)
- Adequate narrative description of each system (electrical, mechanical, plumbing, structural, security, etc. (six sets)
- A complete list of exclusions or exceptions from requirements listed in the requirements of the projects.

16. Management Plan

The Design/Build Team shall submit seven copies of a Management Plan by the time indicated on the Project Schedule. The Management Plan should demonstrate how the Design/Build Team is organized, the role of team members, and how the team will work together to achieve the objectives of the project. It should identify decision making authority and point of contact.

The Management Plan should address in a general manner how the Team will accomplish the objectives of the project, mitigate the project risks identified by the Team, and address any other selection criteria not addressed elsewhere in the Team's submittals. It should include a preliminary project schedule indicating how the Team will accomplish the desired completion timeframe.

The Management Plan should be concise yet contain sufficient information for evaluation by the Selection Committee.

17. Time

One of the selection criteria will be proposed contract time. The Design/Build Team will include in the Preliminary Management Plan the schedule for completing the work including any items required by DFCM or the A/E. A Substantial Completion date prior to **October 29, 2010** is requested but not mandatory.

It is anticipated that an Agreement will be given to the contractor for signature following concurrence of the design and accepted scope of work, including any accepted deviations from the program and accepted cost adjustment if required. The actual notice to [proceed will be promptly issued following the return of the signed Agreement and bonds by the contractor. The actual completion date will be based on the contractor's proposed schedule and any adjustments that are required due to the refined scope of work established following award, which are documented in the Agreement; all as agreed to by the DFCM.

All plans, schedules, and the cost proposals are required to reflect the proposed design and 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.

18. Termination or Debarment Certifications

The general contractor and prime design firm of the Design/Build Team 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. These firms must also certify that neither the firm nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the firm cannot certify these two statements, the firm shall submit a written explanation of the circumstances for review by DFCM. Design/Build Teams are to submit these certifications with their Statement of Qualifications.

19. Selection Committee

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

20. Interviews

Interviews will be conducted with all responsive and responsible Design/Build Teams except as follows. If more than three Design/Build Teams submit proposals and meet other requirements, DFCM may convene the Selection Committee to develop a list of contractors to be invited to interviews. This evaluation will be made using the selection criteria noted below. The information provided by the past performance/references, Preliminary Management Plan and Statement of Qualifications will be the basis for this evaluation.

The purpose of the interview is to allow the Design/Build Team to present its qualifications, past performance and preliminary management plan. It will also provide an opportunity for the Selection Committee to seek clarification of the Team's proposal.

The proposed primary project management personnel, including the project manager and Architect, should be in attendance. The project manager is the Design/Build Team's representative who will have full responsibility for the design and construction of the project. 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-consultants and subcontractors is at the discretion of the contractor.

The method of presentation is at the discretion of the Design/Build Team. The interviews will be held on the date and at the place specified in the Project Schedule.

21. Selection Criteria

The following criteria will be used in arriving at the successful design/build team. The criteria are not listed in any priority order. The Selection Committee will consider all criteria in performing a comprehensive evaluation of the proposal.

The following criteria will be used in ranking each of the construction firms. The firm 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 and determine how much weight to give to each item in performing a comprehensive evaluation of the proposal. Weights have been assigned to each criteria in the form of points.

1. Design Proposal. **15 POINTS.** The Design/Build Team's design as presented in the drawings and specifications as clarified in the interviews will be evaluated as to how well it meets the objectives of the project.

2. Schedule. **15 POINTS.** The contractor's schedule will be evaluated as to how well it meets the objectives of the project. Unless other objectives are stated the shorter the construction duration that is evaluated to be feasible while maintaining safety and quality in conformance with the construction documents is preferred. The contractor shall discuss during the interview the project schedule identifying major work items with start and stop dates that are realistic and critical subcontractors and if they have reviewed and agree to the schedule. The overall completion date shown on the schedule will be used in the contract as the contract completion date.

3. DFCM Past Performance Rating. **15 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. If the DFCM past performance ratings are not available a rating will be established using any DFCM past performance ratings that are available, supplemented by references supplied by the contractor at the time the proposals are submitted.

4. Strength of Contractor's Team. **15 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. Consideration will also be given to the portions of the project that the contractor will self perform and the strength brought to the team by critical subcontractors including how they were selected and the success the contractor has had in working with them.

5. Project Management Approach. **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 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. Keep the site safe; 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. This may include cost reduction ideas or proposals.

6. Cost. **25 POINTS.** The contractor's proposal will be considered with all other criteria to determine the ranking of firm.

The following criteria are project specific. They are added to the above criteria in determining the selection that represents the best value for the state.

TOTAL POSSIBLE POINTS: 100 POINTS.

22. Award of Contract

The selection of the Design/Build Team will be made using the Value Based Selection system (VBS). The award of the Contract shall be in accordance with the criteria set forth in the Request for Proposals (RFP). The State of Utah intends to enter into an agreement with the prime contractor to construct the project as outlined. Individual contractors or alliances between two or more contractors are allowed in this process. The State will contract with only one legal entity.

23. Contract and Bond

The Design/Build Agreement will be in the form included in the RFP documents. The contract time will be as indicated in the proposal. The selected contractor, simultaneously with the execution of the contract agreement, 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. Subcontractors are not required to be bonded unless a specific requirement for such is included in the RFP documents.

24. Licensure

The Design/Build Team shall comply with and require all of it's A/Es consultants, sub-consultants, and subcontractors to comply with the license laws as required by the State of Utah.

25. Permitting

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.

26. Financial Responsibility of Contractors and Subcontractors

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

27. Withdrawal of Proposals

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

28. Time is of the Essence

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

29. Right to Reject Proposals

DFCM reserves the right to reject any or all proposals.

PROJECT SCHEDULE

PROJECT NAME: UTAH SHAKESPEARIAN FESTIVAL - METAL STORAGE BUILDING
SOUTHERN UTAH UNIVERSITY – CEDAR CITY, UTAH
DFCM PROJECT NO. 09221730

Event	Day	Date	Time	Place
RFP for Design/Build Teams Available	Monday	March 8, 2010	Noon	DFCM 4110 State Office Bldg SLC, UT and the DFCM web site *
MANDATORY Pre-Proposal Meeting	Monday	March 22, 2010	1:00 PM	SUU – Facility Mngt. Bldg. 385 S. 1275 W. Cedar City, Utah
Last Day to Submit Questions	Monday	March 29, 2010	4:00 PM	*Jeff Reddoor* - DFCM E-mail jreddoor@utah.gov Fax 435-743-6624
Addendum Deadline (exception for bid delays)	Thursday	April 1, 2010	4:00 PM	DFCM web site*
Management Plans, References, Statements of Qualifications, Cost Proposals and Cost/Scope Adjustments, and Termination / Debarment Certifications Due	Tuesday	April 20, 2010	12:00 NOON	DFCM 4110 State Office Bldg SLC, UT
Short list by selection committee (If Needed)	Monday	April 26, 2010	5:00 PM	
Interviews	Thursday	April 29, 2010	TBA	TBA
Announcement of Selection	Monday	May 3, 2010	12:00 Noon	DFCM web site*

*** 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 Contractors" and in accordance with the "Request for Proposals" for the **Utah Shakespearian Festival - Metal Storage Buildings – Southern Utah University – Cedar City, Utah – DFCM Project 09221730** and having examined the Contract Documents and the site of the proposed Work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of labor, hereby proposes to furnish all labor, materials and supplies as required for the Work in accordance with the Contract Documents as specified and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the Work required under the Contract Documents of which this bid is a part:

I/We acknowledge receipt of the following Addenda: _____

For all work shown on the Drawings and described in the Specifications and Contract Documents, I/we agree to perform for the sum of:

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

I/We guarantee that the Work will be Substantially Complete by **October 29, 2010**, should I/we be the successful proposer and agree to pay liquidated damages in the amount of $250.00 per day for each day after expiration of the Contract Time as stated in Article 3 of the Contractor's Agreement.

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

Enclosed is a 5% bid bond, as required, in the sum of _____

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

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within ten (10) 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.

The Bid Bond attached, in the amount not less than five percent (5%) of the above bid sum, 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

DFCM FORM 5c-2 070109

INSTRUCTIONS AND SUBCONTRACTORS LIST FORM

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 OWNER'S REFUSAL TO ENTER INTO A WRITTEN CONTRACT WITH BIDDER. ACTION MAY BE TAKEN AGAINST BIDDERS BID BOND AS DEEMED APPROPRIATE BY OWNER. ATTACH A SECOND PAGE IF NECESSARY.

4110 State Office Building, Salt Lake City, Utah 84114 - telephone 801-538-3018 – facsimile 801-538-3677 – http://dfcm.utah.gov

DFCM AND DESIGN/BUILD TEAM AGREEMENT

THIS AGREEMENT made and entered into this _____ day of ____, 20__, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter referred to as the "DFCM", and (**FILL IN DESIGN/BUILD FIRM) _____**, a corporation authorized to do business in the State of Utah and consisting of a legally recognized business entity in the State of Utah and general contracting/ construction management and architectural/engineering components, which are to be performed by (**FILL IN DESIGN/BUILD FIRM**) **_____**, or entities under contract with **(FILL IN DESIGN/BUILD FIRM) _____**, as appropriate. **(FILL IN DESIGN/ BUILD FIRM**) **_____**, shall hereinafter be referred to as "DESIGN/BUILD TEAM".

WITNESSETH: WHEREAS, DFCM intends to have Work performed at

_____
_____
_____

WHEREAS, DESIGN/BUILD TEAM agrees to perform the Work for the sum stated herein.

NOW, THEREFORE, DFCM and DESIGN/BUILD TEAM for the consideration provided in this Agreement, agree as follows:

INTRODUCTION:

This Agreement is between DFCM and DESIGN/BUILD TEAM, consisting of the prime general contractor who shall also responsibly represent it's A/E's, architect's, engineer's, suppliers, consultants, subconsultants and subcontractors at any tier. There are designer and general contractor responsibilities identified in this Agreement. There are important documents incorporated by reference. While the DESIGN/BUILD TEAM maintains liability for all design and general contractor functions, the specific functions referred to in this Agreement as well as the documents incorporated by reference, shall be performed by the respective personnel of the DESIGN/ BUILD TEAM that are qualified architects/engineers and general contractors.

The identity of the leaders of the specific functions of the DESIGN/BUILD TEAM are attached to this Agreement, entitled Exhibit "A." and made a part of this Agreement. Said leadership shall not be changed or substituted without written approval of the DFCM.

ARTICLE 1.
DOCUMENTS INCORPORATED BY REFERENCE AND GENERAL PROVISIONS

1.1 DOCUMENTS INCORPORATED BY REFERENCE:

1.1.1 **Request for Proposals and General Conditions.** The DESIGN/ BUILD TEAM and DFCM shall be bound by their respective obligations, duties and rights as referred to in the Request for Proposals

identified as "Announcement of Design/Build Competition for the Design and Construction of the (**FILL IN TITLE OF RFP DOCUMENT**) _____, herein after identified as "Announcement of Design/Build Competition" and dated _____, inclusive of all addenda, as well as the DFCM General Conditions dated May 25, 2005 ("General Conditions") and the DFCM Supplemental General Conditions dated July 15, 2008 and July 1, 2009 (also referred to as "General Conditions"), and on file with the Division of Facilities Construction and Management and by this reference incorporated herein. The Cost Proposal Form is hereby attached and made part of this agreement and is entitled Exhibit "B". It is intended that this DESIGN/BUILD TEAM's Agreement not reiterate all the applicable provisions of said Request for Proposals and the General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated. Unless the context provides otherwise, all the definitions and interpretations of provisions of this DESIGN/BUILD TEAM's Agreement shall be as stated in said Announcement of Design Build Competition and the General Conditions. In case of conflict between the provisions of this DESIGN/BUILD TEAM's Agreement, the Announcement of Design/Build and the General Conditions, the following shall indicate which provision controls:

(1) This Agreement shall control over conflicting provisions in the Announcement of Design/Build Competition and/or General Conditions.

(2) The Announcement of Design/Build Competition shall control over conflicting provisions in the General Conditions.

Said General Conditions shall be construed in such a manner as that any reference to a right, responsibility, or duty of the General Contractor (Contractor) referred to in the General Conditions shall be deemed to refer to the DESIGN/BUILD TEAM. Any reference to A/E in the General Conditions shall be deemed to refer to the DESIGN/BUILD TEAM Architect/Engineer as applicable, and shall also be bound by the provisions in the General Conditions that refer to the duties and responsibilities of the A/E in the General Conditions. Unless otherwise specified by this Agreement, the definitions in the General Conditions shall apply to this Agreement.

1.1.2 **The Project Defined.** The Project is the total design and construction for which the DESIGN/BUILD TEAM is responsible, including all professional design services and all labor, materials and equipment used or incorporated in such design and construction for the project referenced by the Announcement of Design/Build Competition in Paragraph 1.1.1 above.

.

1.1.3 **The Work Defined**. The Work comprises the completed construction designed under the Project and includes labor necessary to produce such construction, and materials and equipment incorporated or to be incorporated in such construction.

1.2 EXECUTION, CORRELATION, CONTRACTUAL RELATIONSHIP AND INTENT

1.2.1 This Agreement shall be signed in not less than duplicate by the DFCM and DESIGN/ BUILD TEAM.

1.2.2 Nothing contained in this Agreement and the Contract Documents shall create a professional obligation or contractual relationship between the DFCM and any third party, including subcontractors, A/E's, consultants and suppliers at any tier of the DESIGN/BUILD TEAM. Notwithstanding this, it is understood and agreed that the DFCM is the intended third party beneficiary of all contracts for design or engineering services, all subcontracts, purchase orders and other agreements between the DESIGN/BUILD TEAM and third parties.

The DESIGN/BUILD TEAM shall incorporate the obligations of this Agreement into its respective subcontracts, supply agreements and purchase orders. The DESIGN/BUILD TEAM shall also be responsible to the DFCM for wrongful or negligent acts, errors or omissions of it's A/E, consultants, subcontractors, suppliers, agents and employees or those in privity with the DESIGN/BUILD TEAM, at any tier.

1.3 CONTRACT DOCUMENTS. The Contract Documents consist of the General Conditions adopted by the Utah State Building Board on May 25, 2005; the DFCM Design Manual dated May 25, 2005 and on file with the office of DFCM; this Agreement; the Conditions of the Contract (General and Supplementary Conditions); and all competition documents provided by DFCM to DESIGN/BUILD TEAM and all competition documents provided by DESIGN/BUILD TEAM to DFCM, which are identified in a list entitled Exhibit "C", hereby attached and made part of this Agreement. Clarifications to said proposal documents are hereby identified in Exhibit "D", which is hereby attached and made part of this Agreement. All such Contract Documents referred to in this Paragraph 1.3 are hereby incorporated by reference herein. Any reference in this Agreement to certain provisions of the Contract Documents shall in no way be construed as to lessen the importance or applicability of any other provisions of the Contract Documents.

1.4 CONTRACT DOCUMENTS COMPLIANCE, TERMS, INDEPENDENT CONTRACTOR. The Work to be performed shall be in accordance with all of the Contract Documents. All terms used in this Agreement shall be as defined in the Contract Documents, and in particular, the General Conditions, except as otherwise provided in this Agreement. The DESIGN/ BUILD TEAM Agrees to furnish labor, materials and equipment to complete the Work as required in the Contract Documents which are hereby incorporated by reference. It is understood and agreed by the parties hereto that all Work shall be performed as required in the Contract Documents and shall be subject to inspection and approval of DFCM or its authorized representative. The relationship of the DESIGN/BUILD TEAM to the DFCM hereunder is that of an independent contractor.

ARTICLE 2.
DESIGN/BUILD TEAM

2.1 RESPONSIBILITY ALLOCATION. The components of the Design Team shall have primary responsibilities as follows:

2.1.1 Design services shall be performed by the A/E of the DESIGN/BUILD TEAM as well as the appropriate consultants (engineers, etc) selected and paid by the DESIGN/BUILD TEAM and acting in the interest of the DESIGN/BUILD TEAM. As part of the proposal of DESIGN/ BUILD TEAM, (**FILL IN NAME OF DESIGN FIRM**) **_____** has been selected as the A/E for the Project and is, or shall be promptly, under contract with the DESIGN/BUILD TEAM. DESIGN/BUILD TEAM shall notify DFCM of any substantial change in the composition of the A/E assigned to the Project, including but not limited to any major changes of staffing or assignments of architects to the Project. Any substantial change in the composition of the A/E must be approved by DFCM in writing. The identity of the leader of the specific functions of **(FILL IN NAME OF DESIGN FIRM) _____**- is (**FILL IN NAME OF DESIGN FIRM REPRESENTATIVE**) **_____**, principal in charge of coordination of all design services. Said leadership shall not be changed or substituted without written approval of the DFCM.

2.1.2 Construction shall be performed in accordance with this Agreement and the Contract Documents by the qualified general contractor component of the DESIGN/BUILD TEAM as well as the appropriate subcontractors and suppliers at any tier in privity with the DESIGN/BUILD TEAM. Design Work shall be performed in accordance with this Agreement and the Contract Documents by the A/E component of the DESIGN/BUILD TEAM as well as the appropriate consultants at any tier in privity with the A/E.

2.1.3 The DESIGN/BUILD TEAM shall be responsible to the DFCM for wrongful or negligent acts, errors or omissions of the DESIGN/BUILD TEAM's employees and parties in privity of contract with the DESIGN/BUILD TEAM, at any tier, to perform any portion of the Work, including their agents and employees.

2.2 BASIC DESIGN SERVICES. The DESIGN/BUILD TEAM's Basic Design Services consist of those described below and any other services identified in this DESIGN/BUILD TEAM Agreement as part of Basic Services related to design, including normal structural, mechanical, electrical, and architectural as well as other consulting services reasonably necessary to fulfill the design duties and responsibilities under this Agreement and the Contract Documents. The DESIGN/BUILD TEAM shall prepare and promptly distribute minutes of all meetings. Said minutes shall not be considered official minutes until approved by the DFCM.

2.3 DESIGN DEVELOPMENT PHASE.

2.3.1 **Design Development Documents.** Based on the approved Design/Build Proposal, written authorization to proceed to Design Development signed by the DFCM, and any adjustments authorized by the DFCM in the program, or scope of work, schedule or construction budget, the DESIGN/BUILD TEAM shall prepare, for approval by the DFCM, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The Design Development Documents shall include the items listed in the Design Development Phase Checklist of the DFCM Design Manual incorporated by reference into this Agreement.

2.3.2 **Design Revisions.** The DFCM reserves the right to request minor design revisions and the DESIGN/BUILD TEAM shall promptly perform such revisions with no increase in cost beyond the Guaranteed Fixed Costs for all the Work of this Project.

2.4 CONSTRUCTION DOCUMENTS PHASE.

2.4.1 **Construction Documents.** Based on the approved Design Development Documents, and written authorization to proceed to the Construction Documents Phase signed by the DFCM, and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the DFCM, the DESIGN/BUILD TEAM shall prepare, for approval by the DFCM, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Construction Documents shall include the items listed in the Contract Document Phase Checklist of the DFCM Design Manual incorporated by reference into this Agreement.

2.4.2 **Market Changes.** It is understood that the DESIGN/BUILD TEAM assumes the risk and cost of market changes with respect to the DESIGN/BUILD TEAM's scope of work. In the event any supplier under a Purchase Agreement with the State of Utah fails to perform according to the terms of his agreement, the DESIGN/BUILD TEAM will be entitled to an equitable adjustment of the contract price and time. The DESIGN/BUILD TEAM will use its best efforts in managing those suppliers to maintain the project schedule.

2.4.3 **Assist With Filing For Governmental Approval.** When requested by the DFCM, the DESIGN/BUILD TEAM shall assist the DFCM in all reasonable requests in connection with the DFCM's responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE.

2.5.1 **Duties; In General.** After receipt of the written authorization to proceed to the Bidding or Negotiation Phase by DFCM, the DESIGN/BUILD TEAM shall obtain bids or negotiate proposals and award contracts to subcontractors, subconsultants and suppliers which are consistent with the Design/Build Agreement. The term "bid" in the Agreement is also meant to mean "proposal" where the DESIGN/BUILD TEAM is using a request for proposal procurement process.

(1) The DESIGN/BUILD TEAM shall promptly supply ten (10) complete sets of Final Construction Documents to DFCM.

(2) **Specified Subcontractors**: The specifically cited subcontractors, along with their license number (if required) and estimated cost, have been listed as a submission with the DESIGN/ BUILD TEAM cost proposal. Any substantial variation from the original estimate, submitted on (**FILL IN DATE PROPOSAL WAS SUBMITTED**) _____ as part of the Cost Proposal, shall be accompanied by a written explanation from the Contractor justifying the variation and describing how the variation meets or exceeds the "value" to the DFCM on the project.

(3) **Non-Specified Subcontractors**: The non-specified subcontractor's scope of work and estimated costs shall be listed as a submission with the DESIGN/BUILD TEAM cost proposal. Within 24 hours after the Contractor "opens" the non-specified subcontractors bid and if the bid is from a subcontractor that would otherwise be required to be part of a sublist under UCA 63-5a-208 if the procurement was performed directly by DFCM in bidding process, the DESIGN/BUILD TEAM shall submit name of the subcontractor along with their license number (if required) and estimated cost to DFCM. During the competitive bid process by the DESIGN/BUILD TEAM for these subcontractors, DFCM shall have a representative at the bid opening and subcontractor's selection.

(4) The DESIGN/BUILD TEAM shall at all reasonable times be available personally, or have available, a responsible member of his or her staff to make such interpretations of the Contract Documents as are necessary to facilitate completion of the construction contract by the DESIGN/BUILD TEAM's subcontractors and suppliers.

(5) If subcontractor's are selected through a proposal process and the DESIGN/ BUILD TEAM fails to comply with the sublist requirements of UCA 63-5a-208 for bids made applicable in this Agreement to proposals, the DESIGN/BUILD TEAM shall have 24 hours to cure such failure after receiving written notice from DFCM.

2.6 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION.

2.6.1 **Advise And Consult.** The DESIGN/BUILD TEAM shall advise and consult with the DFCM during the Construction Phase. No one shall be entitled to rely upon any representation by the DESIGN/BUILD TEAM unless it is in writing and signed by the DESIGN/BUILD TEAM Project Manager or a principal of the DESIGN/BUILD TEAM.

2.6.2 **Representations by Third Parties, and Officials, Other Than DFCM.** DESIGN/ BUILD TEAM may not rely on any representations of other state agencies, officials or any third parties unless specifically approved in writing by DFCM.

2.6.3 **Record Copy at Site.** The DESIGN/BUILD TEAM shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction. At the conclusion of the Construction Phase the DESIGN/BUILD TEAM shall prepare and furnish to the DFCM a complete set of Record Drawings (corrected original tracings or re-plotted CADD drawings), one set of mylar reproducible Record Drawings and two (2) sets of Specifications depicting the Project.

CADD Criteria. The "DFCM CADD Criteria" which is a part of the Design Manual shall be reviewed by the A/E and shall be used to define and/or supplement any terms or responsibilities under this Agreement. The DFCM CADD Criteria in the Design Manual in case of conflict, shall supercede any provision of this Agreement.

2.7 ADDITIONAL SERVICES: IN GENERAL.

2.7.1 **Written Authorization Required.** The DESIGN/BUILD TEAM shall perform all duties and responsibilities required by this Agreement and the Contract Documents for the Guaranteed Fixed Price. If the DESIGN/BUILD TEAM reasonably believes that a particular duty or responsibility is beyond that identified by this Agreement or the Contract Documents, then the DESIGN/ BUILD TEAM shall not be entitled to any amount which would result in an increase in the Guaranteed Fixed Price unless, prior to performing the subject duty or responsibility, the DESIGN/BUILD TEAM has requested in writing a Modification to this Agreement and the Modification has been approved, in writing, by DFCM. The provisions of the General Conditions regarding Modifications, requests for additional time and additional monies shall apply to this Agreement.

2.7.2 **When Not Paid by DFCM**. Notwithstanding anything to the contrary in this Agreement, DFCM shall not be responsible to pay and the DESIGN/BUILD TEAM shall not be entitled to receive, compensation for any Contingent Additional Services if such services were required due to the fault of the DESIGN/BUILD TEAM or the DESIGN/BUILD TEAM's failure to perform in accordance with the terms of this Agreement. Notwithstanding this, there shall be no right to payment for additional services or contingent additional services if such services are not approved in advance by DFCM in writing.

2.8 STANDARD FOR PERFORMANCE.

2.8.1 **Due Care and Diligence; In General.** DESIGN/BUILD TEAM shall exercise the degree of skill and diligence as exercised by members of the DESIGN BUILD TEAM'S profession having substantial experience on projects similar in type, magnitude and complexity to the Project that is the

subject of this Agreement and all of the services under this Agreement shall be performed as expeditiously as is consistent with said standards. The DESIGN/BUILD TEAM shall be liable to the Owner for claims, liabilities, additional burdens, penalties, damages or third party claims, to the extent caused by wrongful or negligent acts, errors or omissions that do not meet this standard of care.

2.8.2 **Due Care and Diligence; Discovering and Reporting Defects and Deficiencies.** The DESIGN/BUILD TEAM shall exercise due care and diligence in discovering and promptly reporting to the DFCM any defects or deficiencies in the Work. Any defective Designs or Specifications furnished by the DESIGN/BUILD TEAM shall be promptly corrected by the DESIGN/ BUILD TEAM at no cost to the DFCM, and the DESIGN/BUILD TEAM shall promptly reimburse the DFCM for all damages, if any, resulting from the use of such defective Designs or Specifications. The DFCM's approval, acceptance, use of or payment for all or any part of the DESIGN/ BUILD TEAM'S services hereunder or of the Project itself shall in no way alter the DESIGN/BUILD TEAM'S obligations or the DFCM's rights hereunder.

2.9 TESTS, INSPECTIONS AND REPORTS.

2.9.1 DFCM shall be responsible for all structural (soils and concrete), mechanical, electrical testing required by law or code. It shall be DESIGN/BUILD TEAM's responsibility to determine when, which, and to the extent that such tests, inspections and reports are required by the Contract Documents. The DFCM may review and comment, when appropriate, on the accuracy of the tests and information furnished by the DESIGN/BUILD TEAM pursuant to this Paragraph 2.9.1. The DFCM will be monitoring tests and inspections for the subject work. The DESIGN/BUILD TEAM shall coordinate all test and inspections with the DFCM. All other tests or inspections required by contract documents shall be furnished at the DESIGN/BUILD TEAM’s expense.

2.9.2 The DFCM shall be responsible for all chemical, air and water pollution tests, tests for hazardous material, and other laboratory and environmental tests, inspections and reports, including those required by law or the Contract Documents. It shall be DFCM’s responsibility to determine when, which, and to the extent that such tests, inspections and reports are required by the Contract Documents. The DFCM may review and comment, when appropriate, on the accuracy of the tests and information furnished by the DESIGN/BUILD TEAM pursuant to this Paragraph 2.9.2. The services, information, surveys and reports required by this Paragraph 2.9.2 shall be furnished at the DFCM’s expense. The DFCM will be monitoring tests and inspections for the subject work. The DESIGN/BUILD TEAM shall coordinate all test and inspections with the DFCM.

ARTICLE 3.
DFCM'S RESPONSIBILITIES

3.1 INFORMATION. The DFCM shall provide full information regarding requirements for the Project, including a program or scope of work which shall set forth the DFCM's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

3.2 RESPONSE TO DESIGN/BUILD TEAM. The DFCM shall give reasonable consideration to all sketches, estimates, working drawings, specifications, proposals, and other documents presented by the

DESIGN/BUILD TEAM; and to inform the DESIGN/BUILD TEAM of the decisions, in writing, within a fourteen (14) day time period.

3.3 DFCM PROJECT MANAGER. The DFCM shall designate a DFCM Project Manager authorized to act on the DFCM's behalf with respect to the Project. The DFCM or such Project Manager shall render decisions within a fourteen (14) day time period pertaining to documents submitted by the DESIGN/BUILD TEAM in order to avoid unreasonable delay in the orderly and sequential progress of the DESIGN/BUILD TEAM's services and Work. The DFCM may appoint an on-site project representative to observe the Work and to have such other responsibilities as the DFCM deems necessary to facilitate this Agreement.

3.4 COMMUNICATIONS. DFCM shall communicate with subcontractors at any tier and material suppliers of the DESIGN/BUILD TEAM only through the DESIGN/BUILD TEAM. DESIGN/BUILD TEAM shall communicate to DFCM directly and not through the User or any other governmental agency. DESIGN/BUILD TEAM shall not rely on any comments or writings of User without express consent in writing of DFCM.

ARTICLE 4.
TIME

4.1 DESIGN FUNCTION SCHEDULE. Time limits provided by the RFP shall not be exceeded by the DESIGN/BUILD TEAM or DFCM. Any extensions of time from the schedule shall be void and of no force and effect until such adjustments are agreed to in writing by the DFCM and DESIGN/BUILD TEAM.

4.2 CONSTRUCTION FUNCTION SCHEDULE. TIME OF COMPLETION OF CONSTRUCTION WORK AND DELAY REMEDY. The Construction Work shall be Substantially Complete within (FILL IN COMPLETION TIME) _____ (___) calendar days after the date of the Notice to Proceed. DESIGN/BUILD TEAM agrees to pay liquidated damages in the amount of $_____ per day for each day after expiration of the Contract Time until the DESIGN/BUILD TEAM achieves Substantial Completion in accordance with the Contract Documents, if the DESIGN/BUILD TEAM's delay makes the damages applicable. The provision for liquidated damages is: (a) to compensate the DFCM for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Design/Build Agreement; (c) is not a penalty; and (d) shall not prevent the DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

No PRE, Claim or action shall be maintained by the DESIGN/BUILD TEAM or Subcontractor or material supplier of DESIGN/BUILD TEAM at any tier, against the DFCM for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of the DFCM or its officers, employees or agents, except as expressly provided in the General Conditions, including procedural, timing and substantive provisions of the General Conditions.

ARTICLE 5.
PAYMENTS

5.1 COMPENSATION. The DFCM shall compensate the DESIGN/BUILD TEAM for work properly performed in accordance with the Contract Documents after the DFCM's receipt and approval of the DESIGN/BUILD TEAM's detailed monthly statement and any lien waivers or releases previously requested by DFCM.

5.1.1 **Guaranteed Fixed Contract Amount.** The DFCM agrees to pay and the DESIGN/BUILD TEAM agrees to accept in full performance of the design work and the construction Work under this DESIGN/BUILD TEAM's Agreement, not more than the sum of **(FILL IN CONTRACT AMOUNT)** _____ DOLLARS AND NO CENTS ($_____.00) which sum is the proposal amount submitted on _____ and which sum shall be the guaranteed fixed contract amount. Payment to the DESIGN/BUILD TEAM will be made within thirty (30) calendar days of receipt of payment application by DFCM.

The DESIGN/BUILD TEAM shall provide DFCM within thirty (30) days of request by DFCM, a schedule of accounts and budgets for Work which will be used as a basis for applications for payment. The DFCM agrees to pay the DESIGN/BUILD TEAM for the construction Work and the design services from time to time as the Work progresses, but not more than once each month after the date of Notice to Proceed, and only upon Certificate of the A/E as approved by DFCM which approval may not be unreasonably withheld, for Work performed during the preceding calendar month, ninety-five percent (95%) of the value of the labor performed and ninety-five percent (95%) of the value of materials furnished in place or on the site. The DESIGN/BUILD TEAM agrees to furnish to the DFCM invoices for materials purchased and on the site but not installed, for which the DESIGN/BUILDER requests payment and agrees to safeguard and protect such equipment or materials and is responsible for the safekeeping thereof and if such be stolen, lost or destroyed, to replace same.

Such evidence of labor performed and materials furnished as the DFCM may reasonably require shall be supplied by the DESIGN/BUILD TEAM at the time of request for Certificate of Payment on account. Materials for which payment has been made cannot be removed from the job site without DFCM's written approval. Five percent (5%) of the earned amount shall be retained from each monthly payment. Additional retainage shall be imposed if, in the written opinion of the Director of the Division of Facilities Construction and Management, special circumstances or considerations justify the imposition of additional retainage in the interest of the State.

5.1.2 **DESIGN/BUILD TEAM Expenses.** The guaranteed fixed contract amount shall include all expenses of the DESIGN/BUILD TEAM, including travel, lodging, per diem and other costs associated with the performance of the duties and work under this Agreement.

5.2 DESIGN/BUILD TEAM'S ACCOUNTING RECORDS. All Accounting Records shall be available to the DFCM or the DFCM's authorized representative at mutually convenient times.

ARTICLE 6.
CHANGES IN THE WORK

6.1 ADDITIONAL WORK. It is understood and agreed by the parties hereto that no money will be paid to the DESIGN/BUILD TEAM for additional labor or materials furnished unless a new contract in writing or a Modification hereof in accordance with the General Conditions and 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.

Modifications shall be issued in accordance with the General Conditions. No action, conduct, omission, prior failure or course of dealing by the DFCM shall act to waive, modify, change, or alter this requirement. Written modifications are the exclusive method for effecting any change to the contract sum or contract time. The

DESIGN/BUILD TEAM understands and agrees that the contract sum and contract time cannot be changed by implication, oral agreements, actions, inactions, course of conduct or contractor initiated change order.

ARTICLE 7.
INSURANCE, BONDS AND INDEMNIFICATION

7.1 IN GENERAL. To protect against liability, loss and/or expense arising in connection with the performance of services described under this DESIGN/BUILD TEAM's Agreement, the DESIGN/BUILD TEAM shall obtain and maintain in force during the entire period of this DESIGN/BUILD TEAM's Agreement, at its own expense, the following insurance from insurance companies authorized to do business in the State of Utah and rated "A" or better with a financial size category of Class X or larger. An exception to the above-stated rating and financial size category requirements is for the professional liability insurance referred to in 7.2.1(1) below, in which case the rating must be "B" or better with a financial size category of Class VIII or larger. All said ratings and financial size categories shall be as published by A.M. Best Company at the time this DESIGN/BUILD TEAM's Agreement is executed.

7.2 DESIGN/BUILD TEAM INSURANCE. Insurance for the general construction management and architectural components of the DESIGN/BUILD TEAM shall be provided as required below:

7.2.1 **General Contractor's Insurance.** In addition to the insurance required in Section 7.4 below, the DESIGN/BUILD TEAM shall meet all the insurance requirements for a General Contractors as required by the General Conditions.

7.3 GENERAL CONTRACTOR'S BONDS. In addition to the insurance required above, the bonds for the General Contractor functions under this Agreement shall be provided as required by the General Conditions. The 100% performance and payment bonds may exclude the amount attributable to design services as agreed to by DFCM. The performance and payment bonds must be in effect and provided to DFCM on the standard DFCM forms prior to the issuance of a notice to proceed for the actual construction work.

7.4 DESIGN INSURANCE. In addition to the insurance required above, the following insurance for the design services under this Agreement shall be provided:

7.4.1 DESIGN/BUILD TEAM Designer's Professional Liability Insurance. The DESIGN/ BUILD TEAM shall maintain a professional liability insurance policy on a claims made basis, annual aggregate policy limit based on the following chart, unless modified in an attachment to this Agreement.

Construction Budget	**Minimum Liability Coverage**
$50,000,000 and above	$2,000,000 per claim, $4,000,000 aggregate
$25,000,000 and above, but under $50,000,000	$2,000,000 per claim, $2,000,000 aggregate
$1,500,000 and above but under $25,000,000	$1,000,000 per claim, $1,000,000 aggregate
Under $1,500,000	$ 500,000 per claim, $ 500,000 aggregate

7.4.2 Valuable papers and Records Coverage and/or Electronic Data Processing (Data and Media) Coverage. The DESIGN/BUILD TEAM and all engineering consultants of the DESIGN/BUILD TEAM shall provide coverage for the physical loss of or destruction to their work product including drawings, specifications and electronic data and media.

7.5 ADDITIONAL COVERAGE. The DFCM reserves the right to require additional coverage from that stated hereinabove, at the DFCM's expense for the additional coverage portion only. DFCM also reserves the right to require project specific insurance, and if such right has been exercised it shall be indicated as an exhibit to this DESIGN/BUILD TEAM's Agreement. Unless project specific insurance is required by the DFCM, the coverage may be written under a practice policy with limits applicable to all projects undertaken by the firm but must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the DESIGN/BUILD TEAM under this DESIGN/ BUILD TEAM's Agreement. All policies provided by the DESIGN/BUILD TEAM must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of the DESIGN/BUILD TEAM's Agreement or the commencement of the DESIGN/BUILD TEAM's services. The DESIGN/BUILD TEAM's policy must also include a contractual liability endorsement applicable to the indemnity provision contained under this Article of this DESIGN/ BUILD TEAM's Agreement. Any review and approval by the DFCM does not relieve the DESIGN/BUILD TEAM of any responsibility of liability for an error, omission, submittal or work.

7.6 FURNISH EVIDENCE OF INSURANCE, CERTIFICATES, ADDITIONAL INSURED. The DESIGN/BUILD TEAM shall submit certificates in form and substance satisfactory to the DFCM as evidence of the insurance requirements of this Article. Such certificates shall provide the DFCM with thirty (30) days notice prior to the cancellation, material change or non-renewal of the applicable coverage, as evidenced by return receipt, certified mail, sent to DFCM. The DESIGN/BUILD TEAM shall notify DFCM within thirty (30) days of any claim(s) against the DESIGN/BUILD TEAM which singly or in the aggregate exceed 20% of the applicable required insured limits, and the DFCM may require the DESIGN/BUILD TEAM to reinstate the policy to provide full protection at the original limits.

The State of Utah shall be named as an insured party, as primary coverage and not contributing, on all the insurance policies required by this Article except the professional liability and workers' compensation policies. The DFCM reserves the right to request the DESIGN/BUILD TEAM to provide a loss report from their insurance carrier.

7.7 DFCM RECOURSE. The DESIGN/BUILD TEAM agrees to maintain the insurance described in this Article during the required term. If the DESIGN/BUILD TEAM fails to furnish and maintain said required insurance, the DFCM may purchase such insurance on behalf of the DESIGN/BUILD TEAM, and the DESIGN/BUILD TEAM shall pay the cost thereof to the DFCM upon demand and shall furnish to the DFCM any information needed to obtain such insurance.

7.8 INDEMNIFICATION.

7.8.1 **In General.** To the fullest extent permitted by law, the DESIGN/BUILD TEAM shall indemnify and hold harmless the State of Utah, its institutions, agencies, departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, authorized volunteers (hereinafter the above listing of entities and persons is referred to as "indemnities") from and against every kind and character of claims, damages, losses and expenses, including but not limited to attorneys' fees,

arising out of or resulting from any act or omission in the performance of the Work under this DESIGN/ BUILD TEAM's Agreement including the work of anyone directly or indirectly employed by the DESIGN/ BUILD TEAM, the DESIGN/BUILD TEAM's agent, consultant or independent contractor, or anyone for whose acts any of them may be liable, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent or intentional act or omission of the DESIGN/BUILD TEAM, anyone directly or indirectly employed by the DESIGN/BUILD TEAM, the agent, consultant or independent contractor of any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a part indemnified hereunder. The DESIGN/ BUILD TEAM shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the State of Utah shall have the right, at its option, to participate in the defense of any such action without relieving the DESIGN/BUILD TEAM of any obligation hereunder.

7.8.2 **Not Reduce Current Rights.** Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under this DESIGN/BUILD TEAM's Agreement.

7.8.3 **Not Bound By Damage Limitations Under Certain Acts.** In claims against any person or entity indemnified under this Paragraph 7.8 by an employee of the DESIGN/BUILD TEAM, anyone directly or indirectly employed by the DESIGN/BUILD TEAM, the agent, consultant or independent contractor of any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 7.8 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the DESIGN/BUILD TEAM or said employee, agent, consultant, independent contractor or anyone for whose acts any of them may be liable, under workers' or workmen's compensation acts, disability benefits acts or other employee benefit acts.

ARTICLE 8.
DISPUTE RESOLUTION

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

ARTICLE 9.
TERMINATION, SUSPENSION OR ABANDONMENT

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

ARTICLE 10.
OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

10.1 IN GENERAL. All Drawings, Specifications, other Contract Documents, as well as studies and projects prepared by the DESIGN/BUILD TEAM under this Agreement, are and shall remain the property of the DFCM, and DFCM shall retain all common law, statutory and other reserved rights with respect thereto. All other provisions regarding the use, re-use and other provision regarding such items as stated in the General Conditions shall apply.

ARTICLE 11.
MISCELLANEOUS PROVISIONS

11.1 GOVERNING LAW AND VENUE. Unless otherwise provided, this DESIGN/BUILD TEAM's Agreement shall be governed by the laws of the State of Utah. Salt Lake County, State of Utah, shall be the venue of any legal proceeding regarding the terms or enforcement of this DESIGN/BUILD TEAM's Agreement.

11.2 WAIVER TO EXTENT OF RECOVERY OF INSURANCE MONIES. The DFCM and DESIGN/BUILD TEAM waive all rights against each other and against the DESIGN/BUILD TEAM's consultants, subcontractors, agents and employees of the other for damages, but only to the extent covered by the DFCM provided Builder's Risk Policy concerning damage to the Work during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions. The DFCM and DESIGN/BUILD TEAM each shall require similar waivers from their contractors, subcontractors, consultants and agents at any tier.

11.3 BINDING AGREEMENT AND ASSIGNMENT PROVISIONS. The DFCM and DESIGN/ BUILD TEAM respectively, bind themselves, their successors, assigns and legal representatives to the other party to this DESIGN/BUILD TEAM's Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this DESIGN/BUILD TEAM's Agreement. Neither the DFCM nor the DESIGN/BUILD TEAM shall assign its interest in this Agreement without the written consent of the other, except that the Contractor hereby consents to the assignment of the DFCM's interest herein as provided in this Article 11.

11.4 INTEGRATION AND AMENDMENT. This DESIGN/BUILD TEAM's Agreement represents the entire and integrated agreement between the DFCM and DESIGN/BUILD TEAM and supersedes all prior negotiations, representations or agreements, either written or oral. Except for Construction Change Directives issued under the General Conditions, this Agreement may be amended only by written instrument signed by both DFCM and DESIGN/BUILD TEAM.

11.5 THIRD PARTIES. Except for DFCM's third party beneficiary rights described in this Agreement, nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the DFCM or DESIGN/BUILD TEAM.

11.6 HAZARDOUS MATERIALS. The responsibilities of the DFCM and the DESIGN/BUILD TEAM regarding Hazardous Materials shall be as specified in the General Conditions and the Contract Documents.

11.7 PROMOTION. The DESIGN/BUILD TEAM shall have the right to include accurate representations of the design of the Project, including photographs of the exterior and interior, among the DESIGN/BUILD TEAM's promotional and professional materials. The DESIGN/BUILD TEAM's materials shall not include the DFCM's or the State's confidential or proprietary information if the DFCM has previously advised the DESIGN/BUILD TEAM in writing of the specific information considered by the DFCM to be confidential or proprietary. The DFCM shall provide professional credit for the DESIGN/ BUILD TEAM on the construction sign and in the promotional materials for the Project. For purposes of this Paragraph 11.7, reference to the "DESIGN/BUILD TEAM" shall include the DESIGN/BUILD TEAM's consultants.

11.8 INDEPENDENT CONTRACTOR. The DESIGN/BUILD TEAM shall be considered an independent DESIGN/BUILD TEAM, and as such, shall have no authorization, express or implied, to bind the State of Utah or the DFCM-to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or DFCM, except as specifically set forth in this DESIGN/BUILD TEAM's Agreement.

11.9 WRITTEN NOTICE. DFCM and DESIGN/BUILD TEAM shall be subject to the written notice provisions of the General Conditions.

11.10 DFCM/AGENCY REVIEW. DFCM or any other entity's (including agency user's of the State of Utah) plan reviews or any other type or nature of review shall in no way relieve the DESIGN/BUILD TEAM of design liability or contractual responsibility under this DESIGN/BUILD TEAM's Agreement. Any guidelines, specifications, drawings or plans provided by the DFCM or any other entity to the DESIGN/ BUILD TEAM shall not relieve the DESIGN/BUILD TEAM of design liability or contractual responsibility under this Agreement.

11.11 CONSULTANTS.

11.11.1 **Not Use "Sales" or "Agent" A/E's or Consultants.** The DESIGN/ BUILD TEAM agrees not to use "sales" or "agent" A/E's or consultants. Said A/E's or Consultants are not to benefit financially either directly or indirectly from the sale or use of any product on or in the Project.

11.11.2 **A/E and Consultant Qualifications.** All A/E and Consultants must be licensed in Utah for the professional practice used on the Project and be approved in writing, in advance, by the DFCM.

11.12 A/E, CONSULTANTS, SUBCONTRACTORS OF DESIGN/BUILD TEAM. Any A/E, subcontract, supplier, or consultants agreement that the DESIGN/BUILD TEAM may enter into in regard to the Project of this DESIGN/BUILD TEAM's Agreement, shall require conformance with the provisions of this DESIGN/ BUILD TEAM's Agreement, to the extent applicable.

11.13 WORK BY DFCM OR DFCM'S CONTRACTORS. The DFCM reserves the right to perform work related to, but not part of, the Project and to award separate contracts in connection with other work at the site. The DESIGN/BUILD TEAM shall cooperate with the DFCM to afford the DFCM's other contractors a reasonable opportunity for access and storage of their materials and equipment for execution of their work. The DESIGN/BUILD TEAM shall incorporate and coordinate the DESIGN/BUILD TEAM's Work with work of the DFCM's separate contractors as required by the Contract Documents. The DESIGN/BUILD TEAM shall promptly notify the DFCM if any such independent action will in any way compromise the DESIGN/ BUILD TEAM's ability to meet the DESIGN/BUILD TEAMS's responsibilities under this Agreement.

11.14 SEVERABILITY. In case a provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

11.15 OBSERVATIONS. The Work shall be observed for acceptance in accordance with the General Conditions. DESIGN/BUILD TEAM shall have a Utah duly licensed architect or engineer, visit the site at least once per week during construction and shall make appropriate observations and promptly write and send to the DFCM written reports for each site visit. DFCM may request more periodic site observations by the A/E

if needed. The A/E shall be compensated for additional work properly performed and approved in advance in writing by DFCM as well as not caused by errors and/or omissions of DESIGN/BUILD TEAM. The A/E shall report promptly any deficiencies, defects or problems with the Work or site conditions.

11.16 RELATIONSHIP OF THE PARTIES AND ASSIGNMENT. The DESIGN/BUILD TEAM accepts the relationship of trust and confidence established by this DESIGN/BUILD TEAM's Agreement and covenants with the DFCM to cooperate with the DFCM and utilize the DESIGN/ BUILD TEAM's best skill, efforts and judgment in furthering the interest of the DFCM; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work in the best and most expeditious and economic manner consistent with the interests of the DFCM.

11.17 SUCCESSORS AND ASSIGNS. The DFCM and DESIGN/BUILD TEAM, 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 DESIGN/BUILD TEAM shall not assign the Contract without the prior written consent of the DFCM, nor shall the DESIGN/BUILD TEAM assign any moneys due or to become due as well as any rights under the Contract, without prior written consent of the DFCM.

The DFCM agrees to exercise reasonable best efforts to enable the DESIGN/BUILD TEAM to perform the Work by furnishing and approving in a timely way, information required by the DESIGN/BUILD TEAM in accordance with the requirements of the Contract Documents.

11.18 AUTHORITY TO EXECUTE AND PERFORM AGREEMENT. DESIGN/BUILD TEAM and DFCM each represent that the execution of this DESIGN/BUILD TEAM's Agreement and the performance thereunder is within their respective duly authorized powers.

11.19 ATTORNEY FEES AND COSTS. Except as otherwise provided in the dispute resolution provisions of the General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in the District Court and/or appellate body to enforce this DESIGN/BUILD TEAM's Agreement or recover damages or any other action as a result of a breach thereof.

11.20 EXTENT OF AGREEMENT. This Agreement represents the entire agreement between the DFCM and DESIGN/BUILD TEAM and supersedes any prior negotiations, representations or agreements. This Agreement may be amended only by written instrument signed by both DFCM and DESIGN/BUILD TEAM. The DESIGN/BUILD TEAM and DFCM for themselves, their heirs, successors, executors, and administrators, whichever may be applicable, hereby agree to the full performance of this Agreement and the Contract Documents.

DESIGN/BUILD TEAM and DFCM each represent that the execution of this DESIGN/BUILD TEAM's Agreement and the performance thereunder is within their respective duly authorized powers.

IN WITNESS WHEREOF, the parties hereto have executed this DESIGN/BUILD TEAM's Agreement on the day and year stated hereinabove.

DESIGN/BUILD TEAM: _____

_____
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 AVAILABILITY
OF FUNDS:

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

DIVISION OF FACILITIES
CONSTRUCTION AND MANAGEMENT

_____
Lynn A. Hinrichs Date
Assistant Director Construction Management

APPROVED AS TO FORM:
ATTORNEY GENERAL
July 1, 2009
By: ALAN S. BACHMAN
Asst Attorney General

APPROVED FOR EXPENDITURE:

_____
Division of Finance Date

LIST OF ATTACHMENTS

Exhibit "A"	DESIGN/BUILD TEAM Leaders
Exhibit "B" (1.1.1)	Cost Proposal Form with Cost Breakdown
Exhibit "C" (1.3)	List of Competition Documents
Exhibit "D" (1.3)	Clarification Items

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, 2005
By Alan S. Bachman, Asst Attorney General

DFCM FORM 5c-2 070109

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

DFCM FORM 5c-2 070109

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.

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

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

_____

_____

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