

Solicitation for Consultant Services

August 14, 2013

MASTER PLANNING AND PROGRAMMING SERVICES FOR RELOCATION OF DRAPER PRISON

State of Utah
Prison Relocation and Development Authority
Project No. 13330100

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Authority's web site address is: <http://gva1.utah.gov/boards/board.aspx?id=714533>

Prison Relocation and Development Authority Documents available at:

[http://governor.utah.gov/dea/publications/commissions/Prison Relocation and Development Authority/](http://governor.utah.gov/dea/publications/commissions/Prison_Relocation_and_Development_Authority/)

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

DFCM Design Manual dated March 15, 2006

DFCM General Conditions dated May 25, 2005

All documents or information to be submitted by any prospective consultant is to be public record.

NOTICE TO CONSULTANTS

The State of Utah, Prison Relocation and Development Authority (hereinafter Authority”) is soliciting the services of qualified firms/individuals to perform master planning and programming services for the following project:

DRAPER PRISON RELOCATION
AUTHORITY PROJECT NO. 13330100

The Authority is contemplating moving part or all of the Utah State Prison located in Draper, Utah and known as the “Draper Prison” to one or more locations. In order to assist with the development of a Request for Proposal for relocation and development at an alternate site, whether in whole or in part, the Authority, desires to hire a Consultant to assist with the Master Planning and Programming for the Authority and the State of Utah Department of Corrections.

The current prison site consists of approximately 700 acres. The move may include the Department of Correction Administration Building located just east of the Draper Prison Site.

All documents or information to be submitted by any prospective consultant is to be public record.

The Agreement with the selected Consultant may be amended to allow the consultant to proceed as the Authority Representative during the actual design and construction that is performed in pursuit of said Master Plan and Program. However, there is no representation, guarantee or assurance from the Authority or the State that the Consultant will be obtain such an amendment to this contract for such additional work. The Consultant selected hereunder shall not be part of any design team, development team or construction team related to the Master Plan or Program developed hereunder.

The selection shall be under the Value Based Selection method. The Solicitation for Consultants (SFC) documents, including the submittal requirements and the selection criteria and schedule, will be available beginning at 3:00 PM on Wednesday, August 14, 2013 on the DFCM web page at [http:// dfcm.utah.gov](http://dfcm.utah.gov). For questions regarding this solicitation, please email Kurt Baxter, DFCM Regional Director, at kbaxter@utah.gov. No others are to be contacted regarding this solicitation.

The Authority 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.

PROJECT DESCRIPTION

INTRODUCTION

This project shall comply with the State Division of Facilities Construction and Management's High Performance Building Rating System. The selected Consultant will work with the Authority, Department of Corrections, and others as directed by the Authority, to develop a master plan and programming for the relocation of the Draper Prison.

SCOPE OF WORK

The scope of work shall be the customary scope of work in the industry in the United States for a Master Planning and Programming project of this size, type and magnitude. The Master Planning and Programming contemplates one or more sites for relocation of the Draper Prison facilities. The Master Planning and Programming shall include coordination with, and input from various State of Utah entities and interest groups as directed by the Authority, with an overall comprehensive outlook as to the Corrections facilities and the overall justice system in the State of Utah as it impacts the facility and land needs. Any meetings with interested persons must be conducted in a fair manner, be transparent and keep a level playing field for all those that may be interested in submitting bids or proposals for any project related to the Master Plan or Programming. Without intending to be an exhaustive list, the following are minimum scope of work issues:

1. Assist the Authority to determine the Cost and Feasibility of relocating the prison. Determine probable prison locations, and operational functions based on single or multiple locations. Incorporate cutting edge technology, plans and processes (based on experience or actual operations) that will significantly reduce the construction cost and the operational costs for the life of the facilities.
2. Preliminary analysis of existing conditions at potential sites
3. Tour existing prison facilities in Utah as well as provide experience related to prisons in other States.
4. Review applicable codes, rules, regulations, policies and procedures applicable to the prison as well as list all codes, rules and regulations that apply to the RFP(s) and any project pursuant to the RFP.
5. Perform all tasks customary for master planning and programming related to relocating all or part of the Draper Prison to one or more sites in the State of Utah.
6. Develop long-term planning for the types, and spaces needs for facilities including a short term and long term plan.
7. Develop a project financial phasing strategy.
8. Life cycle analysis for various types of construction.
9. Conduct work/steering group meeting to develop a draft master plan and programming.
10. Comprehensive utility impact and connection fee analysis. Redundancy required of all utilities and infrastructure must be considered.
11. Demolition requirements.

12. Number of prison beds, type of offenses related to facilities.
13. Needs and accessibility of volunteers.
14. Medical needs, proximity to medical facilities, and medical service contracts related to the new site(s).
15. Material, design and construction requirements as related to life cycle requirements and other needs of the Authority and the State.
16. Operation and Maintenance considerations, including but not limited to, energy consumption, other costs and efficiencies.
17. Cost estimating – demolition, design and construction.
18. Scheduling of Design, Construction, Commissioning, furnishing and move-in.
19. ALTA Surveys, Geotechnical surveys, and other independent contractor services only if approved in writing and in advance by the Authority.
20. Strategies for design and construction, including whether to use Design-Build or CM/GC.
21. Safety for the occupants, staff and public.
22. Access to ancillary services (probation, courts, prosecutors, legal defenders, Board of Pardons);
23. Future planning issues (ie, jail contracting, federal inmates, private prisons);
24. Issues surrounding private development of current prison site;
25. Impact on taxpayers;
26. Environmental impacts (air quality, water, etc.)
27. Evaluation of Private Prison Options, in whole or in part.
28. Work with the private sector to bring forth their ideas and innovations and assure that the Master Plan and Programming allows for private sector input and innovation.
29. Other information as deemed appropriate by the Authority.

DELIVERABLES

Master plan/general program for one or more sites (typical or prototype); Cost Estimate to design and construct new campus. Cost Estimate to demo and mitigate existing site. Provide cost and benefit analysis of privatization.

PUBLIC RECORDS

All submittals and statements by any prospective Consultant in response to this Solicitation shall be considered a Public Record.

REIMBURSEMENTS (on a not-to-exceed basis)

As stated, the Consultant's reimbursements for this project may include an ALTA/topographical survey, geotechnical survey and soil investigation, and water flow analysis or work from other consultants, any of which must be approved in advance and in writing by the Authority, prior to the provision of any such services or any liability of the Authority for any such services. The Consultant reimbursements for this project have been estimated as a NOT-TO-EXCEED part of the fee and are allowed on (with no mark-up) as follows, unless a variation is approved in writing and in advance by the Authority.

Travel/lodging/meals (only for the members whose distance of travel from their office to the site is greater than 100 miles from the servicing office location):

1. Travel: flights shall be coach on commercial airlines; personnel vehicle use will be reimbursed at the current Federally allowed reimbursement rate per mile; and incidental travel (taxi, bus, parking (only for airport long term), and other ground transportation) submit an original receipt for each item (tips for taxi, baggage, etc. are not reimbursable);
2. Lodging may be booked through the state and will be reimbursed at either the actual cost or the state rate – whichever is less (tips for baggage, maid service, doormen, etc. are not reimbursable); the state rates are located at the following web address:
<http://fleet.utah.gov/menu-state-travel/menu-in-state-travel.html>
3. For in-state travel, meal per diems are allowed at the state rate as identified at the following web address (tips and tax on meals are included in the per diem amount):
<http://fleet.utah.gov/menu-state-travel/menu-in-state-travel.html>
4. For consultants traveling from out-of-state, meal per diems are allowed at the state rate as identified at the following address (tips and tax on meals are included in the per diem amount): <http://fleet.utah.gov/menu-state-travel/menu-out-of-state.html>
5. Miscellaneous: e.g. express mail, photos, long distance calls. An original invoice must be submitted for each item.

PROCUREMENT PROCESS

The State of Utah intends to enter into an agreement with a firm to provide professional services as described. The selection of the firm will be made using a Value Based Selection (VBS) system. The Project Schedule lists the important events, dates, times and locations of meetings and submittals. The terms of the project schedule are hereby incorporated by reference and must be met by the selected firm.

1. Solicitation for Consultant Documents

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

2. Contact Information

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

3. Requests for Information

All requests for information regarding this project shall be emailed to Kurt Baxter, DFCM Regional Director at kbaxter@utah.gov.

4. Project Schedule.

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

5. Submittal Due Dates and Times

All required submittals must be delivered to, and be received by, the Authority no later than 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. Submittals shall be addressed to: Denise Austin, VBS Coordinator, Room 4110 State Office Building, Capitol Hill Complex, Salt Lake City, Utah 84114.

6. 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 emailed to Kurt Baxter, DFCM Regional Director at kbaxter@utah.gov.

7. Addendum

All references to questions and requests for clarification will be in writing and issued as addenda to the Solicitation for Consultant 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 Consultant Services and any information required shall be included in your submittal.

8. Past Performance and References

Consultants shall submit past performance and reference information by the time indicated on the Project Schedule. For projects performed in Utah or other states in the last five years, 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)

9. 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 SFC 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 **one hard copy and one digital copy** of the Management Plan by the time indicated on the Project Schedule.

10. Statements of Qualifications

The submitting firm shall provide **one hard copy and one digital copy** 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.

11. Selection Committee

The Selection Committee will be composed of individuals from the Authority and/or as designated by the Authority.

12. 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 the Authority. Firms are to submit these certifications on their business letterhead with their Statement of Qualifications.

13. Interviews

Interviews will be conducted with all firms who have met all of the requirements except as follows:

A. Shortlist: If more than five firms are eligible for interviews, the Authority 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, management plan and statement of qualifications.

B. Purpose of Interview: 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.

C. Attendance at Interview: The proposed primary project management personnel, including the project manager, must 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.

D. Method of Presentation: The method of presentation is at the discretion of the firm.

E. Where and When: The interviews will be held on the date and at the place specified in the Project Schedule.

14. 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 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. 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 based on references submit and data obtained from references.

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, and the like. Consideration will also be given to the strength brought to the team by critical consultants including how they were selected and the success the team has had in the past in similar projects.

C. Project Management Approach - 25 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.

D. Schedule - 20 Points The Consultant'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 master plan and program is preferred. The Consultant shall discuss during the interview the project schedule identifying major work items with start and stop dates that are realistic. There shall also be consideration as to critical subconsultants and if they have reviewed and agree to the schedule. The completion date(s) shown on the schedule will be used in the contract.

TOTAL POSSIBLE POINTS: 100 POINTS

15. Fee Negotiation

Following selection of a Consultant by the Selection Committee and prior to the award of the agreement, the Authority will negotiate the final agreement fee with the selected firm. **In no case may a fee be approved that is over \$300,000 for all services pursuant to this solicitation.**

Should the Authority be unable to agree to a satisfactory contract with the top ranked firm at a price that the Authority 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 the Authority determines that it is in the best interest of the State to initiate a new selection process.

16. Form of Agreement

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

17. Licensure

The Consultant shall comply with and require its subconsultants to comply with the license laws of the State of Utah to the extent applicable to the services under this Solicitation.

PROJECT SCHEDULE

PROJECT NAME:		MASTER PLANNING AND PROGRAMMING PRISON RELOCATION – STATE OF UTAH		
AUTHORITY PROJECT NO.		13330100		
Event	Day	Date	Time	Place
Solicitation for Consultant Available	Wednesday	August 14, 2013	3:00 PM	DFCM web site*
Last Day to Submit Questions	Friday	August 30, 2013	5:00 PM	Kurt Baxter – DFCM E-mail: kbaxter@utah.gov
Addendum Deadline (exception for bid delays)	Thursday	September 5, 2013	3:00 PM	DFCM web site *
Management Plans, References, Statements of Qualifications, and Termination/Debarment Certifications Due	Wednesday	September 11, 2013	12:00 NOON	Denise Austin Room 4110 State Office Bldg Capitol Hill Complex SLC, UT 84114
Short Listing by Selection Committee, if applicable.	Wednesday	September 18, 2013	4:00 PM	DFCM web site *
Interviews	Monday	September 30, 2013	TBA	To Be Announced
Announcement	Tuesday	October 1, 2013	4:00 PM	DFCM web site *
Master Plan Complete	Friday	January 31, 2014		

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

UTAH PRISON RELOCATION AND DEVELOPMENT AUTHORITY PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made this ___th day of _____, 201_, by and between the STATE OF UTAH PRISON RELOCATION AND DEVELOPMENT AUTHORITY, hereinafter called the "Authority", and _____ a corporation of the State of _, whose address is _, Utah 84 , hereinafter called the "Consultant."

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

Master Planning and Programming for a new site or sites related to the relocation of the Utah State Prison known as the "Draper Prison." The Consultant will be assisting the Authority and those that the Authority directs the Consultant to receive input from and assist in this effort. The Master Planning and Programming shall be commensurate with the Solicitation and the Proposal as well as the reasonable standards established in the industry for such an effort given the size and magnitude of the Project.

WITNESSETH, WHEREAS the Authority 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 August 14, 2013 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 the Authority and incorporated by reference as a part of this Agreement is fully set forth herein: the Solicitation for Consultant Services, and the current DFCM (Division of Facilities Construction and Management) 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 Consultant will provide a defined timeline for the scope of the project. The full scope of work shall be completed by **January 31, 2014**.

ARTICLE 3. PAYMENT.

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

3.2 The Authority 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 Authority'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 Authority disputes is due under the terms of the Agreement, or (c) reasonably withheld by the Authority to cover any default or failure to perform by the Consultant. The Authority 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 Authority within three (3) calendar days of receipt of final payment, shall release the Authority 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 Authority and the State of Utah, 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 Authority and the State of Utah and are not to be used by Consultant on any other projects with any other parties except by the advance written agreement of the Authority.

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 Authority to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or the Authority, except as specifically set forth in this Agreement.

7.3 **Release of Rights to Bid.** The Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable, herein release their rights to bid on the construction phase of the Project, if the Authority or State of Utah should decide to proceed with a construction phase.

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 Authority has failed to cure the failure to perform within fourteen (14) calendar days of the Authority's receipt of written notice of its failure to perform. Upon termination of this Agreement, the Consultant shall deliver all work performed to the Authority. 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 Authority, its total remedy and monetary recovery from the Authority or the State of Utah 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 Authority and the State of Utah .

ARTICLE 10. TERMINATION BY AUTHORITY. The performance of service under this Agreement may be terminated by the Authority in whole or in part at any time, whenever the Authority shall determine that such termination is in the best interest of the Authority. This includes any termination by the Authority 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 Authority or the State of Utah 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 Authority and the State of Utah.

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 Authority , their officers, agents and employees and anyone for whom the Authority 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 (PRE), 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. References in said Articles 7.7

through and includes 7.14 to Director or Division, shall refer to the Authority Chair or designee and any administrative appeal to an Executive Director shall refer to the Authority or a subcommittee of the Authority.

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 Authority Representative within twenty-one (21) days of any of the following:

1. Issuance of a denial by Authority 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 the Authority..

12.3 Not Limit Authority Rights. As stated in Rule R23-26-1(6) which for purposes of this Agreement will be deemed to apply herein, this does not limit the right of the Authority to have any of its issues, disputes or claims considered. Authority 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 Authority appoints an expert or a panel to consider any such issue(s), dispute(s) or claims(s) of the Authority, 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 Authority or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. a Contractor claim against Authority 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 Authority.

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. AUTHORITY REVIEWS, LIMITATIONS. The right of the Authority 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 Authority or the State of Utah, shall not be construed as relieving the Consultant from its professional and legal responsibility for services required under this Agreement. No review by the Authority, State of Utah 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 Authority 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 Authority in accordance with applicable law for all damages to the Authority or the State of Utah 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. Authority 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 Authority or the Construction Manager assigned by the State of Utah 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 Authority or the Construction Manager assigned by the State of Utah 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 Authority and the State of Utah 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 Authority, the State of Utah 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 the Authority each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

