STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

Solicitation for Architect / Engineer Services

Value Based Selection Method

May 16, 2011

BUILDING ADDITION
HUNTSMAN SCHOOL OF BUSINESS

UTAH STATE UNIVERSITY
LOGAN, UTAH

DFCM Project No. 11194770

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Current copies of the DFCM General Conditions dated May 25, 2005, Design Manual, and all Supplemental General Conditions are available upon request at the DFCM office and on the DFCM web site at http://dfcm.utah.gov/StdDocs/index.html - "Standard Documents" -"Reference Documents" – "Supplemental General Conditions", and are hereby made part of these contract documents by reference

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 ARCHITECTS / ENGINEERS

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

BUILDING ADDITION - HUNTSMAN SCHOOL OF BUSINESS
UTAH STATE UNIVERSITY - LOGAN, UTAH
DFCM PROJECT NO. 11194770

The new Huntsman School of Business Building is approximately 90,000gsf. The new building will be situated adjacent to the existing School of Business Building, on the south side where the existing Lund Hall currently stands. Although USU is known for a quality 'eclectic' architectural vernacular throughout the campus, situated along the well-traveled Highway 89, this new building must achieve a meaningful physical and aesthetic unity and connection with the existing School of Business, as well as being an 'expressive' identity for the entire complex. The facility will contain classrooms, lecture facilities, collaboration spaces, limited offices, and other associated support functions. Infrastructure, demolition, and other displacement and coordination considerations will figure prominently in working within the project budget and schedule.

Construction budget for this project is $24,000,000.

It is the intent of DFCM and Utah State University to select a firm qualified to **program and design** the project. The selected firm will be initially contracted to provide only programming services. If programming services are judged *satisfactory* by DFCM and USU, a full design agreement will be negotiated. If programming services are judged *unsatisfactory* by DFCM and USU, a new solicitation for design services will be issued. The selection shall be under the Value Based Selection method. The Solicitation for A/E Services documents, including the submittal requirements and the selection criteria and schedule, will be available beginning at 4:00 PM on Monday, May 16, 2011, from DFCM at the State Office Building - Room 4110, Salt Lake City, Utah 84114 and on the DFCM web site at http://dfcm.utah.gov. For questions regarding this solicitation, please contact Dave McKay, DFCM, at 801-541-9019. No others are to be contacted regarding this solicitation.

A **MANDATORY** pre-submittal meeting will be held at 3:00 PM on Thursday, May 26, 2011, at the NFS Building Room 202, Utah State University, 1200 East 800 North, Logan, Utah. All design firms wishing to submit on this project must attend this meeting.

Submittal dates for the required references, management plans, statements of qualifications, and interviews will be based on the Project Schedule included in the Solicitation for A/E Services.

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

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

PROJECT DESCRIPTION

The addition to the Huntsman School of Business at Utah State University is a 90,000gsf facility to occupy the prominent site currently occupied by Lund Hall. The $24,000,000 budget is funded jointly by the State of Utah and Utah State University. The project is intended to present a significant, unified identity to the entire Huntsman School of Business. While no major retrofit of the existing facility has been budgeted at this time, the integration of new and existing facilities in function and spirit is a major design challenge. The new addition will house classrooms, lecture halls, collaboration spaces, limited offices and other related and support spaces.

Infrastructure extension and coordination with adjacent facilities will have major impact on budget and schedule. The timing and demolition of Lund Hall will require a significant reshuffle of several major campus tenants. This project's program must coordinate budgets and timelines with these relocation needs.

DFCM and Utah State University plan to solicit CM/GC services following this programming selection to foster accurate and timely costing and constructability insight.

Construction can begin following the May 2012 graduation. Project completion is currently planned for August 2013. Of course, programming, design, and pre-construction services will guide the forming of a workable schedule.

PROCUREMENT PROCESS

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

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

1. Solicitation for A/E Documents

The Solicitation for A/E Services documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this solicitation by reference. The solicitation 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 solicitation or the pre-submittal meeting, communication during the selection process shall be directed to the specified DFCM Representative. In order to maintain the fair and equitable treatment of everyone, A/Es 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 solicitation is issued, as the project is developed, and extends through the award of an agreement. Failure to comply with this requirement may result in a disqualification in the selection process. A/Es should be aware that selection committee members will be required to certify that they have not been contacted by any of the A/Es 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:

Dave McKay (DFCM Representative)
Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114
E-mail: dmckay@utah.gov
Facsimile: 801-538-3267

4. Project Schedule.

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

5. Mandatory Pre-Submittal 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 prime 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.

Subconsultants are invited to attend this meeting but it is not mandatory for them.

THE PRIME 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, the Division of Facilities Construction and Management previous to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery. If using a courier service, the submitting firm is responsible for ensuring that delivery will be made directly to the required location. It is your responsibility to allow for the time needed to park on Capitol Hill as recent construction activity has made the parking more difficult. Identification is required to enter the building.

7. Last Day to Submit Questions

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

8. Addendum

All references to questions and requests for clarification will be in writing and issued as addenda to the Solicitation for A/E Services. The addenda will be posted on DFCM's web site.

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

9. Past Performance and References

As an A/E completes each DFCM project, DFCM, the contractors and the using agency or institution will evaluate the A/E. It is the intent of DFCM that this process will be the major source for evaluating past performance.

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 A/E 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. Additionally, each A/E wishing to compete for this project that has not completed any DFCM projects in the last five years, will be required to provide one copy of a list of references on ALL prior projects completed or worked on in the last three years. Failure to provide a complete list of projects and references for the last three years, by A/E's without a current DFCM rating will result in a disqualification from the selection process

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)

10. Management Plan

Firms will be required to develop and submit a plan demonstrating how they will manage their responsibilities, identifying risks, and how risks will be mitigated. An organization chart showing the roles and responsibilities of all pertinent decision-makers is a required part of the presentation.

Address project specific criteria, risks that have been identified by the Solicitation for A/E Services and additional risks that the team has identified. State how those risks will be mitigated.

As part of the Management Plan include your proposed project schedule. Indicate critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable.

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

The submitting firm shall provide seven copies of the Management Plan by the time indicated on the Project Schedule.

11. Statements of Qualifications

The submitting firm shall provide seven copies of the Statements of Qualifications by the time indicated on the Project Schedule.

The Statement of Qualifications is a short document that indicates the experience and qualifications of the firm, the project manager and other critical members of the team. It describes what talents their team brings to the project, how their knowledge of the subject will provide benefit to the process, how the team has been successful in the past and how that relates to this project. It should include information on similar projects that have been completed by the firm, project manager 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.

12. Selection Committee

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

13. Termination or Debarment Certifications

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

14. Interviews

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

The purpose of the interview is to allow the firm to present its qualifications, past performance, management plan, schedule and general plan for accomplishing the project. It will also provide an opportunity for the selection committee to seek clarifications from the firm.

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

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

15. Selection Criteria for VBS Professional Services

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

A. DFCM Past Performance Rating. **20 Points**. Each prime firm will be given a past performance rating. The rating will be based first on how well the firm did on past projects with DFCM. If a minimum of three DFCM past performance ratings are not available a rating will be established using any DFCM past performance ratings that are available, supplemented by references supplied by the firm at the time the Management Plans and SOQ are submitted.

B. Strength of Team. **35 Points** Based on the statements of qualifications, the interview, and management plan, the selection team shall evaluate the expertise and experience of the team and the project lead as it relates to this project in size, complexity, quality, duration, etc. Consideration will also be given to the strength brought to the team by critical consultants including how they were selected and the success the team has had in the past in similar projects. The successful team must have recent experience in the programming, design and construction of a successful school of business project.

C. Project Management Approach. **35 Points** Based on the information provided in the statements of qualifications, the management plan and information presented in the interview the selection team shall evaluate how each team has planned to approach the project. 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. The design team partnership will be considered an important aspect of the project management approach.

D. Schedule. **10 Points** The A/E's schedule will be evaluated as to how well it meets the objectives of the project. Unless other objectives are stated the shorter the duration that is evaluated to be feasible while achieving an appropriate design is preferred. The A/E shall discuss during the interview the project schedule identifying major work items with start and stop dates that are realistic and critical subconsultants and if they have reviewed and agree to the schedule. The completion dates shown on the schedule will be used in the contract.

TOTAL POSSIBLE POINTS: 100 POINTS

16. Fee Negotiation

Following selection of a design firm by the Selection Committee and prior to the award of the design agreement, DFCM will negotiate the final agreement fee with the selected firm. Should the DFCM be unable to agree to a satisfactory contract with the top ranked firm at a price that DFCM determines

to be fair and reasonable to the State, discussions with that firm shall be formally terminated. Negotiations will then be undertaken with the second ranked firm.

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

17. Form of Agreement

At the conclusion of negotiations, the selected A/E will be required to enter into an agreement using the attached form of the Design Agreement between DFCM and Architect/Engineer.

18. Licensure

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

PROJECT SCHEDULE

PROJECT NAME: **BUILDING ADDITION - HUNTSMAN SCHOOL OF BUSINESS**
UTAH STATE UNIVERSITY - LOGAN UTAH
DFCM PROJECT #: **11194770** **PROGRAM AND DESIGN**

Event	Day	Date	Time	Place
Solicitation for A/E Services Available	Monday	May 16, 2011	4:00 PM	DFCM 4110 State Office Bldg SLC, UT and the DFCM web site*
Mandatory Pre-submittal Meeting	Thursday	May 26, 2011	3:00 PM	NFS Building Room 202 Utah State University 1200 East 800 North Logan, UT
Last Day to Submit Questions	Thursday	June 2, 2011	12:00 NOON	Dave McKay – DFCM E-mail dmckay@utah.gov Fax 801-538-3267
Addendum Deadline (exception for bid delays)	Monday	June 6, 2011	4:00 PM	DFCM web site *
Management Plans, References, Statements of Qualifications, and Termination / Debarment Certifications Due	Wednesday	June 8, 2011	12:00 NOON	DFCM 4110 State Office Bldg SLC, UT
Short Listing by Selection Committee, if applicable.	Thursday	June 23, 2011	4:00 PM	DFCM web site *
Interviews	Thursday	July 7, 2011	TBD	USU Facilities 1295 East 700 North. Logan, UT
Announcement	Monday	July 11, 2011	4:00 PM	DFCM web site*

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

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made this __th day of _____, 20__, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called the "DFCM", and _____, a corporation of the State of Utah, whose address is _____, Utah _____ hereinafter called the "Consultant."

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

_____
_____
_____

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

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

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

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

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

ARTICLE 3. PAYMENT.

3.1 In accordance with the provisions and considerations set forth in this Agreement, the DFCM agrees to pay the Consultant a not-to-exceed (OR LUMP) sum of _____ _____ DOLLARS AND NO/100 CENTS ($) for the full and complete services included under the terms of this Agreement at the rates specified. This sum may be changed only by written authorization from the DFCM in the form of a modification to this Agreement properly executed by the DFCM.

3.2 The DFCM agrees to pay the Consultant from time to time as the work progresses, but not more than once each month after the date of the notice to proceed, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested. Payment

shall be made within thirty (30) days of the DFCM's receipt of the Consultant's invoice except that this requirement shall not apply to any amount: (a) for which the Consultant's invoice does not provide sufficient detail to demonstrate is due, (b) that the DFCM disputes is due under the terms of the Agreement, or (c) reasonably withheld by the DFCM to cover any default or failure to perform by the Consultant. The DFCM shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

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

3.4 The acceptance by the Consultant of final payment without a written protest filed with DFCM within three (3) calendar days of receipt of final payment, shall release the DFCM from all claims and all liability to the Consultant for fees and costs of the performance of the services pursuant to this Agreement.

ARTICLE 4. CHANGES IN WORK. Any changes in the scope of the services to be performed under this Agreement shall be in the form of a written modification to this Agreement, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments resulting therefrom, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.

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

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

ARTICLE 7. LEGAL RELATIONSHIP.

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

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

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

ARTICLE 9. TERMINATION BY CONSULTANT. This Agreement may be terminated by Consultant upon seven (7) calendar days written notice should the DFCM fail substantially to perform, through no fault of the Consultant and the DFCM has failed to cure the failure to perform within fourteen (14) calendar days of the DFCM's receipt of written notice of its failure to perform. Upon termination of this Agreement, the Consultant shall deliver all work performed to the DFCM. In the event of such termination, the Consultant shall be compensated for services properly performed under this Agreement up to date of the notice of termination. The Consultant agrees that in the event of such termination for default and such default is not successfully challenged by DFCM, its total remedy and monetary recovery from the DFCM is limited to full payment for all work properly performed,

reimbursables, under this Agreement up to the date of termination as well as any reasonable monies owed as a result of the Consultant having to terminate contracts necessarily entered into by the Consultant pursuant to this Agreement. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

ARTICLE 10. TERMINATION BY DFCM. The performance of service under this Agreement may be terminated by the DFCM in whole or in part at any time, whenever the DFCM shall determine that such termination is in the best interest of the DFCM. This includes any termination by DFCM for convenience or for cause. Any such termination shall be effected by delivery to Consultant of a written notice of termination specifying the extent to which performance of work under this Agreement is terminated and the date upon which such termination becomes effective. The Consultant agrees that in the event of such termination, its total remedy and monetary recovery from the DFCM is limited to full payment for all work properly performed, plus reimbursables, under this Agreement up to date of termination. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

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

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

12.1 **General Conditions Requirements Apply.** The provisions of Articles 7.7 through and including 7.14 of the DFCM General Conditions dated May 25, 2005 and Supplemental General Conditions are on file with the DFCM as well as available on the DFCM website at (http://dfcm.utah.gov/StdDocs/index.html) and hereby incorporated by reference shall apply to Preliminary Resolution Efforts, Claims and Disputes under this Agreement. References in said Articles 7.7 through and including 7.14 to the term "Contractor" and "Subcontractor" shall refer to the Consultant and Subconsultants or Subcontracts at any tier under this Agreement, respectively. Unless inconsistent with the provisions of this Agreement, definitions in the DFCM General Conditions and Supplemental General Conditions shall apply to this Agreement.

12.2 **Time For Filing.** Notwithstanding paragraph 12.1 above, the PRE must be filed in writing with the DFCM Representative within twenty-one (21) days of any of the following:

1. Issuance of a denial by DFCM of a Consultant request for additional monies or other relief under this Agreement;

2. In the case of a Subconsultant, after the expiration of the time period for the Consultant/ Subconsultant PRE process under Paragraph 7.7.5 of DFCM General Conditions; or

3. When the Consultant knows or should have known about any other issue where the Consultant seeks additional monies, time or other relief from the State of Utah or DFCM.

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

Consultant shall cooperate with such expert or panel process.

ARTICLE 13. INSURANCE. To protect against liability, loss and/or expense in connection with the performance of services described under this Agreement, the Consultant shall obtain and maintain in force during the entire period of this Agreement without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah. The following are minimum coverages that may be supplemented by additional requirements contained in Solicitation for Consultant Services or any other document used to procure Consultant's services.

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

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

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

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

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

ARTICLE 14. STANDARD OF CARE. The services of Consultant and its Subconsultants, if any, shall be performed in accordance with and judged solely by the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The Consultant shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. a Contractor claim against DFCM or the State of Utah), to the extent caused by errors or omissions that do not meet this standard of care.

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

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

ARTICLE 17. DFCM REVIEWS, LIMITATIONS. The right of the DFCM or any entity/user to perform plan checks, plan reviews, other reviews and/or comment upon the work of the Consultant, as well as any approval by the DFCM, shall not be construed as relieving the Consultant from its professional and legal responsibility for services required under this Agreement. No review by the DFCM or any entity/user, approval or acceptance, or payment for any of the services required under this Agreement shall be construed to operate as a waiver by the DFCM of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the Consultant shall be and remain

liable to the DFCM in accordance with applicable law for all damages to the DFCM caused by the Consultant's acts, errors and/or omissions.

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

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

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

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

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

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

20.4 **"Different Period of Limitation" from Utah Code.** These provisions are understood and agreed to by the Consultant as establishing a "different period of limitations" as that term is used in UCA 78-12-21.5(3)(a) or any other similar statute of the Utah Code. These provisions are not intended to shorten any time period allowed by Utah law and code for non-contract actions, including but not limited to, those based in tort.

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

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

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

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

CONSULTANT: _____

_____
Signature Date

Title: _____

_____
Please type/print name clearly

State of _____)
)
County of _____)

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

_____
Notary Public

(SEAL)

My Commission Expires _____

APPROVED AS TO FORM:
ATTORNEY GENERAL
May 5, 2011
By: ALAN S. BACHMAN
Asst Attorney General

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

_____
Lynn A. Hinrichs Date
Assistant Director Construction Management

Approved for expenditure:

_____
Division of Finance Date

Approved as to availability of funds:

_____
David D. Williams, Jr. Date
DAS Financial Director

EXHIBITS: "A" - Solicitation for Consultant Services
"B" - if attached by DFCM. This may also include specific Professional Liability Insurance requirements including aggregate and per occurrence requirements.

3000/300/____/FVA/____/_____/__/0
Project No. _____

DESIGN AGREEMENT
BETWEEN DFCM AND ARCHITECT / ENGINEER

This AGREEMENT is made this __th day of _____, 20__, between the Division of Facilities Construction and Management, hereinafter referred to as "DFCM", and the "Architect / Engineer", **_____,** a corporation of the State of Utah, whose address is _____Utah _____, hereinafter called the "A/E", agree to all the provisions of this Agreement for the Project identified as:

ARTICLE I.
DOCUMENTS INCORPORATED BY REFERENCE

A. DFCM GENERAL CONDITIONS.

1. The DFCM General Conditions ("General Conditions") and Supplemental General Conditions ("also referred to as General Conditions") which are current as of the date of this Agreement and on file with the DFCM (http://dfcm.utah.gov/StdDocs/index.html) is incorporated by reference as if fully set forth in this Agreement.

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

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

B. SOLICITATION / PROCUREMENT DOCUMENTS AND REQUIREMENTS.

The A/E shall comply with the following:

1. State Procurement requirements.

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

3. The procurement documents and Contract Documents.

C. DFCM DESIGN MANUAL.

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

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

D. ATTACHMENTS TO THIS AGREEMENT

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

E. HIERARCHY OF DOCUMENTS.

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

1. Codes and applicable law;

2. The attachments hereto;

3. The solicitation documents issued by DFCM for the selection of the A/E;

4. Any response by A/E to the procurement documents attached to this Agreement;

5. The body of this Agreement;

6. The General Conditions; and

7. The Design Manual.

ARTICLE II.
GENERAL REQUIREMENTS

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

1. Comply with the requirements of the Predesign Program;

2. Provide designs that comply with applicable laws, codes, rules, regulations and quality requirements;

3. Comply with this Agreement including the General Conditions and Design Manual;

4. Meet the established Construction Budget in Attachment "A";

5. Maintain the Project Schedule in Attachment "A"; and

6. To work with DFCM and the Contractor to accomplish all these objectives.

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

C. STANDARD OF CARE; RESPONSIBILITY. The services of A/E and its Subconsultants, if any, shall be performed in accordance with and judged solely by the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The A/E shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. a Contractor claim against DFCM or the State of Utah), to the extent caused by errors or omissions that do not meet this standard of care.

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

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

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

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

conflicts in the applicable code requirements, laws, rules or regulations, during the work of the Scope of A/E's Services, when and if the A/E becomes aware of such change(s) or conflicts, the A/E shall promptly notify the DFCM in writing. If the DFCM determines that work that has already been properly performed must now be changed, such change will be considered additional work under this Agreement and the A/E shall then prepare all documents to comply with the needed change(s).

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

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

1. Give written approval of an increase in the Construction Budget; and/or

2. Rebid or renegotiate the construction contract within a reasonable time; and/or

3. Revise the Project scope and/or quality as necessary to meet the Construction Budget; and/or

4. Abandon the Project and terminate this Agreement.

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

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

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

K. USE OF PROTOTYPICAL DESIGNS OR DESIGNS PROVIDED BY DFCM. A/E shall use prototypical designs or other design drawings, specifications or calculations provided by DFCM in the request for proposal. A/E shall recheck such designs and any other design data, drawings, specifications and calculations provided by DFCM. A/E shall correct any error or omission as deemed necessary thereafter, and shall be responsible therefore to the same extent as if such materials had been provided by A/E under this Agreement. A/E shall be provided with all

change orders, proposed change orders, and clarifications, from previous projects that are applicable to this Project. A/E shall incorporate all pertinent material into the new plans and specifications. If A/E has provided design services to DFCM on previous projects and has designed buildings similar to the components of this Project, which are in A/E's charge, at the direction of DFCM, A/E shall modify and reuse existing design as much as possible. Where existing designs are being reused, drawings are required to conform to DFCM graphic/CAD standards unless prior written approval is given by DFCM.

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

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

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

ARTICLE III.
PROJECT TEAM.

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

B. A/E AND SUBCONSULTANTS.

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

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

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

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

1. Place advertisements for bids or proposals;

2. Conduct bid or proposal openings and interviews;

3. Timely provide and update A/E with available "public" information in DFCM's possession regarding the Project, including but not limited to, legal descriptions, topographic surveys, ALTA or other boundary surveys, utility surveys, record drawings, reports, project objectives, budgets, and other material requirements and limitations.

4. Notify A/E of any known fault, known defect, or known deficiency in the Project, including but not limited to acts, errors, omissions, or inconsistencies in A/E's services and Deliverable Instruments of Service. Notwithstanding this provision, any failure to notify the A/E, shall not relieve the A/E of any responsibility or liability for such fault, defect or deficiency.

5. The DFCM Representative shall timely render decisions so as to avoid unreasonable delays in the orderly progress of the Project.

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

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

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

1. **Incidental Services.** A/E shall provide all services incidental to the A/E's identified Basic Services as established by standard professional custom and practice.

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

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

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

B. SCHEMATIC DESIGN PHASE.

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

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

3. **Documents and Drawings.**

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

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

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

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

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

C. DESIGN DEVELOPMENT PHASE.

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

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

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

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

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

D. CONSTRUCTION (CONTRACT) DOCUMENTS PHASE.

1. **General Description of Construction Documents Submittal**. A/E shall prepare, for written approval by the DFCM Representative, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The narrative shall include the A/E's proposed design and construction budget which shall be within the DFCM budget provided to the A/E. The A/E shall advise the DFCM of any adjustments to previous preliminary estimates of Construction cost indicated by changes in requirements or general market conditions. The Construction Documents shall comply with the following:

a. The DFCM approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by DFCM;

b. The Construction Documents shall comply with and identify all applicable codes, tests and inspections; and

c. The provision of this Agreement and the Design Manual.

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

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

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

E. PROCUREMENT OR NEGOTIATION PHASE.

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

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

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

F. CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT.

1. **Commencement and Termination.** The A/E's responsibility to provide Basic Services for the Construction Phase commences with DFCM's written authorization to proceed on to this Phase and terminates upon the completion of the guaranty period of the Contractor's work, unless extended by written agreement of the A/E and DFCM. Any final payment made prior to the end of the guaranty period does not terminate A/E's obligation to provide full performance of the A/E's services throughout the guaranty period for the fee already paid for basic services.

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

3. **Site Visits.**

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

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

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

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

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

5. **Modifications.** A/E shall prepare Change Orders, or Construction Change Directives, with supporting documentation and data for DFCM's approval and execution in accordance with the Contract Documents, and may issue ASI's not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. ASI's must be approved by the DFCM Representative prior to being issued. When approved by DFCM, the A/E shall prepare Statements of Justification, detailed cost and time estimates of the proposed change in the work, Requests for Proposals, Construction Change Directives, and Change Orders. A/E shall prepare, reproduce, and distribute Drawings and Specifications to completely describe Work to be added, deleted, and/or modified. The preparation of all such documentation shall not be considered additional services unless the change in the Work is determined by DFCM to be a scope change and/or an unknown condition.

6. **Record Drawings (As-Builts).** The A/E shall monitor the Contractor's efforts to regularly update the redline drawings during construction. Upon completion of the Construction Phase, A/E shall prepare Record Drawings based upon redline construction drawings and/or other information provided by Contactor. A/E has no duty to verify the accuracy or completeness of said information and, unless A/E knows that said information is on its face inaccurate and/or

incomplete, A/E is entitled to rely upon said information in preparing Record Drawings. If and to the extent A/E knows that said information is on its face inaccurate and/or incomplete, A/E shall promptly advise DFCM in reasonable detail of the inaccurate and/or incomplete information. Subject to said obligation to advise and its obligation to transcribe the Contractor's redline construction drawings and/or other information provided by Contractor in a manner consistent with the Standard of Care, A/E makes no representation regarding the accuracy or completeness of its Record Drawings.

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

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

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

ARTICLE VI
DELIVERABLE INSTRUMENTS OF SERVICE

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

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

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

advance written approval of the Director of the Division of Facilities Construction and Management.

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

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

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

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

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

A. FEES IN ATTACHMENT "A." Payment shall be in accordance with the schedule of lump sum payments for each phase listed under this Agreement as shown in the Schedule of A/E's and Subconsultant Fees (Attachment "A"). Progress payments with respect to such lump sum amounts shall be based upon percentage of such services completed.

B. PAYMENT IN FULL. The fee for any particular phase or activity described in Attachment "A" shall be the full payment owing by DFCM for such phase or activity.

C. WITHHOLDING OF PAYMENT; LIABILTY OF EXCESS OWING. Should the A/E fail to perform any of its obligations hereunder, be in default of this Agreement, or otherwise fail to complete the services of this Agreement within the time established by the Project Schedule (Attachment "A"), the A/E shall be liable to the DFCM for the actual damages incurred and such amount, may be deducted from any amount due or that may become due the A/E. To the extent that the damages exceed any amount that would otherwise be due the A/E, the A/E shall be liable for such excess to the DFCM. The DFCM may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees. Notwithstanding the above, the DFCM agrees that the A/E is not responsible for damages arising directly or indirectly from any delays for causes beyond the A/E's control.

D. OTHER PREREQUISITES TO RECEIVE PAYMENT: In addition to any other requirements under this Agreement, the following is required before any payment shall be made and/or deemed owed by the DFCM:

1. **Invoices.** The A/E shall submit invoices for progress payments not more than once a month. Invoices shall include the DFCM project and contract number, and be signed by the A/E. Each invoice shall include a detailed description by line item showing the contract prices, percentage of the services completed for the period, payments received to date, payment requested for the period, the overall percentage of completion, any lien waivers or releases previously requested by DFCM.

2. **Adjustments of Progress Payments.** The DFCM may, at its discretion, adjust any progress payments so that it corresponds to the percentage of completion as estimated by the DFCM. Notice shall be given to the A/E prior to making any such adjustments.

E. ACCEPTANCE OF FINAL PAYMENT. The acceptance by the A/E of final payment without a written protest filed with DFCM within three (3) days of receipt of final payment, shall release the DFCM from all claims and all liability to the A/E for fees and costs of the performance of the services pursuant to this Agreement.

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

ARTICLE VIII.
REQUIREMENTS FOR ADDITIONAL SERVICES.

A. ADDITIONAL SERVICES; IN GENERAL.

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

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

ARTICLE IX.
INSURANCE AND INDEMNIFICATION

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

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

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

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

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

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

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

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

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

5. **Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage.** The A/E and all Subconsultants of the A/E shall provide coverage for the physical loss of or destruction to their work product including drawings, specifications and electronic data and media.

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

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

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

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

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

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

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

B. INDEMNIFICATION

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

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

3. **Indemnification Requirements.**

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

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

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

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

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

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

DFCM and A/E each shall require similar waivers from their Subconsultants and agents at any tier.

ARTICLE X.
LIMITATIONS OF ACTIONS

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

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

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

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

4. **"Different Period of Limitation" from Utah Code.** These provisions are understood and agreed to by the A/E as establishing a "different period of limitations" as that terms is used in UCA 78-12-21.5(3)(a) or any other similar statute of the Utah Code. These provisions are not intended to shorten any time period allowed by Utah law and code for non-contract actions, including but not limited to, those based in tort.

ARTICLE XI.
PRELIMINARY RESOLUTION EFFORTS, CLAIMS AND DISPUTES

A. GENERAL CONDITIONS REQUIREMENTS APPLY. The provisions of Articles 7.7 through and including 7.14 of the General Conditions shall allow to Preliminary Resolution

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

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

1. Issuance of a denial by DFCM of an A/E request for additional monies or other relief under this Agreement;

2. In the case of a Subconsultant, after the expiration of the time period for the A/E / Subconsultant PRE process under Paragraph 7.7.5 of the General Conditions; or

3. When the A/E knows or should have known about any other issue where the A/E seeks additional monies, time or other relief from the State of Utah or DFCM.

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

ARTICLE XII.
TERMINATION OR SUSPENSION

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

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

2. **Paid Sums Owing Through Date of Termination.** In the event of such termination for cause by the A/E, the A/E shall be paid all sums owing A/E through the date of

termination. Under no circumstances, shall A/E be paid for any other sums related to the termination for cause, including but not limited to, lost profits or consequential damages.

B. TERMINATION FOR CONVENIENCE. The DFCM reserves the right to terminate this Agreement for convenience or any reason upon fourteen (14) calendar days written notice to A/E. The DFCM may also suspend the services of the A/E for a period not to exceed 180 days and pay the A/E all sums owing through the date of suspension. For any period beyond 180 days, the A/E may consider it a termination for convenience. Should said termination occur during or upon completion of the Schematic Design Phase, A/E shall be entitled to receive and shall be paid all fees stated herein through the Schematic Design Phase, together with reimbursable expenses incurred to date, less the amount of said fees and expenses paid by DFCM and received by A/E through said date. Should said termination occur during the Design Development Phase or any subsequent phase, A/E shall be entitled to receive and shall be paid the greater of: (i) all fees earned and reimbursable expenses incurred through the effective date of said termination, less said fees and expenses paid by DFCM and received by A/E through said date; (ii) the actual, reasonable cost to A/E and its Subconsultants (regardless of tier) of the authorized services provided, plus a profit thereon of 10%, plus reasonable reimbursable expenses incurred under this Agreement through the effective date of said termination, less said fees and expenses paid by DFCM and received by A/E through said date; or such other amount as agreed to by A/E and DFCM.

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

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

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

ARTICLE XIII
GENERAL LEGAL REQUIREMENTS

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

B. INDEPENDENT CONTRACTOR. A/E is an independent contractor and not an employee of DFCM or the State of Utah. A/E shall have no authorization, express or implied, to bind the State of Utah or DFCM to any agreement, settlement, liability or understanding

whatsoever, nor to perform any acts as agent for the State of Utah or DFCM, except as specifically set forth in this Agreement.

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

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

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

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

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

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

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

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

A/E:

_____
Signature Date

Title: _____

State of _____)
)
County of _____)

_____
Please type/print name clearly

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
DAS Financial Director

DFCM: DIVISION OF FACILITIES CONSTRUCTION & MANAGEMENT

_____
Lynn A. Hinrichs Date
Assistant Director Construction Management

APPROVED AS TO FORM:
May 5, 2011
By: ALAN S. BACHMAN
Asst. Attorney General

APPROVED FOR EXPENDITURE:

_____
Division of Finance Date

(Name of Project)
DFCM Project No. _____

Attachment "A"

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

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

   A. Travel reimbursement requirements: As outlined in A/E's attached proposal.
   B. Document reproduction requirements (needs for review sets, bidding, construction, etc.):
      Note: Printing for use by design team in presentations and for coordination is included in basic services fee. As outlined in A/E's attached proposal.
   C. Construction Period site visits: As outlined in A/E's attached proposal.
   D. Record drawings: Amount of fee allocated to completion of Record drawings $_____

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

   Exceptions to this list of basic services are: _____

2. **ADDITIONAL SERVICES / REQUIREMENTS:** The following additional services/requirements (i.e. hazardous material requirements, special inspection services, insurance requirements) will be provided as described and at the listed fee: _____ $_____

   High Performance Building Rating System: _____(Yes/No) Fee: $_____
   USGBC LEED Required: _____(No/Certified/Silver/Gold/Platinum) Fee: $_____

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

4. **MILESTONES / SCHEDULE:** Required project milestones and A/E's project schedule. (See attached schedule of A/E's work plan):
   Design complete ready for bidding: _____
   Construction complete and ready for occupancy permit: _____

Attachment "B"

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

Attachment "C"

Any additional explanation of the A/E's response to the DFCM's submittal documents are hereby identified and attached.

(Name of Project)
DFCM Project No. _____

Attachment "D"

Attachment to Design Agreement for CM/GC Projects

1. The CM/GC Agreement with the selected firm for this Project, is hereby incorporated by reference. The A/E shall abide by all A/E responsibilities identified in that Agreement.

2. As per Article 5 of the CM/GC Agreement, the A/E shall cooperate with the CM/GC to present mutually agreed upon designs, estimates and value engineering.

3. Article II.G. of the Design Agreement shall be omitted and replaced with the following: The A/E shall review the estimates of the CM/GC for concurrence, and shall design within the estimates approved by DFCM.

4. Schedule. The A/E is required to cooperate with the CM/GC schedule for delivering bid packages in the scope required by the CM/GC and agreed to by DFCM. It is the intent of DFCM to keep the number of bid packages to the practical minimum.

5. **Cost Escalation Allowance:**

   A. The project construction budget (FLCC) has been established at present estimated construction cost.

   B. DFCM will hold a contingency, which is not part of the FLCC, which may be available to the Project by modification to the FLCC, to account for legitimate material and labor escalation costs as may be determined by the A/E and CM/GC team until the results of a bid package is obtained for a particular scope of work.

   C. Following the results of the bid package, the CM/GC is solely responsible for any material and labor escalation costs.

   D. DFCM reserves the right to reject any bid package where the escalation is excessive in the sole opinion of DFCM, at which time scope reduction or value engineering will be considered by CM/GC in cooperation with the A/E. This consideration of the CM/GC and the A/E will be submitted to DFCM for acceptance.

   E. The A/E and CM/GC's fee will not be adjusted due to material or labor cost escalations experienced at any phase of this Project.

6. Minutes. The A/E is responsible for meeting minutes throughout the design phase. The CM/GC is responsible for meeting minutes throughout the construction phase, except that the A/E shall ensure that accurate meeting minutes are managed by the CM/GC and make any necessary comments on the minutes prior to approval by DFCM.

7. Incentive. If the final costs of the Project are equal to or less than the final approved FLCC, then the A/E shall be entitled to 10% of the savings between the final approved GMP and the final cost, or $30,000, whichever is less.

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