



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management**

**DFCM**

## **Solicitation for Statement of Qualifications**

Value Based Selection Method

**January 22, 2016**

# **MASTER ARCHITECT UTAH STATE PRISON RELOCATION**

**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 <http://dfcm.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 <http://dfcm.utah.gov>.

## NOTICE TO MASTER ARCHITECTS

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

**UTAH STATE PRISON RELOCATION**  
**DEPARTMENT OF CORRECTIONS – SALT LAKE CITY, UTAH**  
**DFCM PROJECT NO. 15310100**

Master Architectural Services for a new 1,331,748 gsf Utah State Prison including onsite and offsite improvements. The facility is intended to replace the existing Draper Prison Facility and must be capable of housing 4,000 inmates initially with expansion capability. The initial space 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 maximum/general population substance abuse treatment/maximum facility; male and female reception and orientation facility with mental health and geriatric housing, reception, medical, educational, vocational, religious, recreation, culinary, laundry, security, maintenance and Correctional Industries. Construction budget for this project is \$425,000,000.

The selection shall be under the Value Based Selection method. The SOQ documents, including the submittal requirements and the selection criteria and schedule, will be available at 3:00 PM on Friday January 22, 2016 on the DFCM web site at <http://dfcm.utah.gov>. For questions regarding this solicitation, please contact Jim Russell, DFCM, at 801-231-3489. ***No one else is to be contacted regarding this solicitation.***

A **MANDATORY** pre-submittal meeting will be held at 10:00 AM on Monday, February 1, 2016 in the Administration Office Auditorium, Division of Services for the Blind and Visually Impaired (DSBVI), 250 North 1950 West, Salt Lake City, Utah 84116. All master architectural firms wishing to submit on this project must attend this meeting.

Submittal dates for the required references, management plans, statements of qualifications, and interviews will be based on the Project Schedule included in the SOQ.

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

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

## **PROJECT DESCRIPTION**

### **Scope of Work:**

The scope of services for this project includes master planning, architectural and operational programming and conceptual site design for all site improvements for the new Utah Department of Corrections Prison. The exact location is still to be chosen by the State. This scope may be expanded through separate amendment(s) to include full design services for all or portions of the required facilities. DFCM may choose to hire multiple architects for specific portions of the project. If that is the direction chosen, the Master Architect will be required to work collaboratively with and coordinate with the selected architectural firm(s). This project may be delivered in multiple bid packages and multiple delivery methods that will be identified at the completion of the programming and master planning phase. To review the further detailed scope of work regarding this project see Scope of Services Appendix posted separately.

### **Fee Negotiation of Programming, Master Planning, and Design Services:**

After selection of the Master Architect firm, DFCM will undergo contract negotiations with the firm ranked highest and determined to be the best value to the State. In the event that a contract cannot be negotiated with the highest ranked firm, DFCM has the option to undertake negotiation with the next highest ranked firm, or to undertake a new solicitation. It is anticipated that a total design fee for this project will be within the maximum budgeted fee of six percent of the construction budget, for all design phases, construction administration phase and through project closeout. It is anticipated that a total fee for the programming and master planning phase will be within the maximum budgeted fee of one half of one percent of the construction budget.

### **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 selected firm must maintain an office in the State of Utah and be available on a daily basis as needed by DFCM, from the time of the full execution of the resulting contract of this SOQ through the final completion of the subject project.

### **New Utah State Prison Complex Description:**

The State of Utah is proposing the construction of a new prison complex to replace the existing 3,980 bed Utah State Prison 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.

### **New Complex Vital Characteristics:**

- **3,980 beds** – Complex Capacity. Key notes on capacity:
  - The facility needs the ability to expand beyond 3,980 beds if the Utah prison population rises in the future;
  - The initial space 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

maximum/general population/substance abuse treatment/maximum facility; male and female reception and orientation facility with mental health and geriatric housing, reception, medical, educational, vocational, religious, recreation, culinary, laundry, security, maintenance and correctional industries.

- **1,331,748 sq. ft.** - Square footage needed (per initial space program) for 3,980 bed prison complex.
- **Sub-Populations Served:**
  - Male and female Inmates
  - Maximum, medium, minimum, and community security inmates
  - General population, death row, intensive management/confinement, protective custody, reception and orientation, in-transit, and geriatric populations
- **Special Functions:**
  - Reception and diagnostic center
  - Central healthcare service management for UDC
  - Substance abuse treatment housing and programming
  - Sex offender treatment housing and programming
  - Mental health treatment housing and programming
  - Space for educational, vocational, religious, recreation, correctional industries, and volunteer programs

# PROCUREMENT PROCESS

The State of Utah intends to enter into an agreement with a firm to provide some or all of the 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 Architectural Documents

The SOQ documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this solicitation by reference. The solicitation will be available on the DFCM web site at <http://dfcm.utah.gov>.

## 2. Contact Information

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

## 3. Requests for Information

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

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

*No one else is to be contacted regarding this solicitation.*

**4. Project Schedule.**

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

**5. Mandatory Pre-Submittal Meeting**

A mandatory pre-submittal meeting will be held on the date and time and at the location listed on the Project Schedule.

A representative from each interested prime firm is required to attend. During the meeting, a presentation will be made to describe the overall scope of work and intended schedule. Interested firms may ask questions and request clarification about the project and the procurement process.

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

**THE PRIME FIRMS ABSENCE FROM THE PRE-SUBMITTAL MEETING AND/OR FAILURE TO REGISTER PRECLUDES PARTICIPATION AS A SUBMITTING FIRM ON THIS PROJECT.**

**6. Submittal Due Dates and Times**

All required submittals must be delivered to, and be received by, the Division of Facilities Construction and Management previous to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery since the 2016 Legislative Session will be in progress and parking is limited. 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 received at the office of DFCM no later than the time and dated listed in the Project Schedule. Questions must be emailed to Jim Russell at [jimrussell@utah.gov](mailto:jimrussell@utah.gov).

**8. Addendum**

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

Any addenda issued prior to the submittal deadline shall become part of the SOQ and any information required shall be included in your submittal.

**9. Past Performance and References**

DFCM will rate each firm’s performance on every project worked (rating scale: 1 = low; 5 = high). The rating may include comments from agencies. Ratings on completed DFCM projects over the previous five years will be provided to the evaluation committee for their consideration in evaluating and scoring the past performance of each entity.

DFCM Past performance ratings are available for your review at your request from the DFCM project manager. Requests shall be made prior to the final questions deadline.

If a firm has not completed at least three DFCM projects in the last five years, they shall provide by the time indicated in the schedule, a list of references on all similar projects that were completed by the firm in the last five years. All references shall be for projects in which the firm was the prime firm, and held a contract directly with the owner.

The non DFCM ratings will be used to augment the DFCM ratings, if there are any, for a total of at least three past performance ratings.

It is the firm’s responsibility to provide adequate references in compliance with this RFP. Firms that fail to meet the minimum of three ratings will be disqualified.

For non-DFCM projects provide the following information:

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

**10. Management Plan and Statement of Qualification**

The submittal for management plan and statement of qualifications shall be combined into one document and shall be limited to 75 pages maximum. Six hard copies and six CDs are required. The submittal shall be organized as follows:

**COVER PAGE:** Should include the project name and project number as well as the prime firm’s name. The cover page may have a picture on it with a brief description of the picture.

**TAB ONE:** Letter of Introduction – including: executive summary of proposal and point of contact information.

**TAB TWO:** Statement of Qualification and Strength of Team – including: *prime firm experience, other key firms team experience, organizational chart, project specific team experience, team delivery method experience, team experience with DFCM/Agency, team experience in geographic region, team member availability, project manager experience, design architect experience, any other team members project specific experience as required.*

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.

**TAB THREE:** Management Plans – Firms are required to develop and submit a plan demonstrating how they will manage their responsibilities and scope of work outlined within this RFP. The Management Plan should be concise yet contain sufficient information for evaluation by the selection committee and should include: *preconstruction services, project communication plan, sub-consultant management plan, value added ideas, tools and techniques, creativity, security procedures that assure that security related documents, information, plans and specifications are clearly marked as confidential and maintained as confidential, project team integration, and change control plan.*

**TAB FOUR:** Project Schedule – 11” x 17” pages may be utilized for the proposed project schedule. Explain how you plan to create and manage the design schedule throughout the project. Also, include a schedule for Programming and Master planning that indicates critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable for this specific scope of work.

**TAB FIVE:** Project Risks – Address *Risk Identification and Mitigation Plan* 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.

**TAB SIX:** Termination and Debarment Statement, DFCM Past Performance and References, and Miscellaneous Information.

## **11. Selection Committee**

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

## **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 DFCM. Firms are to submit these certifications with their Statement of Qualifications.

## **13. Interviews**

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

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

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

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

## **14. Selection Criteria for the VBS Master Architectural Services**

The following criteria will be used in ranking each of the teams. The criteria are not listed in any priority order. The selection committee will consider all criteria in performing a comprehensive evaluation of the proposal. Weights have been assigned to each criteria in the form of points.

- A. DFCM Past Performance Rating. 50 Points.** Each prime firm will be given a past performance rating. The rating will be based first on how well the firm did on past projects with DFCM. If a minimum of three DFCM past performance ratings are not available a rating will be established using any DFCM past performance ratings that are available, supplemented by references supplied by the firm at the time the Management Plans and SOQ are submitted.

**B. Strength of Team.**

- 10 Points. *Prime Firm Experience:*** show the overall experience of the firm in relation to projects of similar scope, size and complexity.
- Master Planning large “Green Field” sites
  - Prisons larger than 2,000 beds
  - Sites over 200 acres in developed institutional facilities
  - All security levels and both male and female inmates in a single institution
  - Medical and mental health care delivery in a correctional environment
  - Integration of educational, vocational, industry and rehabilitative programs
  - In addition to the above, provide a sample of an operational program created for a similar facility.
- 20 Points. *Other Key Firms Experience:*** show the overall experience of the project team in relation to successful projects of similar scope and size and complexity.
- What firms on the team have the above experience
- 20 Points. *Project Specific Team Experience:*** what is the project team’s specific experience on past successful projects, in relation to similar project type, scope, size and complexity?
- What individual team members assigned to this project have the above experience
- 10 Points. *Team Delivery Method Experience:*** what experience does the project team have with similar delivery methods (design/build, design/bid/build, CM/GC)?
- 30 Points. *Team Experience with DFCM/Agency:*** what experience does the team have on successful past projects with the DFCM/Agency?
- 30 Points. *Team Experience in Geographical Region:*** what experience does the team have in the specific geographical region and how will this experience be a benefit to the project?
- 10 Points. *Team Member Availability:*** show the availability of the team considering current project assignments and their commitment to these projects.
- Commitment of Key Team members (Planner, Architectural Programmer, Operational Programmer, Lead Designer and Project Manager must be available to start work immediately and remain available to meet the needs of the project.

- 20 **Points. *Project Manager Experience:*** show the experience of past relevant projects. Consider availability, other current projects and percent of commitment, years of experience and years of experience with current firm.
- Experience, number of years, number of projects managing multiple, diverse design teams on a single project preferably a large prison project of similar scope.
- 20 **Points. *Design Architect Experience:*** show the experience of past relevant projects, availability, years of experience and years of experience with current firm.
- Experience designing “State of the Art” correctional facilities.
    - Provide three examples with benefits.
  - Knowledge of current best practices in corrections
    - Provide three examples.
  - Understanding of the Prison Rape Elimination Act (PREA) and how it affects facility design.
  - Experience designing facilities using direct supervision model.
  - Experience designing facilities for all levels of security.
  - Experience designing facilities with both male and female populations.
  - Experience providing medical and mental health services in a correctional setting.
  - Experience implementing sustainable design concepts.
- 20 **Points. *Experience of Additional Project Specific Team Member:*** show the experience of any additional team members such as:
- Innovative and cost-effective Seismic design solutions for such conditions as what are expected on the I-80/7200 West site
  - Sustainable design such as, high efficiency/long-life mechanical systems
  - Use of technology to enhance staff and inmate safety and security
  - Integration of public safety and institutional security in site master plans
  - Controls technology that integrates all aspects of building and site systems management to maximize efficiency, reduce operational costs and conserve resources
  - Use of technology to improve quality and efficiency of project delivery

C. **Project Management Approach.**

- 20 **Points. *Preconstruction Services:*** does the team have a plan in place to provide the required deliverables, adequate plan reviews and provide the needed quality control?
- Provide a process map that demonstrate your approach.

- 10 Points. *Project Communication Plan*:** show how the team will identify and communicate with the Stakeholders (Owner, User Groups, Program Manager and CM/GC).
- How is information communicated within the team?
  - What tools do you use/recommend to keep the entire team informed ?
  - How do you prepare owner groups to be ready to respond with needed information as you move through the phases of planning, programming and design?
  - How does your plan deal with owner group staff turnover?
  - How does your plan deal with security procedures that assure that security related documents, information, plans and specifications are clearly marked as confidential and maintained as confidential?
- 10 Points. *Sub-consultant Management Plan*:** show how sub-consultants will be selected and managed.
- Demonstrate how sub-consultants will be integrated into your team, their role/area of responsibility
  - How will you assure all work is coordinated? (tools/techniques/process)
- 10 Points. *Risk Identification and Mitigation Plan*:** has the team demonstrated an understanding of the project through identification of risks and have they provided a detailed mitigation plan?
- What do you see as the top three risks for the project and what are the steps you would implement to mitigate them
  - What do you see as the primary risks for each of the following phases and what would be your recommendations for mitigating them:
    - Pre-Design
    - Design
    - Construction
    - Activation
- 30 Points. *Value Added Ideas*:** has the team provided value added ideas that will benefit the project?
- What are your top five ideas for adding value to the project
  - How would the ideas be integrated into your Pre-Design deliverables
- 30 Points. *Tools and Techniques*:** does the team use any unique tools or techniques that will benefit the project?
- Describe how you see these tools being implemented on a project of the scope and complexity
- 30 Points. *Creativity*:** has the team demonstrated creativity that can be translated positively to this project?
- Provide three examples of creative/innovative solutions implemented on a correctional project
  - Describe how they benefited the project

- 30 Points. *Project Team Interaction:*** demonstrate the ability to work well as a project design team and with the CM/GC and Owner throughout design and construction.
- 10 Points. *Change Control Plan:*** show how the team will manage and control RFIs, ASIs, PRs, PCOs and change order pricing.
- Describe what you consider best practices for controlling each

**TOTAL POSSIBLE POINTS: 420 POINTS**

**15. Fee Negotiation**

Following selection of a design firm by the Selection Committee and prior to the award of the design agreement, DFCM will negotiate the final agreement fee with the top ranked firm. Should the DFCM be unable to agree to a satisfactory contract with the top ranked firm at a price that DFCM determines to be fair and reasonable to the State, discussions with that firm shall be formally terminated. Negotiations will then be undertaken with the second ranked firm.

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

**16. Form of Agreement**

At the conclusion of negotiations, the selected architectural firm will be required to enter into an agreement using the attached form of the Design Agreement between DFCM and Architect/Engineer and as such may be modified by the Utah Attorney General to meet insurance and risk needs.

**17. Licensure**

The architectural firm shall comply with and require its subconsultants to comply with the license laws of the State of Utah.

**PROJECT SCHEDULE**

<b>PROJECT NAME: MASTER ARCHITECT – UTAH STATE PRISON RELOCATION DEPARTMENT OF CORRECTIONS – SALT LAKE CITY, UTAH</b>				
<b>DFCM PROJECT NO. : 15310100</b>				
<b>Event</b>	<b>Day</b>	<b>Date</b>	<b>Time</b>	<b>Place</b>
Solicitation for MA Services Available	Friday	January 22, 2016	3:00 PM	DFCM web site*
<b>Mandatory</b> Pre-submittal Meeting	Monday	February 1, 2016	10:00 AM	Administration Office Auditorium Division of Services for the Blind and Visually Impaired (DSBVI) 250 North 1950 West SLC, UT
Owner/User Visit	Wednesday	February 10, 2016	TBA	To Be Announced
Last Day to Submit Questions	Friday	February 12, 2016	4:00 PM	Jim Russell- DFCM E- mail: <a href="mailto:jimrussell@utah.gov">jimrussell@utah.gov</a>
Addendum Deadline (exception for bid delays)	Tuesday	February 16, 2016	3:00 PM	DFCM web site *
Management Plans, References, Statements of Qualifications, and Termination / Debarment Certifications Due	Friday	February 19, 2016	12:00 NOON	DFCM Room 4110 State Office Bldg Capitol Hill Complex SLC, UT
Short Listing by Selection Committee, if applicable.	Thursday	February. 25, 2016	TBA	To Be Announced
Announcement of Finalists	Friday	February 26, 2016	4:00 PM	DFCM web site*
Interviews	Thursday	March 3, 2016	TBA	To Be Announced
Announcement	Monday	March 7, 2016	4:00 PM	DFCM web site*

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

**DESIGN AGREEMENT  
BETWEEN DFCM AND MASTER ARCHITECT**

This AGREEMENT is made this \_\_\_th day of \_\_\_\_, 201\_, between the Division of Facilities Construction and Management, hereinafter referred to as "DFCM", and the "Master Architect", \_\_\_\_\_ a corporation of the State of Utah, whose address is \_\_\_\_\_ 84\_\_\_\_, hereinafter called the "MA", agree to all the provisions of this Agreement for the Project identified as:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**ARTICLE I.  
DOCUMENTS INCORPORATED BY REFERENCE**

**A. DFCM GENERAL CONDITIONS.**

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

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

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

**The MA's Firm must maintain an office in the State of Utah and be available on a daily basis as needed by DFCM, from the time of execution of the full execution of the resulting contract of the Solicitation through the final completion of the subject project.**

**From the time of full execution of this Agreement through the completion of the Master Architectural Services, the only contact shall be with Jim Russell, DFCM Assistant Director, except as otherwise provided in writing in this contract or provided in writing by Jim Russell. No others are to be contacted regarding this Project in violation of this paragraph.**

**B. SOLICITATION / PROCUREMENT DOCUMENTS AND REQUIREMENTS.**

The MA shall comply with the following:

1. State Procurement requirements.

2. The DFCM solicitation documents and MA submitted documents for this project are hereby incorporated by reference as part of this Agreement. Attachment “C” hereto indicates changes to the MA’s response, if applicable.

3. The procurement documents and Contract Documents.

4. The security plan provided by the MA’s Team and any security requirements mandated by DFCM.

5. All personnel of the MA and any sub-consultant may be subject to security checks as required by the Department of Corrections.

**C. DFCM DESIGN MANUAL.**

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

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

**D. ATTACHMENTS TO THIS AGREEMENT**

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

**E. HIERARCHY OF DOCUMENTS.**

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

1. Codes and applicable law;
2. The attachments hereto;
3. The solicitation documents issued by DFCM for the selection of the MA;
4. Any response by MA to the procurement documents attached to this Agreement;
5. The body of this Agreement;
6. The General Conditions; and
7. The Design Manual.

**ARTICLE II.  
GENERAL REQUIREMENTS**

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

1. Comply with the requirements of the Predesign Program;
2. Provide designs that comply with applicable laws, codes, rules, regulations and quality requirements;
3. Comply with this Agreement including the General Conditions and Design Manual;
4. Meet the established Construction Budget in Attachment "A";
5. Maintain the Project Schedule in Attachment "A"; and
6. To work with DFCM and the Contractor to accomplish all these objectives.

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

**C. STANDARD OF CARE; RESPONSIBILITY.** The services of MA 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 MA shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, security breaches, 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 or any act or negligence in regard to a security breach in violation of this Agreement.

**D. CONFIDENTIALITY AND PUBLIC INFORMATION RELEASE.** The subject project will include numerous confidential plans and documents as it related to a secure Prison Facility. The MA shall mark all plans, communications and documents as confidential and security related. The MA shall insure that only qualified people have access to such plans, communications and documents that are prescreened to assure that they meet industry standards for personnel that will abide to such confidentiality. The MA shall develop a confidentiality plan in conjunction with DFCM prior to the release of any such plans, communications or documents that would provide any person of the design components or nature of the prison in any manner which could be reasonably construed as security related. After the development of such confidentiality plan, the MA shall assure that it's only managers and employees, as well as any subcontractors or subconsultants at any tier abide by said confidentiality plan. The MA shall not make any information release in connection with the Project without advance written permission

of DFCM. The MA shall require of its Subconsultants the same agreement to maintain the confidentiality of information.

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

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

**F. LAWS, CODES AND REGULATIONS.** The MA and its Subconsultants shall use their best efforts consistent with the Standard of Care stated herein to comply with laws, codes, rules, regulations, ordinances and quality requirements applicable to the Project as established by State statute, codes adopted by State law, administrative rule and/or deemed applicable to the Project pursuant the express terms of this Agreement including those documents incorporated by reference. The MA or DFCM may request, and will be granted, a meeting with the other to discuss any additional codes or requirements that are applicable to the Project. In the case of change(s) or conflicts in the applicable code requirements, laws, rules or regulations, during the work of the Scope of MA's Services, when and if the MA becomes aware of such change(s) or conflicts, the MA shall promptly notify the DFCM in writing. If the DFCM determines that work that has already been properly performed must now be changed, such change will be considered additional work under this Agreement and the MA shall then prepare all documents to comply with the needed change(s).

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

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

1. Give written approval of an increase in the Construction Budget; and/or
2. Rebid or renegotiate the construction contract within a reasonable time; and/or
3. Revise the Project scope and/or quality as necessary to meet the Construction Budget; and/or
4. Abandon the Project and terminate this Agreement.

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

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

**J. DFCM REVIEWS, LIMITATIONS.** The right of the DFCM or any entity/user to perform plan checks, plan reviews, other reviews and/or comment upon the work of the MA, as well as any approval by the DFCM, shall not be construed as relieving the MA 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 MA shall be and remain liable to the DFCM in accordance with applicable law for all damages to the DFCM caused by the MA acts, errors and/or omissions.

**K. USE OF PROTOTYPICAL DESIGNS OR DESIGNS PROVIDED BY DFCM.** The MA shall use prototypical designs or other design drawings, specifications or calculations provided by DFCM in the request for proposal. The MA shall recheck such designs and any other design data, drawings, specifications and calculations provided by DFCM. The MA shall correct any error or omission as deemed necessary thereafter, and shall be responsible therefore to the same extent as if such materials had been provided by the MA under this Agreement. The MA shall be provided with all change orders, proposed change orders, and clarifications, from previous projects that are applicable to this Project. The MA shall incorporate all pertinent material into the new plans and specifications. If the MA has provided design services to DFCM on previous projects and has designed buildings similar to the components of this Project, which are in MA's charge, at the direction of DFCM, the MA shall modify and reuse existing design as much as possible. Where existing designs are being reused, drawings are required to conform to DFCM graphic/CAD standards unless prior written approval is given by DFCM.

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

**M. HAZARDOUS MATERIALS.** The MA shall comply with the General Conditions and Design Manual provisions regarding hazardous materials.

**N. DISCRIMINATION AND SEXUAL HARASSMENT PROHIBITED.** Pursuant to the laws of the State of Utah, the MA, 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 MA, or anyone for whose act the MA may be liable, shall not act in any manner as would violate the laws, regulations and policies of the United States or the State of Utah prohibiting sexual harassment.

**ARTICLE III.  
PROJECT TEAM.**

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

**B. MA AND SUBCONSULTANTS.**

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

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

**ARTICLE IV.  
DFCM RESPONSIBILITIES AND RIGHT TO EVALUATE MA**

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

1. Place advertisements for bids or proposals;
2. Conduct bid or proposal openings and interviews;
3. Timely provide and update MA with available “public” information in DFCM’s possession regarding the Project, including but not limited to, legal descriptions, topographic surveys, ALTA or other boundary surveys, utility surveys, record drawings, reports, project objectives, budgets, and other material requirements and limitations.
4. Notify the MA of any known fault, known defect, or known deficiency in the Project, including but not limited to acts, errors, omissions, or inconsistencies in MA’s services and Deliverable Instruments of Service. Notwithstanding this provision, any failure to notify the MA, shall not relieve the MA of any responsibility or liability for such fault, defect or deficiency.
5. The DFCM Representative shall timely render decisions so as to avoid unreasonable delays in the orderly progress of the Project.

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

**ARTICLE V.  
SCOPE OF MA'S BASIC SERVICES.**

**A. IN GENERAL.** The MA's Basic Services consist of those described in this Agreement, the General Conditions, and Design Manual, and include normal structural, mechanical, electrical, and architectural as well as other consulting services reasonably necessary to fulfill the MA's duties under this Agreement. Any additional scope of service requirements are provided in Attachment "A" and the Design Manual. ALL SUBMITTALS, COMMUNICATIONS AND DOCUMENTS SHALL BE MARKED AS "CONFIDENTIAL-SECURITY RELATED."

**B.**

**1. Incidental Services/Reimbursements.** Not included in the Basic Services are amounts to cover Direct and Reimbursable costs such as travel and printing. These costs are reimbursed at 1.05 % of cost and travel will be determined as per State Travel Guidelines.

a. **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:

i. 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);

ii. 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>

iii. 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>

iv. 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>

b. **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.

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

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

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

## **B. SCHEMATIC DESIGN PHASE.**

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

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

### **3. Documents and Drawings.**

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

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

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

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

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

## **C. DESIGN DEVELOPMENT PHASE.**

1. **General Description of Design Development Submittal.** The MA shall prepare, for written approval by the DFCM Representative, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate. The narrative shall include the MA's proposed design and construction

budget which shall be within the DFCM budget provided to the MA. The Design Development submittals shall comply with the following:

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

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

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

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

#### **D. CONSTRUCTION (CONTRACT) DOCUMENTS PHASE.**

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

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

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

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

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

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

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

#### **E. PROCUREMENT OR NEGOTIATION PHASE.**

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

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

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

#### **F. CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT.**

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

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

#### **3. Site Visits.**

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

b. **Compliance with Contract Documents, Reporting Defects and Deficiencies.** Site visits shall require the MA to examine the Work of the Contractor in progress to assist the DFCM in identifying any lack of compliance with the Construction Documents, defects or deficiencies in the Work and to determine whether the Work is proceeding in a manner

such that, when completed, will likely be in accordance with the Construction Documents. Except as may otherwise be provided in Attachment "A", the MA's on-site construction-phase services are (i) not full-time, continuous, or exhaustive; (ii) do not include a duty to discover latent defects in the Work; and (iii) do not constitute a guarantee of the MA's Work or relieve the Contractor of its responsibilities. The MA is not responsible for the Contractor's selected means, methods, or sequences of work. The MA shall cooperate and assist the DFCM in enforcement of the Construction Documents. The MA shall promptly report known or obvious defects to the DFCM. This provision does not relieve the Contractor of its responsibility to comply with the Construction documents. The MA shall assure that all of its employees, including subconsultants that are able to obtain any information on this project or visit any site are able to pass a security check as customarily provided by the Department of Corrections.

c. **Written Report.** The MA shall promptly submit to DFCM a written report subsequent to each site visit.

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

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

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

6. **Record Drawings (As-Built).** The MA shall monitor the Contractor's efforts to regularly update the redline drawings during construction. Upon completion of the Construction Phase, the MA shall prepare Record Drawings based upon redline construction drawings and/or other information provided by Contractor. The MA has no duty to verify the accuracy or completeness of said information and, unless the MA knows that said information is on its face inaccurate and/or incomplete, the MA is entitled to rely upon said information in preparing Record Drawings. If and to the extent the MA knows that said information is on its face inaccurate and/or incomplete, the MA shall promptly advise DFCM in reasonable detail of the inaccurate and/or incomplete information. Subject to said obligation to advise and its obligation to transcribe the Contractor's redline construction drawings and/or other information provided by Contractor in a manner consistent with the Standard of Care, the MA makes no representation regarding the accuracy or completeness of its Record Drawings.

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

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

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

## **ARTICLE VI. DELIVERABLE INSTRUMENTS OF SERVICE**

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

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

**C. PROMOTIONAL ISSUES.** The MA shall have the right to include photographic or artistic representations of the exterior of the project that is viewable by the public among the MA's promotional and professional materials, provided that the MA appropriately gives recognition to the State of Utah regarding the Project. The MA shall be given reasonable access to the completed Project to make such representations subject to advance written approval by the Utah Department of Corrections. However, the MA's materials shall not include the DFCM confidential or proprietary information. The DFCM shall provide professional credit for the MA in the DFCM's promotional materials that relate to the MA's work for the Project. Except to the extent related to the MA's defense of any statements made by others in regard to the MA's performance, and notwithstanding any other provision of this Agreement, the MA shall not make any public information release in connection with services performed under this Agreement without the advance written approval of the Director of the Division of Facilities Construction and Management.

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

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

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

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

## **ARTICLE VII. COMPENSATION, PAYMENTS TO THE MA, AND DAMAGES**

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

**B. CUSTOMER SATISFACTION INCENTIVE "CSI".** The DFCM Customer Satisfaction Incentive ("also referred to as CSI") which is current as of the date of this Agreement and on file with the DFCM (<http://dfcm.utah.gov/dfcm-standard-documents.html>) is incorporated by reference as if fully set forth in this Agreement.

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

**D. WITHHOLDING OF PAYMENT; LIABILITY OF EXCESS OWING.** Should the MA fail to perform any of its obligations hereunder, be in default of this Agreement, or otherwise fail to complete the services of this Agreement within the time established by the Project Schedule (Attachment "A"), the MA shall be liable to the DFCM for the actual damages incurred and such amount, may be deducted from any amount due or that may become due the MA. To the extent

that the damages exceed any amount that would otherwise be due the MA, the MA shall be liable for such excess to the DFCM. The DFCM may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees. Notwithstanding the above, the DFCM agrees that the MA is not responsible for damages arising directly or indirectly from any delays for causes beyond the MA's control.

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

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

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

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

**G. INTEREST ON LATE PAYMENTS.** Except as otherwise provided by law, if any payment is late based upon the provisions of this Agreement, the MA 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.

## **ARTICLE VIII. REQUIREMENTS FOR ADDITIONAL SERVICES.**

**A. ADDITIONAL SERVICES; IN GENERAL.**

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

2. **Written Modification in Advance of Work Required.** The MA shall perform additional services when authorized by a written modification to this Agreement in advance of the performance of the subject work. Failure of the MA to obtain a written approval from the DFCM of the cost and authorization to proceed shall result in the MA's forfeiture of the right to seek

additional compensation for the contended additional service. The MA shall have no obligation, and shall not, begin or provide any additional services unless and until such written modification has been provided by the DFCM.

**ARTICLE IX.  
INSURANCE AND INDEMNIFICATION**

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

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

<b>Construction Budget</b>	<b>Minimum Liability Coverage</b>
\$50,000,000 and above	\$2,000,000 per claim, \$4,000,000 aggregate
\$25,000,000 and above, but under \$50,000,000	\$2,000,000 per claim, \$2,000,000 aggregate
\$1,500,000 and above but under \$25,000,000	\$1,000,000 per claim, \$1,000,000 aggregate
Under \$1,500,000	\$ 500,000 per claim, \$ 500,000 aggregate

The DFCM reserves the right to require additional coverage from that stated in the chart herein above, at the DFCM's expense for the additional coverage portion only. DFCM also reserves the right to require project specific insurance or such other insurance type program that the DFCM may select at the DFCM’s expense, and if such right has been exercised it shall be indicated as an exhibit to this Agreement or as a modification to the Agreement. Unless project specific insurance or other insurance plan is required by the DFCM, the coverage may be written under a practice policy with limits applicable to all projects undertaken by the firm but must be maintained in force for the discovery of claims for a period of six (6) years after the date final payment is made to the MA under this Agreement. All policies provided by the MA must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of the MA’s Agreement or the commencement of the MA’s services. The MA’s policy must also include contractual liability coverage applicable to the indemnity provision of this Agreement for those portions of the indemnity provisions that are insured under the MA’s policy and in accordance with this Agreement, including the attachments hereto.

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

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

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

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

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

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

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

compensation policies. The DFCM reserves the right to request the MA to provide a loss report from its insurance carrier.

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

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

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

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

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

## **B. INDEMNIFICATION**

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

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

### **3. Indemnification Requirements.**

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

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

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

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

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

f. **Specific Waiver for Damages Covered by Builder's Risk.** DFCM and the MA waive all rights against each other for damages, but only to the extent covered by the State of Utah's Builder's Risk Policy concerning damage to the Work during construction, except such rights as they may have to the proceeds of such insurance as set forth in the General Conditions. DFCM and the MA each shall require similar waivers from their Subconsultants and agents at any tier.

## **ARTICLE X. LIMITATIONS OF ACTIONS**

**A. STATUTE OF LIMITATION AND STATUTE OF REPOSE.** An action by or against the MA, the MA's Subconsultant, agent, independent Subconsultant, or anyone for whom the MA, 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 MA, the MA's Subconsultant, agent, independent Subconsultant, or anyone for whom the MA may be liable, that is based in contract or warranty shall be commenced within six (6) years of the date of substantial completion of the improvement or abandonment of construction except that such period of limitation shall be modified as follows:

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

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

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

4. **“Different Period of Limitation” from Utah Code.** These provisions are understood and agreed to by the MA 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 XI. PRELIMINARY RESOLUTION EFFORTS, CLAIMS AND DISPUTES**

**A. GENERAL CONDITIONS REQUIREMENTS APPLY.** The provisions of Articles 7.7 through and including 7.14 of the General Conditions shall allow to Preliminary Resolution Efforts, Claims and Disputes under this Agreement. References in said Articles 7.7 through and including 7.14 to the term “Contractor” and “Subcontractor” shall refer to the MA and Subconsultant under this Agreement, respectively. Unless inconsistent with the provisions of this Agreement, definitions in the General Conditions shall apply to this Agreement.

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

1. Issuance of a denial by DFCM of an MA 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 MA / Subconsultant PRE process under Paragraph 7.7.5 of the General Conditions; or
3. When the MA knows or should have known about any other issue where the MA seeks additional monies, time or other relief from the State of Utah or DFCM.

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

**ARTICLE XII.  
TERMINATION OR SUSPENSION**

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

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

2. **Paid Sums Owing Through Date of Termination.** In the event of such termination for cause by the MA, the MA shall be paid all sums owing MA through the date of termination. Under no circumstances, shall MA be paid for any other sums related to the termination for cause, including but not limited to, lost profits or consequential damages.

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

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

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

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

### **ARTICLE XIII. GENERAL LEGAL REQUIREMENTS**

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

**B. INDEPENDENT CONTRACTOR.** The MA is an independent contractor and not an employee of DFCM or the State of Utah. The MA shall have no authorization, express or implied, to bind the State of Utah or DFCM to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or DFCM, except as specifically set forth in this Agreement.

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

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

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

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

requested, to the last business address known to the party giving notice, confirming the FAX delivery.

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

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

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

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

**MA:**

\_\_\_\_\_  
Signature Date

Title: \_\_\_\_\_

State of \_\_\_\_\_ )

\_\_\_\_\_ )

County of \_\_\_\_\_ )

\_\_\_\_\_  
Please type/print name clearly

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

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires \_\_\_\_\_

APPROVED AS TO AVAILABILITY  
OF FUNDS:

**DIVISION OF FACILITIES  
CONSTRUCTION AND MANAGEMENT**

\*/S/ David D. Williams, Jr.  
David D. Williams, Jr.  
CBA Financial Director

\*/S/ DFCM  
DFCM

APPROVED AS TO FORM:  
July 20, 2015  
By: Alan S. Bachman  
Assistant Attorney General

APPROVED FOR EXPENDITURE:  
\*/S/ Division of Finance  
Division of Finance

\*Electronic signatures are effective when the AIM Status History page is attached to this agreement following this signature page. The AIM Status History page identifies the State signatures

(Name of Project)

**Attachment "A"**

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

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

- A. Travel reimbursement requirements: As outlined in MA's attached proposal.
- B. Document reproduction requirements (needs for review sets, bidding, construction, etc.):  
Note: Printing for use by design team in presentations and for coordination is included in basic services fee. As outlined in MA's attached proposal.
- C. Construction Period site visits: As outlined in MA's attached proposal.
- D. Record drawings: 5% up to \$50,000 of contract amount will be held for record drawings.

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

Exceptions to this list of basic services are:

2. **ADDITIONAL SERVICES / REQUIREMENTS:**

- Complexity of Consultant Fee: \$\_\_\_\_\_
- Complexity of Scope Fee: \$\_\_\_\_\_

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

- Total Guaranteed Fee \$\_\_\_\_\_
- Potential CSI to be added by modification at a later date \$\_\_\_\_\_

4. **MILESTONES / SCHEDULE:** Required project milestones and MA's project schedule.

- Design complete ready for bidding: \_\_\_\_\_
- Construction complete and ready for occupancy permit: \_\_\_\_\_
- Project closeout complete (punch lists, O&M, record drawing, warranties, certificate of occupancy and other requirements): \_\_\_\_\_

(Name of Project)

**Attachment “B”**

The MA’s Organization Chart is hereby identified and attached.

(Name of Project)

**Attachment “C”**

Any additional explanation of the MA’s response to the DFCM’s submittal documents are hereby identified and attached. None

(Name of Project)

**Attachment “D”**  
**Attachment to Design Agreement for CM/GC Projects**

1. The CM/GC Agreement with the selected firm for this Project, is hereby incorporated by reference. The MA shall abide by all the MA responsibilities identified in that Agreement.
2. As per Article 5 of the CM/GC Agreement, the MA shall cooperate with the CM/GC to present mutually agreed upon designs, estimates and value engineering.
3. Article II.G. of the Design Agreement shall be omitted and replaced with the following: The MA shall review the estimates of the CM/GC for concurrence, and shall design within the estimates approved by DFCM.
4. Schedule. The MA is required to cooperate with the CM/GC schedule for delivering bid packages in the scope required by the CM/GC and agreed to by DFCM. It is the intent of DFCM to keep the number of bid packages to the practical minimum.
5. Minutes. The MA is responsible for meeting minutes throughout the design phase. The CM/GC is responsible for meeting minutes throughout the construction phase, except that the MA shall ensure that accurate meeting minutes are managed by the CM/GC and make any necessary comments on the minutes prior to approval by DFCM.
6. Incentive. If the final costs of the Project are equal to or less than the final approved FLCC, then the MA shall be entitled to 10% of the savings between the final approved GMP and the final cost, or \$30,000, whichever is less.

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