



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Utah State Building Board

Solicitation for Consultant Services

Value Based Selection Method

March 18, 2015

STATEWIDE FACILITY CONDITION AND INFRASTRUCTURE ASSESSMENTS

UTAH STATE BUILDING BOARD

Project No. 310

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Current copies of the DFCM General Conditions dated May 25, 2005, Design Manual, and all Supplemental General Conditions are available upon request at the DFCM office and on the DFCM web site at www.dfc.utah.gov - “Standard Documents” – “Reference Documents” – “Supplemental General Conditions”, and are hereby made part of these contract documents by reference.

The Agreement and General Conditions dated May 25, 2005 have been updated from versions that were formally adopted and in use prior to this date. The changes made to the General Conditions are identified in a document entitled Revisions to General Conditions that is available on DFCM’s web site at www.dfc.utah.gov.

NOTICE TO CONSULTANTS

The State of Utah – Utah State Building Board is soliciting the services of qualified firms/individuals to perform Statewide Facility Condition and Infrastructure Assessments services for the following project:

STATEWIDE FACILITY CONDITION AND INFRASTRUCTURE ASSESSMENTS
UTAH STATE BUILDING BOARD
PROJECT NO. 310

The Utah State Building Board is soliciting proposals to conduct facility condition assessments on approximately 40,000,000 square feet of state-owned buildings and infrastructure over the next five years. Assessments will be limited in scope and focus ONLY on critical (major) facility and infrastructure components such as chiller, boilers, HVAC systems, electrical systems utility distribution systems (tunnels, water, gas, steam, etc.), structural (non-destructive testing), and fire code deficiencies. The assessments will be complete (thorough/detailed) assessments - not updates of previously-completed assessments.

Construction budget for this project is \$900,000.00.

The selection shall be under the Value Based Selection method. The Solicitation for Consultants (SFC) documents, including the submittal requirements and the selection criteria and schedule, will be available at 1:00 PM on Wednesday, March 18, 2015 on the DFCM web page at <http://dfcm.utah.gov>. For questions regarding this project, please contact Mike Smith, Utah State Building Board, 801-870-3420, mikesmith@utah.gov. No others are to be contacted regarding this project.

A **MANDATORY** pre-submittal meeting will be held at 1:00 PM on Wednesday, April 1, 2015 in Room 4112 State Office Building, Capitol Hill Complex, Salt Lake City, Utah. All consultants 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 SFC.

The Utah State Building Board 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.

Utah State Building Board
Room 4110 State Office Building
Capitol Hill Complex
Salt Lake City, Utah 84114

PROJECT DESCRIPTION

The Utah State Building Board is soliciting proposals to conduct facility condition assessments on approximately 40,000,000 square feet of state-owned buildings and infrastructure over the next five years. Assessments will be limited in scope and focus ONLY on critical (major) facility and infrastructure components such as chiller, boilers, HVAC systems, electrical systems utility distribution systems (tunnels, water, gas, steam, etc.), structural (non-destructive testing), and fire code deficiencies. The assessments will be complete (thorough/ detailed) assessments - not updates of previously completed assessments.

Assessment teams must assess the following areas: architectural, mechanical, electrical, and civil. Facilities to be assessed include state-owned multi-story office and support facilities, correctional facilities, park facilities, and state college/university facilities, etc. The Utah State Building Board may modify the contract to include other buildings as needed. The ages of the facilities range from 5 - 100 years old. Interested firms must have experience and a proven track record of performing facility condition assessments on state government facilities and demonstrate their ability to perform the following requirements:

Requirements

- Identify critical facility and infrastructure deficiencies.
- Calculate the cost of all deficiencies utilizing RS Means or equivalent published construction and remodeling cost estimating data and format.
- Rank and prioritize all items by severity and anticipated life cycle.
- Input all information into current iPlan database or approved equivalent.
- Assessments must identify facility and infrastructure deficiencies including (a) fire code deficiencies and (b) HVAC, electrical, structural (non-destructive testing) deficiencies. Assessments must also include accurate cost estimates for repairs and improvements required to cure identified deficiency.
- Each facility assessment must break out and report deficiencies in the following categories. All reports, summaries, totals, and models must illustrate each category individually.
 1. Site (building proper, typically 50' out)
 2. Exterior structure
 3. Interior structure
 4. Fire safety
 5. HVAC (mechanical)
 6. Plumbing
 7. Electrical

- Classification: All deficiencies must be classified as follows:
 1. Priority 1 – Critical (Immediate, Year One). Projects in this category require immediate action to:
 - a. return a facility to normal operation
 - b. stop accelerated deterioration
 - c. correct a cited safety hazard
 2. Priority 2 – Necessary - Not Yet Critical (Years Two to Five). Projects in this category include conditions requiring appropriate attention to prelude predictable deterioration or potential downtime and the associated damage or higher cost if deferred further.

- Each detailed item must include the following information:
 1. Unique title and project number
 2. Project priority classification
 3. Building System Category (Site, Exterior Structure, etc.)
 4. Specific Building Code violation or application
 5. Specific item extent (floor wide, item only, etc.)
 6. Detailed narrative description of each project describing the condition needing to be corrected, the corrective action required, and the consequences of effect of this project on the building occupancy, maintainability, and reasons the original condition occurred.

- Provide technical assistance in the following disciplines:
 1. Central high temperature boiler systems
 2. Central chilled water systems
 3. HVAC systems
 4. Plumbing systems
 5. Electrical systems

- Access to facilities should be scheduled through the user agency with respect to activities and needs of the building occupant.

- Assessments should not use disassembly or special testing equipment. All assessments should be made through visual inspections of accessible equipment and building components. It is expected that the inspection team will, for example, lift ceiling tiles in suspended ceilings and open access doors to reveal hidden equipment and building components that are integral to the survey.

Condition Exclusions

- Assessments should not include condition of scientific equipment, furniture, movable equipment, routine maintenance items. The study is limited to critical (major) facility and infrastructure components.
- Inspections do not include hazardous materials inspections.
- Assessments should not include excavation or demolition cost.

PROCUREMENT PROCESS

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

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

1. Solicitation for Consultant Documents

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

2. Contact Information

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

3. Requests for Information

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

Mike Smith
Utah State Building Board
Room 4110 State Office Building
Capitol Hill Complex
Salt Lake City, Utah 84114
E-mail: mikesmith@utah.gov
Phone: 801-870-3420

4. Project Schedule.

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

5. 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 Utah State Building Board previous to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery. If using a courier service, the submitting firm is responsible for ensuring that delivery will be made directly to the required location. It is your responsibility to allow for the time needed to park on Capitol Hill.

7. Last Day to Submit Questions

All questions must be received at the office of the Utah State Building Board no later than the time and dated listed in the Project Schedule. Questions must be submitted in writing to Mike Smith at the Utah State Building Board.

8. Addendum

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

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

9. Past Performance and References

The Utah State Building Board 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 Utah State Building Board 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.

Utah State Building Board past performance ratings are available for your review at your request from the Utah State Building Board project manager. Requests shall be made prior to the final questions deadline.

If a firm has not completed at least three Utah State Building Board 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-Utah State Building Board ratings will be used to augment the Utah State Building Board 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-Utah State Building Board 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 Submittal

The submittal for management plan and statement of qualifications shall be combined into one document and shall be limited to 10 pages maximum. Six hard copies and two 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 point of contact information.

TAB TWO: Organizational chart – including team resumes and project roles.

TAB THREE: Management Plans – Firms will be required to develop and submit a plan demonstrating how they will manage their responsibilities. An organization chart showing the roles and responsibilities of all pertinent decision-makers is a required part of the presentation. The Management Plan should be concise yet contain sufficient information for evaluation by the selection committee.

TAB FOUR: Project Schedule – 11” x 17” pages may be utilized for the proposed project schedule. Indicate critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable

TAB FIVE: Project Risks – Address project 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: Statement of Qualifications – 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 SEVEN: Termination and Debarment Statement and Miscellaneous Information.

11. Selection Committee

The Selection Committee may be composed of individuals from the Utah State Building Board, 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 the Utah State Building Board. 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 six firms are eligible for interviews, the Utah State Building Board 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 base 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 VBS Professional 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. Utah State Building Board past performance rating. **40 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 the Utah State Building Board. If a minimum of three Utah State Building Board past performance ratings are not available, a rating will be established using any Utah State Building Board 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.** *Project Specific Firm Experience:* what is the firm's project specific experience on past successful projects, in relation to similar project type, scope, size and complexity.
 - 10 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.
 - 10 Points.** *Team Delivery Method Experience:* what experience does the project team have with similar delivery method.
 - 5 Points.** *Team Experience:* what experience does the team have in the specific geographical region and how will this experience be a benefit to the project.

- 5 **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.

C. Project Management Approach

- 15 **Points.** *Programming Services:* does the team have a plan in place to provide the required deliverables and provide the needed quality control?
- 20 **Points.** *Delivery Method:* does the firm have a well-documented, established plan in place to provide end-user access to deliverable information?
- 10 **Points.** *Scope Control Plan:* was the scope control plan clearly defined and will it work for this project.
- 10 **Points.** *Project Communication Plan:* show how the team will identify and communicate with the Stakeholders (Owner, User and Agency).
- 10 **Points.** *Schedule Control Plan:* provide a detailed Schedule; identify the necessary bid packages; include identifying, managing and controlling critical path activities.

TOTAL POSSIBLE POINTS: **145 POINTS**

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

15. **Fee Negotiation**

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

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

16. **Form of Agreement**

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

17. **Licensure**

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

**Utah State Building Board****PROJECT SCHEDULE**

PROJECT NAME: STATEWIDE FACILITY CONDITION AND INFRASTRUCTURE ASSESSMENTS UTAH STATE BUILDING BOARD				
PROJECT NO. 310				
Event	Day	Date	Time	Place
Solicitation for Consultant Services Available	Wednesday	March 18, 2015	1:00 PM	DFCM web site*
Mandatory Pre-submittal Meeting	Wednesday	April 1, 2015	1:00 PM	Room 4112 State Office Bldg Capitol Hill Complex. SLC, UT
Last Day to Submit Questions	Tuesday	April 7, 2015	12:00 NOON	Mike Smith – Utah State Bldg Board E-mail: mikesmith@utah.gov
Addendum Deadline	Wednesday	April 15, 2015	12:00 NOON	DFCM web site *
Management Plans, References, Statements of Qualifications, and Termination/Debarment Certifications Due	Wednesday	April 22, 2015	12:00 NOON	Utah State Building Board Room 4110 State Office Bldg Capitol Hill Complex SLC, UT 84114
Short Listing by Selection Committee, if applicable.	Wednesday	April 29, 2015	2:00 PM	To Be Determined
Announcement of Finalists	Friday	May 1, 2015	12:00 NOON	DFCM web site*
Interviews	Thursday	May 7, 2015	TBA	Room 4112 State Office Bldg Capitol Hill Complex. SLC, UT
Announcement	Wednesday	May 13, 2015	12:00 NOON	DFCM web site*

* DFCM's web site address is www.dfc.utah.gov.

**UTAH STATE BUILDING BOARD
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT, made this ___th day of _____, 201_, by and between the Utah State Building Board, and _____, a corporation of the State of __, whose address is __, Utah 84 __, hereinafter called the "Consultant."

WITNESSETH: That whereas, the Utah State Building Board intends to have services performed by Consultant as follows:

WITNESSETH, WHEREAS the Utah State Building Board intends to have Consultant fully complete the objectives of this Agreement, and

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

THEREFORE, the Utah State Building Board and the Consultant, for the consideration hereinafter provided, agree as follows:

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

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

ARTICLE 3. PAYMENT.

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

3.2 **Incidental Services/Reimbursements.** Consultant shall provide all services as established by standard professional custom and practice. The Consultant reimbursements for this project have been estimated as a NOT-TO-EXCEED part of the fee and are allowed on (with no mark-up) as follows:

1. Travel/Lodging/Meals: only for the members whose distance of travel from their office to the site is greater than 100 miles from the servicing office location:

a. Travel: flights shall be coach on commercial airlines; personnel vehicle use will be reimbursed at the current Federally allowed reimbursement rate per mile; and incidental travel (taxi, bus, airport long term parking only, and other ground transportation) submit an original receipt for each item (tips for taxi, baggage, etc. are not reimbursable);

b. Lodging may be booked through the state and will be reimbursed at either the actual cost or the state rate (whichever is less). Tips for baggage, maid service, doormen, etc. are not reimbursable. The state rates are located at the following web address: <http://fleet.utah.gov/menu-state-travel/menu-in-state-travel.html>

c. For in-state travel, meal per diems are allowed at the state rate as identified at the following web address (tips and tax on meals are included in the per diem amount): <http://fleet.utah.gov/menu-state-travel/menu-in-state-travel.html>

d. For consultants traveling from out-of-state, meal per diems are allowed at the state rate as identified at the following address (tips and tax on meals are included in the per diem amount): <http://fleet.utah.gov/menu-state-travel/menu-out-of-state.html>

2. **Miscellaneous:** e.g. express mail, photos, long distance calls. An original invoice must be submitted for each item. Exceptions to the above shall be approved by the Utah State Building Board Director in writing.

3.3 The Utah State Building Board agrees to pay the Consultant from time to time as the work progresses, but not more than once each month after the date of the notice to proceed, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested. Payment shall be made within thirty days of the Utah State Building Board's receipt of the Consultant's invoice except that this requirement shall not apply to any amount: (a) for which the Consultant's invoice does not provide sufficient detail to demonstrate is due, (b) that the Utah State Building Board disputes is due under the terms of the Agreement, or (c) reasonably withheld by the Utah State Building Board to cover any default or failure to perform by the Consultant. The Utah State Building Board shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

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

3.5 The acceptance by the Consultant of final payment without a written protest filed with the Utah State Building Board within three calendar days of receipt of final payment, shall release the Utah State Building Board from all claims and all liability to the Consultant for fees and costs of the performance of the services pursuant to this Agreement.

ARTICLE 4. CHANGES IN WORK. Any changes in the scope of the services to be performed under this Agreement shall be in the form of a written modification to this Agreement, mutually agreed to and signed by

duly authorized representatives of both parties, specifying any such changes, fee adjustments resulting therefrom, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.

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

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

ARTICLE 7. LEGAL RELATIONSHIP.

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

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

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

ARTICLE 9. TERMINATION BY CONSULTANT. This Agreement may be terminated by Consultant upon seven calendar days written notice should the Utah State Building Board fail substantially to perform, through no fault of the Consultant and the Utah State Building Board has failed to cure the failure to perform within fourteen calendar days of the Utah State Building Board's receipt of written notice of its failure to perform. Upon termination of this Agreement, the Consultant shall deliver all work performed to the Utah State Building Board. In the event of such termination, the Consultant shall be compensated for services properly performed under this Agreement up to date of the notice of termination. The Consultant agrees that in the event of such termination for default and such default is not successfully challenged by Utah State Building Board, its total remedy and monetary recovery from the Utah State Building Board is limited to full payment for all work properly performed, reimbursables, under this Agreement up to the date of termination as well as any reasonable monies owed as a result of the Consultant having to terminate contracts necessarily entered into by the Consultant pursuant to this Agreement. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the Utah State Building Board.

ARTICLE 10. TERMINATION BY THE UTAH STATE BUILDING BOARD. The performance of service under this Agreement may be terminated by the Utah State Building Board in whole or in part at any time, whenever the Utah State Building Board shall determine that such termination is in the best interest of the Utah State Building Board. This includes any termination by Utah State Building Board for convenience or for cause. Any such termination shall be effected by delivery to Consultant of a written notice of termination specifying the extent to which performance of work under this Agreement is terminated and the

date upon which such termination becomes effective. The Consultant agrees that in the event of such termination, its total remedy and monetary recovery from the Utah State Building Board is limited to full payment for all work properly performed, plus reimbursables, under this Agreement up to date of termination. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the Utah State Building Board.

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

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

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

12.2 **Time For Filing.** Notwithstanding paragraph 12.1 above, the PRE must be filed in writing with the Utah State Building Board Representative within twenty-one days of any of the following:

1. Issuance of a denial by Utah State Building Board of a Consultant request for additional monies or other relief under this Agreement;
2. In the case of a Subconsultant, after the expiration of the time period for the Consultant/ Subconsultant PRE process under Paragraph 7.7.5 of DFCM General Conditions; or
3. When the Consultant knows or should have known about any other issue where the Consultant seeks additional monies, time or other relief from the State of Utah or the Utah State Building Board.

12.3 **Not Limit Utah State Building Board Rights.** As stated in Rule R23-26-1(6), this does not limit the right of Utah State Building Board to have any of its issues, disputes or claims considered. Utah State Building Board 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 the Utah State Building Board, the Consultant shall cooperate with such expert or panel process.

ARTICLE 13. INSURANCE. To protect against liability, loss and/or expense in connection with the performance of services described under this Agreement, the Consultant shall obtain and maintain in force during the entire period of this Agreement without interruption, at its own expense, insurance as listed below

from insurance companies authorized to do business in the State of Utah. The following are minimum coverages that may be supplemented by additional requirements contained in Solicitation for Consultant Services or any other document used to procure Consultant's services.

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

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

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

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

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

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

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

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

ARTICLE 17. UTAH STATE BUILDING BOARD REVIEWS, LIMITATIONS. The right of the Utah State Building Board or any entity/user to perform plan checks, plan reviews, other reviews and/or comment upon the work of the Consultant, as well as any approval by the Utah State Building Board, shall not be construed as relieving the Consultant from its professional and legal responsibility for services required under

this Agreement. No review by the Utah State Building Board 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 Utah State Building Board of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the Consultant shall be and remain liable to the Utah State Building Board in accordance with applicable law for all damages to the Utah State Building Board caused by the Consultant's acts, errors and/or omissions.

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

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

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

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

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

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

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

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

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

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

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

CONSULTANT:

Signature Date

Title: _____

Please type/print name clearly

State of _____)
)
County of _____)

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

Notary Public

My Commission Expires _____

(SEAL)

APPROVED AS TO FORM:
ATTORNEY GENERAL
February 2, 2015
By: ALAN S. BACHMAN
Asst Attorney General

UTAH STATE BUILDING BOARD

Jeffrey L. Reddoor Date
Building Board Director

Approved for expenditure:

Approved as to availability of funds:

Division of Finance Date

David D. Williams, Jr. Date
CBA Financial Director