



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management**

**DFCM**

# **Request for Proposals for Insurance Broker and Consultant**

Value Based Selection Method

**February 19, 2016**

## **NEW UTAH STATE CORRECTIONAL FACILITY**

**DEPARTMENT OF CORRECTIONS  
SALT LAKE CITY, UTAH**

**DFCM Project No. 15310100**

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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 [www.dfc.utah.gov](http://www.dfc.utah.gov) - “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 [www.dfc.utah.gov](http://www.dfc.utah.gov).

# NOTICE TO OFFERORS

The State of Utah - Division of Facilities Construction and Management (“DFCM”) is requesting proposals for an **INSURANCE BROKER AND CONSULTANT** for the purpose of devising, advising, administering, and consulting regarding an Owner Controlled Insurance Program (“OCIP”) and/or a Contractor Controlled Insurance Program (“CCIP”) and/or other insurance programs for the following project (hereinafter “Project”):

**NEW UTAH STATE CORRECTIONAL FACILITY**  
**DEPARTMENT OF CORRECTIONS – SALT LAKE CITY, UTAH**  
**DFCM PROJECT NO. 15310100**

The Professional Services Agreement attached hereto and the “Supplemental General Conditions” on the DFCM website at [www.dfc.utah.gov](http://www.dfc.utah.gov) used by DFCM are hereby made part of this Request for Proposals (“RFP”) and made part of the resulting contract.

**BRIEF PROJECT DESCRIPTION:** This project includes constructing a new correctional facility estimated at over 1,300,000 gsf including onsite and possible offsite improvements. The facility shall replace the existing Draper Correctional Facility and shall be capable of initially housing approximately 4,000 inmates with expansion capability. The initial draft Program identified several facilities as part of this complex such as: male maximum/general population facility, male general population/sex offender/work camp facility, male general population substance abuse treatment facility, female general population substance abuse treatment/ maximum facility, male and female reception and orientation facility with mental health housing, reception, medical, educational, vocational, religious, recreation, culinary, laundry, security, maintenance and correctional industries. This RFP seek the assistance of an Insurance Broker and Consultant to devise, advise, administer and consult regarding an OCIP, CCIP and/or other insurance programs for the Project.

**The Legislature chose a location near the Great Salt Lake and may include unusual soil, local and environmental conditions that need to be considered.**

The **Construction Budget (hard costs) for the Project will be approximately \$425,000,000** and will be updated after program completion.

The RFP documents, including the selection requirements and the selection schedule, will be available at 3:00 PM on Friday, February 19, 2016 on the DFCM web page at <http://dfcm.utah.gov>. For questions regarding this project or your proposal, please contact Jim Russell, DFCM, by email only at [jimrussell@utah.gov](mailto:jimrussell@utah.gov). No other State officials or employees are to be contacted regarding this RFP or the project. The procurement shall be under the Value Based Selection RFP method.

Proposals, including the brokerage percentage cost proposal, and statements of qualifications, must be submitted by 12:00 Noon on Friday, February 26, 2016 to DFCM, Room 4110 State Office Building, Capitol Hill Complex, Salt Lake City, Utah 84114. Additional information will be required as stated on the Project Schedule. Note: Submittals must be received at 4110 State Office Building by the specified times.

**\*\*\*\*IMPORTANT: The Cost Proposal and the Statement of Qualifications must be submitted in separate envelopes as the evaluation committee is not allowed to see the percentage to be charged by the broker until such time as the finalization of the score for the qualifications criteria.**

The Broker/Consultant must be duly licensed to perform “insurance brokerage” work in the State of Utah. The Division of Facilities Construction & Management reserves the right to reject any or all proposals or to waive any formality or technicality in any proposal in the interest of the State. Submit proposals to:

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT  
Room 4110 State Office Building - Capitol Hill Complex  
Salt Lake City, Utah 84114

## PROJECT DESCRIPTION

The Broker/Consultant will work with DFCM to review the contracts and work/services of all those associated with the subject project, including the Project Manager under Contract, Design Team, CM/GC and any of their subcontractors, subconsultants and suppliers at any tier. This review shall advise DFCM and assist in the procurement of insurance needed for each entity. It is anticipated that this Project will require an OCIP and/or CCIP, separate insurance policies or combinations thereof, all with the intent of making sure that the project is properly insured with the necessary primary and excess coverage, with appropriate limits, from appropriate carriers for the duration of the project and an appropriate tail period. Subguard Insurance must also be considered.

The acquisition of insurance for the Project by the broker will be procured using a best value analysis by the broker where qualifications of the insurance company, the A.M. Best rating and any other important financial and qualification aspects of the company as well as cost are considered. The broker will work closely with DFCM that must approve the final company selections by the broker.

**Expense of Proposals:** Any expenses for preparation of proposals, including any expenses for travel or meals throughout the selection process, shall be at the sole expense of the firm and shall not be any responsibility of DFCM or the State of Utah.

The firm must maintain an office in the State of Utah during the contract term and be available on a daily basis as needed by DFCM, through the final completion of the subject project. The firm does not have to have an office in the State of Utah at the time of submission of the proposal but must promptly arrange for the office in the State of Utah after execution of the contract.

**PROJECT DESCRIPTION – NEW UTAH STATE CORRECTIONAL FACILITY:** The State of Utah is proposing the construction of a new correctional facility to replace the 4,000 bed Utah State Correctional Facility in Draper, Utah. The new facility must be able to meet the current and future needs of the agency in terms of capacity and inmate populations served. The facility also must have the design and space necessary to promote the State's Criminal Justice Reinvestment Initiative and facilitate successful inmate rehabilitation.

# 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. Request for Proposal Documents and Availability

The RFP documents include the Professional Services Agreement used by DFCM together with the Supplemental General Conditions, which documents shall be incorporated into your Proposal by reference. This RFP and any further RFP documents will be available on the DFCM website as stated on the Project Schedule.

## 2. Mandatory Minimum Requirements

To be considered, your firm must have been a broker for an OCIP or CCIP for a public entity within the past 10 years. A list of those entities is required as discussed below in regard to references. The Broker/Consultant must be duly licensed to perform “insurance brokerage” work in the State of Utah. If your firm has not been a broker for an OCIP or CCIP for a public entity in the last 10 years or if your firm is not duly licensed in the State of Utah, your proposal will automatically be disqualified.

## 3. Contact Information

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

## 4. Requests for Information

All requests for information regarding this project shall be emailed to:

Jim Russell, DFCM Representative  
Division of Facilities Construction and Management  
4110 State Office Building  
Capitol Hill Complex  
Salt Lake City, Utah 84114  
E-mail: [jimrussell@utah.gov](mailto:jimrussell@utah.gov)

**5. Project Schedule**

The Project Schedule lists the important events, dates, times and locations of meetings and submittals that must be met by the Offeror Broker/Consultant. Consult the Project Schedule included in this RFP when submitting your proposal.

**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.

**7. Last Day to Submit Questions**

All questions must be emailed to Jim Russell ([jimrussell@utah.gov](mailto:jimrussell@utah.gov)) at DFCM no later than the time and date listed on the Project Schedule in this RFP.

**8. Addendum**

All responses to questions and requests for clarification will be in writing and issued as addenda to the Request for Proposals. The addenda will be posted on DFCM’s web site. Any addenda issued prior to the submittal deadline shall become part of the RFP and any information required shall be included in your proposal.

**9. Past Performance and References**

Each firm shall provide the names of references for brokerage services that involved an OCIP or CCIP performed for public or private entities for the last 10 years. We prefer at least three references; however, if you only have fewer references, provide all the references that you can provide. You must have at least one. DFCM will contact the references. This information will be made available to the evaluation committee as part of your score.

- Point of Contact: Person who will be able to answer any customer satisfaction questions.
- Phone Number: Phone number of the contact we will be surveying.
- User Name: Name of the State of Utah or Public/Private entities that purchased your Brokerage and/or Insurance Consulting services.
- Project Name: Name of the project.
- Date Completed: Date of when the work was completed.
- Address: Street, city and state where the work was performed.
- Size: Size of project in dollars.
- Duration: Duration of the project / construction in months.
- Type: Type of the project (i.e.: School, Offices, Warehouse, etc.)

## **10. Cost Proposal, Fees, and Markups**

If the Offeror observes that portions of this RFP or Contract Documents are at variance with applicable laws, building or insurance codes, rules, and regulations or contain obvious erroneous or uncoordinated information, the Offeror shall promptly notify the specified DFCM Representative and the necessary changes shall be accomplished by Addendum.

Cost Proposal, bearing original signatures, must be typed or handwritten in ink on the Cost Proposal Form provided in the procurement documents, will be accepted at the office of DFCM, Room 4110 State Office Building, Capitol Hill Complex, Salt Lake City, UT 84114. **The Cost Proposal must be provided in a separately sealed envelope as the evaluators are not entitled to see the Cost Proposal until after the non-cost criteria has been scored.** The Cost Proposal will be scored as follows: the lowest percentage fee will be given the highest score; higher fees will be scored proportionately lower. Late proposals will be disqualified and returned to the proposer unopened. One copy of the cost proposal is required.

All Offerors shall furnish the following fee as part of the Cost Proposal: the percentage that the broker is charging for the insurance to be purchased as a result of this RFP for the Project. This percentage shall include the costs of any meals, travel costs, office supplies and equipment, consulting advice, administrative costs, all other indirect costs and expenses related to the performance of the insurance brokerage and consulting services under this RFP.

## **11. Statement of Qualification Submittal**

The Statement of Qualifications shall include a comprehensive description of services provided, including, but not limited to, the following:

- Financial resources of agent, broker and underwriting company;
- Quality of prior service rendered to the state and local governments;
- Service facilities available in-state;
- Service reputation;
- Experience and expertise in providing similar types of insurance;
- Coverages and services to be provided;
- Qualifications of key personnel;
- Any other reasonable factor which will provide the best possible coverage and service to the purchasing agency;
- Training that will be provided to avoid risks;
- Experience with OCIPS and/or CCIPS.
- Names and A.M. Best ratings of each insurance provider to be used in any OCIP, CCIP or other insurance program.
- The type of insurance proposed to be provided (i.e. liability, worker's compensation, automobile, airplane, professional liability, documents, Builders' Risk, and other customary insurance for a Project of this magnitude.), including the occurrence and aggregate limits for each such coverage.

The Statement of Qualifications shall also include a description of how the Offeror will:

- Assist DFCM with the advice of insurance amounts, types, levels, quality of firms, OCIP or CCIP or other types and combinations, acquisition of the insurance
- Administer any possible OCIP or CCIP, including administering enrollment, deducts, financial aspects, claims and dispute resolution services, and like administrative matters.
- And all other matters that assist DFCM with the insurance.

The submittal for Statement of Qualifications shall be combined into one document and shall be limited to 50 numbered pages, excluding tab pages, cover page, separate sealed envelope, and exhibits. Six hard copies and one CD containing the Statement of Qualifications must be submitted. The submittal shall be organized as follows:

**COVER PAGE:** Shall include the project name and project number as well as the broker's name.

**TAB ONE:** Letter of introduction – including main point of contact information.

**TAB TWO:** Statement of Qualifications - including the Prime Broker, ability to access the insurance carriers that are of the type, magnitude, responsibility and financial depth needed for the subject project. The acquisition of the insurance providers by the broker is a best value determination, including cost and other factors, with the determination to be made by the broker and is subject to consent by DFCM. All insurance firms must be of the highest quality for this critical project. Describe the staff for the project. Staff may be subject to security checks as required by the Utah Department of Corrections. Firm must also comply with all security and confidentiality measures required by the State of Utah, DFCM or the Department of Corrections. The Statement of Qualifications shall include all items set forth in Paragraph 11 herein above.

**TAB THREE:** Project Risks, Tools, and Ideas – Address Risk Identification and Mitigation Plan, Tools and Techniques, Value Added Ideas, specific criteria, risks that have been identified by the RFP, and additional risks that the team has identified. State how those risks will be mitigated. Given the access that your own firm may have to confidential information on this Project, you must address the insurance that your firm will have for itself in performing under this RFP and resulting Contract.

**TAB FOUR:** References – References from public and/or private entities, Termination or Debarment Statement, and Miscellaneous Information.

## **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 it 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. These certifications are to be submitted with the Statement of Qualifications. If proposing as a joint venture, please provide for each firm.

### **13. Selection Committee**

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

### **14. Interviews**

Interviews will be conducted with all responsive and responsible Offerors except as follows. If more than four Firms submit proposals and meet the requirements, DFCM may convene the selection committee to develop a short list of Offerors to be invited to interviews. This evaluation will be made using the selection criteria noted below except that cost will not be considered. The information provided by the past references and statement of qualifications will be the basis for this evaluation.

The purpose of the interview is to allow the Firm to present its qualifications, past performance, statement of qualifications and general plan for being the broker, consulting and acquirer of insurance for the project. It will also provide an opportunity for the selection committee to seek clarification of the Offeror's proposal.

The proposed primary Manager of the Brokerage Firm and Consultant that will be continuously assigned to this project must be in attendance. 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**

The following criteria will be used in ranking each of the Offerors. The Offeror 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 criterion in the form of points.

- A. Cost. 40 Points.** The Offeror's Cost Proposal will be scored objectively after the evaluation committee scores the statement of qualifications. The Offeror with the lowest brokerage commission will receive 40 points. All other Offerors will receive a portion of the total cost points based on what percentage higher their brokerage commission is from the lowest commission.
  
- B. References: 20 Points.** Each Offeror will be given a performance rating based on the submitted references which must be from public and/or private entities in the last 10 years. A rating will be established using the "owner" references supplied by the Offerors at the time the proposals are submitted. This score will be mathematically generated with the criteria points being determined by factoring the points available by the average performance percentage of the firm.

**C. Statement of Qualifications and Strength of Team. 40 Points.**

**20 Points.** Firm Experience: show the overall experience of the firm in relation to OCIPS, CCIPS and insurance for projects of similar scope, size and complexity including consulting, being a broker, administration, and acquisition of insurance necessary for all the key persons/firms for this project.

**20 Points.** Identification and solutions for project risks, tools and ideas.

**TOTAL POSSIBLE POINTS: 100 POINTS**

\*\* Points will be totaled and the highest point total will determine the best value to the state\*\*

**16. Scoring and Justification**

The selection committee will provide a unitary score per criteria for each firm, taking into account the individual and separate scoring of each selection committee member. The firm with the highest total of points will represent the best value for the state and will be selected for the project. The selection committee will provide a justification statement that details conclusions supporting the selection.

**17. Award of Agreement**

The award of the Contract shall be in accordance with the criteria set forth in this RFP. The State of Utah intends to enter into an agreement with the awarded Offeror. The State will contract with only one legal entity.

**18. Agreement**

The Professional Services contract will be the form attached to this RFP with some possibility for negotiation that does not prejudice the rights of those providing offers and as approved by the Attorney General. The contract must be executed within five days of award or DFCM reserves the right to go to the next highest scoring Offeror. **The Contract time will be from the time of execution of the contract until the subject Correctional Facility Project is completed as well as the warranty period of the project and tail period of any insurance has expired, whichever is the latter.**

**19. Interpretation of Solicitation**

If any person or entity contemplating submitting a proposal is in doubt as to the meaning of any part of this RFP, such person shall submit to the DFCM Project Manager a request for an interpretation thereof. The person or entity submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by addenda posted on DFCM's web site at <http://dfcm.utah.gov>. Neither the DFCM, Program Manager nor A/E [Design Professional] will be responsible for any other explanations or interpretations of the proposed documents.

**20. Licensure**

The Offeror shall comply with and require all of its employees, agent, consultants, insurance firms, and subcontractors to comply with the license laws as required by the State of Utah.

**21. Financial Responsibility of Offeror's Insurance Providers**

Offeror shall respond promptly to any inquiry in writing by DFCM to any concern of financial responsibility of any insurance provider involved with the project. .

**22. Withdrawal of Proposals**

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

**23. Time is of the Essence**

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

**24. Right to Reject Proposals**

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

**25. Confidentiality**

If any part of your proposal contains matters that are to be confidential under the Government Records Access and Management Act of the State of Utah (GRAMA), the proposal must be properly marked as to which sentences are confidential as well as the appropriate reason under GRAMA. An entire proposal or the cost proposal cannot be marked as confidential and if it is, it will not be honored.

**PROJECT SCHEDULE**

<b>PROJECT NAME: NEW UTAH STATE CORRECTIONAL FACILITY</b>				
<b>DEPARTMENT OF CORRECTIONS – SALT LAKE CITY, UTAH</b>				
<b>DFCM PROJECT NO. 15310100</b>			<b>Broker/Consultant</b>	
<b>Event</b>	<b>Day</b>	<b>Date</b>	<b>Time</b>	<b>Place</b>
Request for Proposals Available	Friday	February 19, 2016	3:00 PM	DFCM web site *
Last Day to Submit Questions	Wednesday	February 24, 2016	5:00 PM	Jim Russell - DFCM E-mail <a href="mailto:jimrussell@utah.gov">jimrussell@utah.gov</a>
Addendum Deadline (exception for proposal delays)	Friday	February 26, 2016	3:00 PM	DFCM web site *
Costs Proposal, References, Statements of Qualifications, and Termination/Debarment Certifications Due	Tuesday	March 1, 2016	12:00 NOON	DFCM Room 4110 State Office Bldg. Capitol Hill Complex SLC, UT
Short Listing by Selection Committee, if applicable.	Wednesday	March 2, 2016		
Announcement of Finalists	Wednesday	March 2, 2016	4:00 PM	DFCM web site*
Interviews	Thursday	March 3, 2016	TBA	To Be Announced
Announcement	Friday	March 4, 2016	4:00 PM	DFCM web site *

\* DFCM's web site address is [www.dfc.utah.gov](http://www.dfc.utah.gov).

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

THIS AGREEMENT, made this \_\_th day of \_\_\_\_\_, 201\_, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called the "DFCM", 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 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 DFCM in the form of a modification to this Agreement properly executed by the DFCM.

3.2 **Incidental Services/Reimbursements.** Consultant shall provide all services as established by standard professional custom and practice. 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:

1. 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:

a. 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, airport long term parking only, and other ground transportation) submit an original receipt for each item (tips for taxi, baggage, etc. are not reimbursable);

b. 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>

c. 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>

d. 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>

2. **Miscellaneous:** e.g. express mail, photos, long distance calls. An original invoice must be submitted for each item.

Exceptions to the above shall be approved by the DFCM Director in writing.

3.3 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 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.

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

3.5 The acceptance by the Consultant of final payment without a written protest filed with DFCM within three 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 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 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 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 additional 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 78B-2-225(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.

