



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management**

DFCM

# **REQUEST FOR CONSULTANT SERVICES (RFC)**

Multi-Step Consultant Selection Process

July 28, 2006

## **FY 2007 Code Inspection Services for Statewide Construction Projects With Inspection Firm Fees Over \$50,000**

# TABLE OF CONTENTS

	<u>Page Numbers</u>
Title Sheet	1
Table of Contents	2
Notice to Consultants	3
Project Description	4
Procurement Process - Step I	6
Project Schedule – Step I	12
Procurement Process – Step II	13
Professional Services Agreement	15

Current copies of the following documents are hereby made part of this Request for Consultant Services (RFC) by reference. These documents are available on the DFCM web site at <http://dfcm.utah.gov> or are available upon request from DFCM.

DFCM Design Manual dated March 15, 2006  
DFCM General Conditions dated May 25, 2005

## NOTICE TO CONSULTANTS

The State of Utah - Division of Facilities Construction and Management (DFCM) is soliciting the services of qualified firms to perform **Code Inspection Services** for the following project:

### **MULTI-STEP CONSULTANT SELECTION PROCESS FOR STATEWIDE CODE INSPECTION SERVICES FOR PROJECTS WITH INSPECTION FEES OVER \$50,000**

DFCM is entering into a Multi-Step Consultant Selection Process for Code Inspection Firms. Firms selected through this process will conduct code inspection services on construction projects with estimated inspection fees over \$50,000. Projects will be located throughout the state. Step I will involve the pre-qualification of code inspection firms based on the selection criteria outlined in this Request for Consultant Services (RFC). Firms must demonstrate that they have the necessary skills, training, certifications, satisfactory performance ratings/references, and management approach to ensure that code inspections will be performed accurately and timely. In addition, pre-qualified inspection firms will be required to contract with and manage "Special Inspection and Testing Firms" to conduct special inspections and testing required by code.

During Step II, code inspection firms pre-qualified during Step I will be invited to submit a project management plan on each of the projects listed in the RFC. A selection committee will evaluate each project management plan to determine which firm is best suited to provide code inspection services on each project. Pre-qualified code inspection firms will NOT be required to submit project management plans on every project listed in the RFC. However, firms MUST submit a project management plan for each project they desire to be considered for negotiation of a contract.

The selection shall be under the multi-step consultant selection process. The RFC documents, including the submittal requirements and the selection criteria and schedule, will be available beginning on Friday, July 28, 2006 from DFCM at the State Office Building - Room 4110, Salt Lake City, Utah 84114 and on the DFCM web site at <http://dfcm.utah.gov>. For questions regarding this solicitation, please contact Will Thornley, DFCM, at (801) 755-6778. No others are to be contacted regarding this solicitation.

A **MANDATORY** pre-submittal meeting will be held at 1:00 PM on Tuesday, August 8, 2006 at DFCM, 4110 State Office Building, Salt Lake City, Utah. All inspection firms wishing to submit on this project must attend this meeting.

Submittal dates for the required references, management approach, statements of qualifications, and interviews will be based on the project schedule included in the RFC.

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

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

## PROJECT DESCRIPTION

DFCM is entering into a Multi-Step Consultant Selection Process for code inspection services. Code inspection firms selected through this process will conduct code inspection services on construction projects with estimated inspection fees over \$50,000 throughout the state.

**Step I:** Code inspection firms will be pre-qualified based on the selection criteria outlined in this Request for Consultant Services (RFC). Firms must demonstrate that they have the necessary skills, training, certifications, satisfactory performance ratings/references, and management approach to ensure that code inspections will be performed accurately and timely. In addition, pre-qualified inspection firms will be required contract with and manage “Special Inspection and Testing Firms” to conduct special inspections required by code.

Pre-qualified inspection firms may remain on DFCM’s list of pre-qualified code inspection firms provided: (a) they maintain a performance rating of 3.5 or greater on each DFCM project assigned; (b) they have not been suspended for poor performance or failure to comply with requirements of their contract; or (c) the firm has not undergone a significant reorganization involving the loss of key personnel, licenses, or certifications to a degree such that the firm no longer meets the pre-qualification requirements outlined in this RFC.

DFCM will evaluate the performance of each firm on the projects they are assigned. Firms that receive a DFCM performance rating lower than 3.5 on any project may be suspended from the pre-qualified list of Code Inspection firms.

DFCM reserves the right to add additional firms to the pre-qualified list of code inspection firms. DFCM may re-open this RFC at any time to pre-qualify additional firms. Firms that wish to be added to DFCM’s list of pre-qualified code inspection firms must contact DFCM and comply with all pre-qualification selection criteria contained in this RFC.

**Step II:** Code inspection firms pre-qualified during Step I will be invited to submit a project management plan on each of the projects listed in this RFC that the firms wish to be considered for negotiation of a contract. Note that additional projects may be added to this throughout the year. A selection committee will evaluate each firm’s project management plan, then rank in order, the committee’s determination of each firm’s ability to conduct the code inspection services required for each project. DFCM will then enter into fee negotiations with the highest ranked firm on each project. If DFCM is unable to reach an agreed upon fee with the highest ranked firm for any particular project, they will suspend negotiations with that firm and begin fee negotiations with the next highest ranked firm. This process will continue until DFCM reaches an agreed upon fee with one of the firms. Pre-qualified code inspection firms are NOT required to submit project management plans on every project listed in this RFC and will not be penalized for choosing not to submit on a particular project. However, firms MUST submit a project management plan for each project they desire to be considered for negotiation of a contract in Step II.

**Potential Projects for Inspection Services**

Listed below are the potential projects that may require code inspection services. This list is provided in order to provide firms with information about the type of work, locations, and cost estimates. Additional information on each project will be provided at the time firms are assigned each project. DFCM reserves the right to add or delete projects from this list. DFCM also reserves the right to pre-qualify additional firms throughout the year that will be eligible to submit on the projects listed below and other projects added to this list.

**FY 2007 Capital Development Projects**

Approved by the Utah State Legislature (2006 General Session)

<b>Agency/Institution</b>	<b>Estimated Construction Budget</b>
ABC - Holladay, Kimball Junction, and Redwood Road Stores	\$ 5,800,000
Department of Corrections - Gunnison Inmate Housing	\$ 16,000,000
DNR - Midway Fish Hatchery	\$ 6,400,000
State Capitol Building	\$ 40,000,000
UBATC/USU - Vernal Building	\$ 11,000,000
U of U - College of Pharmacy Expansion	\$ 53,700,000
U of U - Hospital West Wing Addition and Critical Care Pavilion	\$ 96,000,000
U of U - School of Business Remodel/Addition	\$ 24,600,000
USTAR U of U - Neuroscience Research Center	\$ 104,000,000
USTAR USU - Life Science Research Center	\$ 56,000,000
USU - Engineering Building Addition	\$ 8,100,000
UVSC - Digital Learning Center	\$ 38,000,000

# MULTI-STEP CONSULTANT PROCUREMENT PROCESS STEP I

The State of Utah intends to enter into an agreement with inspection firms to provide code inspection services for each of the projects listed (or that may be added) in this RFC. Firms will be chosen through the Multi-Step Consultant Selection process. 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 firms.

**Step I:** Code inspection firms will be pre-qualified based on the selection criteria outlined in this Request for Consultant Services (RFC). Firms must demonstrate that they have the necessary skills, training, certifications, satisfactory performance ratings/references, and management approach to ensure that code inspections will be performed accurately and timely. In addition, pre-qualified inspection firms will be required to contract with and manage “Special Inspection and Testing Firms” to conduct special inspections required by code.

Pre-qualified inspection firms may remain on DFCM’s list of pre-qualified code inspection firms for future processes provided: (a) they maintain a performance rating of 3.5 or greater on each DFCM project; (b) they have not suspended for poor performance or failure to comply with requirements of their contract; or (c) the firm has not undergone a significant reorganization involving the loss of key personnel, licenses, or certifications to a degree such that the firm no longer meets the pre-qualification requirements outlined in this RFC.

DFCM will evaluate the performance of each firm on the projects they are assigned. Firms that receive a DFCM performance rating lower than 3.5 on any project may be suspended from the pre-qualified list of Code Inspection firms.

DFCM reserves the right to add additional firms to the pre-qualified list of code inspection firms. DFCM may re-open this RFC at any time to pre-qualify additional firms. Firms that wish to be added to DFCM’s list of pre-qualified code inspection firms must contact DFCM and comply with all pre-qualification selection criteria contained in this RFC.

**Step II:** Code inspection firms pre-qualified during Step I will be invited to submit a project management plan on each of the projects listed in this RFC that the firms wish to be considered for negotiation of a contract. Note that additional projects may be added to this throughout the year. A selection committee will evaluate each firm’s project management plan, then rank in order, the committee’s determination of each firm’s ability to conduct the code inspection services required for each project. DFCM will then enter into fee negotiations with the highest ranked firm on each project. If DFCM is unable to reach an agreed upon fee with the highest ranked firm for any particular project, they will suspend negotiations with that firm and begin fee negotiations with the next highest ranked firm. This process will continue until DFCM reaches an agreed upon fee with one of the firms. Pre-qualified Code Inspection Firms are not required to submit project management plans on every project listed in this RFC and will not be penalized for choosing not to submit on a particular project. However, firms will only be considered in Step II for those projects

for which they submitted a project management plan. A more detailed description of Step II is included later on in this document.

**1. Solicitation for Consultant Documents**

The RFC documents consist of all of the documents listed in the table of contents and all said documents are incorporated in this RFC by reference. The RFC will be available at DFCM per the attached schedule and on the DFCM web site at <http://dfcm.utah.gov>.

**2. Contact Information**

Except as authorized by the DFCM Representative or as otherwise stated in the RFC 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, inspection firms 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 RFC 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. Inspection firms should be aware that selection committee members will be required to certify that they have not been contacted by any of the inspection firms 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:

Will Thornley  
Division of Facilities Construction and Management  
4110 State Office Building  
Salt Lake City, Utah 84114  
E-mail: [WTHORNLEY@utah.gov](mailto:WTHORNLEY@utah.gov)  
Phone: 801-755-6778  
Facsimile: 801-538-3267

**4. Project Schedule.**

The project schedule lists the important events, dates, times, and locations of meetings and submittals that must be met by the inspection firm.

**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 inspection firm is required to attend. During the meeting, a presentation will be made to describe the Multi-Step Selection Process and Schedule. Interested firms may ask questions and request clarification about the process and schedule.

**Failure to attend the Mandatory Pre-Submittal Meeting or failure to register will result in the disqualification of a firm from submitting on this RFC.**

**6. Submittal Due Dates and Times**

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

**7. Last Day to Submit Questions**

All questions must be received at the office of DFCM no later than the time and dated listed in the project schedule. Questions must be delivered in writing to Will Thornley at DFCM by the stated deadline in the project schedule.

**8. Addenda**

All clarifications will be in writing and issued as addenda to the RFC. Addenda will be posted on DFCM's web site at <http://dfcm.utah.gov>. Firms are responsible for obtaining information contained in the addenda from the web site. Any addenda issued prior to the submittal deadline shall become part of the multi-step selection process and any information required must be included in the firm's submittal.

**9. Past Performance and References**

As an inspection firm completes each DFCM project, DFCM, the contractors and the using agency or institution will evaluate the inspection firm. It is the intent of DFCM that this process will be the major source for evaluating past performance. Inspection firms shall submit past performance and reference information by the time indicated on the project schedule.

For all DFCM inspection services (projects) completed in the last year identify the project by name, number and DFCM project manager. Each inspection firm wishing to compete for this project that has not completed at least three DFCM programming/master planning projects in the last year, will be required to provide one copy of a list of references on additional similar projects for a total of five (5) projects.

**For non-DFCM programming/master planning 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 that purchased the Inspection services.  
Project Name: Name of the project.  
Date Completed: Date of when the work was completed.  
Address: Street, city and state where the work was performed.  
Size: Size of project in dollars.  
Duration: Duration of the project.  
Type: Type of the project (i.e.: School, Offices, Warehouse, etc)

**10. Management Approach**

Each firm shall provide five (5) copies of a document describing their management approach by the time indicated on the schedule. The document should include: (a) the process used for selecting and managing sub-consultants such as special inspection firms; (b) a description of how the firm/team will be organized and detailing the firm's ability and plan to conduct code inspections throughout the state; (c) the method used to develop a schedule to ensure that code inspections are completed on time (the deadline issued by DFCM); (d) the firm's understanding of DFCM's code inspection requirements and standards; and (e) any other information that will assist the selection committee in evaluating the firm's management approach. Include an organization chart of key personnel and a description of their duties. The management approach document should be concise (**limit 2 pages**) yet contain sufficient information for evaluation by the selection committee. The organization chart is a separate document and is not counted as one of the two pages.

**11. Statements of Qualifications**

The submitting firm shall provide five (5) copies of the statements of qualifications by the time indicated on the project schedule. The statement of qualifications is a short document that details the professional licenses, certifications, experience and qualifications of the firm and the firm's key personnel. It identifies the lead contact person and other critical members of the team. It describes what talents the team brings to the code inspection process and how their knowledge and experience will benefit to the process. It should include information (history) of code inspections performed by the firm and the team members. Include special qualifications or certifications that are applicable.

**12. Selection Committee**

The selection committee may be composed of individuals from the Utah State Building Board, DFCM, the User Agency / Institution, representatives from the design and construction disciplines, and others deemed appropriate by the DFCM.

**13. Interviews**

If deemed necessary, interviews will be conducted with all firms that comply with all of the submittal requirements. The purpose of the interview is to allow firms to present additional information pertaining to their qualifications, past performance/references and management approach. It also provides the selection committee with an opportunity to seek clarifications from the firms on these issues. The inspection firm's key personnel should be in attendance. Firms may also have some or all field inspectors present at the interview for the committee to meet and ask questions. The method of presentation is at the discretion of the firm. The interviews will be held on the date, time and place specified in the project schedule.

**14. Selection Criteria**

The following criteria and weighting will be used in evaluating each firm. The selection committee will consider all criteria in performing a comprehensive evaluation of each firm. Each firm will be scored by each selection committee member in the categories listed below.

- A. Performance Rating/References.** The committee will evaluate and score each firm's past performance rating and references in accordance with the information outlined in Section 9 above. The committee will evaluate each firm's DFCM performance rating and/or references as well as additional information pertaining to the firm's performance ratings/references presented during the interview. **Possible Points: 35**
  
- B. Management Approach.** The committee will evaluate and score each firm's project management approach in accordance with the information outlined in Section 10 above. The committee will evaluate each firm's document detailing their project management approach as well as additional information pertaining to the firm's project management approach presented during the interview. **Possible Points: 30**
  
- C. Qualifications.** The committee will evaluate and score each firm's qualifications in accordance with the information outlined in Section 11 above. The committee will evaluate each firm's statement of qualifications as well as additional information pertaining to the firm's qualification presented during the interview. **Possible Points: 35**

**TOTAL POINTS = 100 POINTS**

**15. Pre-Qualifying**

Firms achieving a **total score of 85 or greater** by the selection committee will be added to DFCM's list of pre-qualified code inspection firms for projects with estimated fees over \$50,000.

This pre-qualification may remain in effect for FY 2007 projects approved by the Legislature and projects funded by state agencies and institutions of higher education. DFCM will evaluate this selection process each year to determination whether it should be continued.

Pre-qualified inspection firms may remain on DFCM's list of pre-qualified code inspection firms for future processes provided: (a) they maintain a performance rating of 3.5 or greater on each DFCM project; (b) they have not suspended for poor performance or failure to comply with requirements of their contract; or (c) the firm has not undergone a significant reorganization involving the loss of key personnel, license, or certifications to a degree such that the firm no longer meets the pre-qualification requirements outlined in this RFC.

DFCM will evaluate the performance of each firm on the projects they are assigned. Firms that receive a DFCM performance rating lower than 3.5 on any project may be suspended from the pre-qualified list of code inspection firms. DFCM reserves the right to add additional firms to the pre-qualified list of code inspection firms. DFCM may re-open this RFC at any time during to pre-qualify additional firms. Firms that wish to be added to DFCM's list of pre-qualified code inspection firms must contact DFCM and comply with all pre-qualification selection requirements contained in this RFC.

Notwithstanding any other provision herein, DFCM reserves the right to disqualify any inspection firm that is not responsible and/or non-responsive. This includes, but is not limited to, the right of DFCM to disqualify an inspection firm for not having the requisite licenses or certifications for the services as required by law. DFCM also reserves the right to reject all inspection firms submitting on this RFC.

**16. Licensure and Certifications**

All inspection firms must comply with and require its inspectors and special inspection firms to comply with the license laws of the State of Utah and ensure that all required certifications are current and up-to-date. All such licenses and certifications must be fully in place at the time of submission of statement of qualifications.



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES  
**Division of Facilities Construction and Management**

DFCM

## STEP 1 PROJECT SCHEDULE

<b>PROJECT NAME: PRE-QUALIFICATION OF CODE INSPECTION FIRMS FOR PROJECTS WITH FEES OVER \$50,000</b>				
<b>Event</b>	<b>Day</b>	<b>Date</b>	<b>Time</b>	<b>Place</b>
Solicitation for Consultant Available	Friday	July 28, 2006	9:00 AM	DFCM 4110 State Office Bldg SLC, UT & DFCM web site*
<b>Mandatory</b> Pre-submittal Meeting	Tuesday	August 8, 2006	1:00 PM	DFCM 4110 State Office Bldg SLC, UT
Last Day to Submit Questions	Friday	August 11, 2006	4:00 PM	DFCM 4110 State Office Bldg SLC, UT
Final Addendum Issued	Monday	August 14, 2006	4:00 PM	DFCM web site *
References, Statements of Qualifications, and Management Approach	Thursday	August 17, 2006	12:00 NOON	DFCM 4110 State Office Bldg SLC, UT
Interviews (if needed)	Thursday	August 24, 2006	TBA	DFCM 4110 State Office Bldg SLC, UT
Announcement	Monday	August 28, 2006	4:00 PM	DFCM web site *

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

# **MULTI-STEP CONSULTANT PROCUREMENT PROCESS STEP II**

Note: The following description of the Step II process is provided in this document (Step I) as a convenience to interested firms. The following description of Step II is NOT intended to take the place of the official Step II document that will be issued at a later date to pre-qualified firms.

## **1. Invitation to Submit Project Management Plan**

DFCM will notify each pre-qualified firm (via fax or e-mail) when a project is ready for code inspection services and invite them to submit a project management plan unique to that project. Only firms pre-qualified during Step I will be invited to submit project management plans during Step II. Firms may decide which project(s) they wish to submit a management plan on and be considered for selection and negotiation. If a firm fails to submit a project management plan for a particular project, that firm will NOT be considered for inspection services on that project.

## **2. Project Management Plan**

Each pre-qualified code inspection firm that elects to submit for a project(s) shall prepare three (3) copies of a detailed project management plan prepared specifically for the project(s) described in the invitation. The project management plans must be received by DFCM by the deadline indicated in the Step II schedule. The project management plan must be delivered to DFCM by the time indicated on the Step II schedule. All project management plans should include the following:

- (a) The name of the project and DFCM project number;
- (b) Identify the lead inspector and other key personnel that will be assigned to the project. Document their certifications and past experience inspecting this type of project. For example, if the project needing inspection services is a health care facility, document who will be the lead inspector and other staff assigned to the project. Describe their past experience inspecting health care facilities and their understanding of the particular code inspection requirements and construction schedules unique to health care facilities. Document the number of such projects that the lead inspector has inspected and the unique skills and certifications they possess;
- (c) Document the method that will be used to manage special inspection and testing firms including the process used to review their reports for completeness and accuracy;
- (d) Document the firm's ability to add this project to their existing workload
- (e) Describe the approach/plan/method/tools that will be used to ensure that all required code inspections will be completed on time and in accordance with the construction schedule;
- (f) Document how the inspection schedule for this project will be developed. Include examples of controls, plans and methods used to minimize number of site visits. Describe how inspections will be scheduled and coordinated with the contractor;

- (g) Provide an organization chart identifying key personnel, the chain of command, each person's areas of responsibility and contact information;
- (h) Provide additional information that will assist the selection committee in evaluating the firm's project management plan. The document should be concise (**limit 3 pages**) yet contain sufficient information for evaluation by the selection committee. The organization chart is a separate document and is not counted as one of the three pages.

### **3. Selection Committee**

The selection committee may be comprised of DFCM staff and representatives from the User Agency / Institution to evaluate each firm's project management plan. Based on the information contained in each firm's project management plan, the selection committee will rank in order their determination of each firm's ability provide code inspection services for each project.

### **4. Interviews**

If deemed necessary, the selection committee may request to interview firms. The purpose of the interview is to provide the selection committee with an opportunity to seek additional information or clarification pertaining to each firm's project management plan. The inspection firm's key personnel should be in attendance. Firms may also have some or all field inspectors present at the interview for the committee to meet and ask questions. The method of presentation is at the discretion of the firm. The interviews will be held at on the date, time and place specified in the project schedule.

### **5 Fee Negotiation and Fee Schedule**

Following the evaluation by the selection committee, DFCM will negotiate the final agreement and fee with the firm selected for each project and proceed similarly to the negotiation requirements established for architect-engineer selections. If DFCM is unable to reach an agreed upon fee with the highest ranked firm for any particular project, they will suspend negotiations with that firm and begin fee negotiations with the next highest ranked firm. This process will continue until DFCM reaches an agreed upon fee with one of the firms.

### **6. Form of Agreement**

At the conclusion of successful negotiations, the selected inspection firm will be required to enter into a contract using the attached agreement.

### **7. Right to Reject Project Management Plan (Proposals)**

DFCM reserves the right to reject any or all project management plans, to delete any project for consideration, and to cancel this solicitation, in whole or in part.



progresses, but not more than once each month after the date of the notice to proceed, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested. Payment shall be made within thirty (30) days of the DFCM's receipt of the Consultant's invoice except that this requirement shall not apply to any amount: (a) for which the Consultant's invoice does not provide sufficient detail to demonstrate payment is due, (b) that the DFCM disputes is due under the terms of the agreement, or (c) reasonably withheld by the DFCM to cover any default or failure to perform by the Consultant. To the extent that the amount due DFCM for any such default or failure to perform exceeds any amount that would otherwise be due the Consultant, the Consultant 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 Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control. The DFCM shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

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

**3.4 Acceptance of Payments.** The acceptance by the Consultant of a payment without a written protest filed with DFCM within 3 calendar days of receipt of such payment, shall release the DFCM from all claims and all liability to the Consultant for fees and costs of the performance of the services associated with the services related to such payment pursuant to this Agreement.

**3.3 Determination of Costs.** DFCM is relying on the expertise of Consultant in preparing the refined scope of work in order to assure that the inspection activities are defined and performed at a level necessary to fulfill all safety and contract

documents compliance issues. Both parties shall cooperate in good faith to sequence inspections in order to reduce costs while assuring proper performance. Payments shall be determined as follows:

3.3.1 Number of inspection hours multiplied by the hourly rate in Exhibit A.

3.3.2 Number of trips multiplied by the trip expense for the project identified in Exhibit A. Trip expense shall include time and transportation to and from the job site. All billable trips must be requested in advance by the Contractor's superintendent or DFCM's Building Official (hereinafter "Building Official").

3.3.3 The Consultant's fee may include reimbursement for lodging and meals which are related to requested inspections that are not within 100 miles of travel from inspector's home or office or require overnight stay. Said compensation for Consultant will be at the then current State of Utah rate for lodging and meals used for State employee reimbursement or a higher amount if approved by the Building Official due to unusual circumstances. These expenses are included in the guaranteed maximum price amount. The DFCM will not pay a mileage allowance.

3.3.4 Fees for material testing and special inspection expenses shall be calculated by multiplying the hours and the type of tests performed by the applicable rates in Exhibit A.

3.3.5 The Consultant fee may include a management fee for overseeing the work of special inspection and materials testing Subconsultants. The fee for such work shall be        % of the Subconsultant's fee for said services. The Consultant shall not be paid a management fee for special inspections and material testing services provided by the Consultant.

## **ARTICLE 4. CHANGES IN WORK.**

**4.1 Agreement Modifications.** 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. Said modification must be signed by both DFCM and Consultant **IN ADVANCE** of the Consultant performing the work that is the subject of the change. It shall be the responsibility of the Consultant to notify the DFCM of any work it may contend is beyond the scope of this Agreement in advance of the performance of such work.

#### **4.2 Scope of Work Change.**

Consultant shall immediately notify DFCM of substantial changes in building plans, specifications, Contractor's schedule or planned scope of work that may affect the guaranteed maximum price amount. Change of the guaranteed maximum price amount caused by substantial changes must be negotiated and agreed to in writing in advance by DFCM and Consultant as a modification to this Agreement. No adjustment in the not-to-exceed contract amount shall be paid if Consultant fails to notify DFCM of substantial changes when the change occurs.

### **ARTICLE 5. CONSULTANT'S DUTIES.**

#### **5.1 Responsibilities, In General.**

##### **5.1.1 Discipline and**

**Competence.** The Consultant shall enforce strict discipline and good order among the Consultant's employees, it's Subconsultants, agents, representatives and other persons performing under this Agreement. The Consultant shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Consultant and Subconsultants shall always conduct themselves in a professional and courteous manner. Methods of intimidation, anger, or other non-professional conduct will be grounds for termination of the offending person or the termination of this Agreement, as determined by the DFCM. Consultant must perform in a manner that is consistent with customary practices.

##### **5.1.2 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 members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity

to the Project that is the subject of this Agreement. The Consultant shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third party claims (i.e. a Contractor claim against DFCM or the State of Utah), to the extent caused by any errors or omissions that do not meet this standard of care.

#### **5.2 Building Inspections.**

5.2.1 All inspections shall be in conformance with the State adopted Building, Electrical, Mechanical, and Plumbing Codes and the DFCM's specifications as contained in the construction documents.

5.2.2 The inspector will report directly to the Building Official. The inspector will perform inspection and other services as directed by the Building Official.

5.2.3 All of the Consultant's inspectors (except special inspections) must be licensed in the State of Utah in one or more of the following areas. Inspector: I Combination, I UBC, I NEC, I IPC and I IMC. All inspectors will submit qualifications to be approved by the Building Official. Inspectors will not perform inspections in trade areas for which they are not properly licensed by the State of Utah.

5.2.4 Consultant shall notify the Building Official at least two business days prior to any change in the primary person performing on site inspections. The replacement inspector is subject to approval by the Building Official.

5.2.5 Consultant shall regularly visit site and make note of any work which has been covered without being inspected. Consultant shall immediately notify the Building Official of any work that has been covered without inspection.

#### **5.3 Special Inspections and Materials Tests.**

5.3.1 Consultant is responsible to oversee the special inspections and material tests for the project. Duties include but are not limited to: site supervision, inspection coordination, test and inspection management, personnel management, reporting, conflict resolution and billing.

5.3.2 Consultant shall submit qualification of special inspectors and material testing personnel to the Building Official for approval. Personnel are not permitted on site until they have been approved.

5.3.3 Consultant shall meet with Subconsultants prior to beginning work to discuss the scope of the project. Consultant shall coordinate the work of Subconsultants to ensure that all required special inspections and materials tests are completed in a timely and efficient manner.

5.3.4 Consultant shall ensure that special inspecting/testing personnel have access to relevant construction documents before beginning their work.

5.3.5 Consultant shall periodically visit site to oversee the work of the Subconsultants. Time spent on site managing the inspection services and overseeing Subconsultants is not billable, except for management visits included as part of the attached cost proposal.

5.3.6 The Consultant shall not receive a financial benefit from the fees that are charged by a Subconsultant other than the management fee allowed in Article 3.3.5, Compensation.

**5.4 Time Frame For Services.** The Consultant shall complete the scope of work in a manner to achieve any milestones identified in the Request for Consultant Services or the attachments to this Agreement. The full scope of work shall be completed by [REDACTED]. Consultant shall be responsible to DFCM for any damages related to delay in providing the services under this Agreement including delays caused to third parties where DFCM may be held liable where any of such delays are due to the act, error or omission of Consultant under this Agreement.

**5.5 Use of "Sales Agents."** The Consultant warrants that no sales agent has been employed or retained except as indicated in writing to DFCM.

**5.6 Laws, Codes and Regulations.** Consultant 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

## **ARTICLE 6. BUILDING INSPECTION PROCEDURES**

### **6.1 Building, Mechanical, Electrical, and Plumbing Inspections.**

6.1.1 The Contractor's superintendent will contact the Consultant to arrange for building inspections. The Consultant shall respond to all inspection requests no later than two (2) business days after receiving the request. If the Consultant cannot respond within this time period, he shall find a qualified Subconsultant and notify the Building Official prior to the inspection. The Consultant shall not initiate an inspection without an advance request from the Contractor's superintendent or the Building Official. Consultant shall immediately notify the Building Official if Consultant believes that inspections are required which are not being requested by the Contractor.

6.1.2 Consultant shall make note of all retests and associated expenses on the monthly invoice.

6.1.3 The Consultant's inspector, upon request, shall show proper identification to the Contractor. Any site-specific security clearance requirements must be complied with by the Consultant and Subconsultants.

6.1.4 Standards for all inspections. Inspections shall indicate whether there is compliance with:

- a. Current edition of the applicable building codes.
- b. Project drawings and specifications.
- c. Manufacturers recommendations and installation instructions.
- d. Applicable DFCM construction standards.

## **6.2 Special Inspections and Materials Tests.**

6.2.1 The special inspections and material tests will be conducted according to the project's construction documents and specifications and according to standard material testing and inspection practices. Additional inspections/tests may be requested by the DFCM.

6.2.2 Contractor's superintendent will contact Consultant to schedule special inspections and material tests. Consultant will then schedule the appropriate personnel to complete the inspections or tests. Consultant will inform personnel of type of inspection, time requested, and location of work. The Consultant shall respond to all inspection requests no later than two (2) business days after receiving the request. If the Consultant cannot respond within this time period, he shall find a qualified Subconsultant and notify the Building Official prior to the inspection.

6.2.3 Consultant shall provide an on site sign-in log for inspection/testing personnel. The log shall include the time the inspector arrived and left, the type of inspection or test, and the inspector's name. The inspection/testing personnel shall complete the log entries before leaving the site.

6.2.4 Consultant shall document all failed inspections and tests on monthly invoices and the expense associated with retesting.

## **ARTICLE 7. SUBCONSULTANTS**

### **7.1 Required Approval.**

7.1.1 Subconsultants listed in Exhibit A shall be used for this work and not replaced during the course of this Agreement except with the advance written approval of the Building Official after complying with the following criteria.

a. The Consultant has established in writing that the change is in the best interest of the State of Utah.

b. The Consultant has established an appropriate reason for the change which may include, but is not limited to, the following reasons: the original Subconsultant has failed to perform, the original Subconsultant is not

qualified or capable of performing, and/or the original Subconsultant has requested in writing to be released.

c. The circumstances related to the request do not indicate any bad faith in the original inclusion of the Subconsultant.

7.1.2 The Consultant shall not contract with a proposed person or entity to whom the DFCM has made a reasonable and timely objection. The Consultant shall not be required to contract with anyone to whom the Consultant has made reasonable objection.

7.1.3 The change in Subconsultants shall be evidenced by a modification to this Agreement. This modification shall also address any impact the change may have on the fees contained in Exhibit A.

### **7.2 Subconsultant Relations.**

7.2.1 By appropriate enforceable agreement, the Consultant shall require each Subconsultant to be bound to the Consultant by the terms of this Agreement, and to assume toward the Consultant all the obligations and responsibilities which the Consultant, by this Agreement, assumes towards the DFCM.

7.2.2 Each Subconsultant agreement shall preserve and protect the rights of the DFCM and Consultant under this Agreement with respect to the work to be performed by the Subconsultant so that subcontracting thereof will not prejudice such rights, and shall allow to the Subconsultant, unless specifically provided otherwise in the Subconsultant agreement, the benefit of all rights and remedies against the Consultant that the Consultant, by this Agreement, has against the DFCM.

**7.3 Payment to Subconsultants.** The Consultant shall promptly pay each Subconsultant, upon receipt of payment from the DFCM, out of the amount paid to the Consultant on account of such Subconsultant's portion of the work, the amount to which said Subconsultant is entitled. The Consultant shall, by appropriate Agreement with each Subconsultant, require each Subconsultant to make payment to its Subconsultant in a similar manner.

## **ARTICLE 8. COMMUNICATION AND DOCUMENTATION**

**8.1 Communications.** Consultant shall promptly communicate to the Building Official and DFCM's Representative. Consultant may communicate directly with the Contractor about any Stop Work Order, an urgent health or safety matter at the site, or if the direct communication with the Contractor will facilitate the performance of the work by the Contractor. Any communication with the Contractor must be part of the inspector's report prepared at the site. Consultant shall not be entitled to rely upon any representation, statement or conduct of any person or entity, except as provided in this Agreement.

**8.2 Documentation In General.** Consultant shall prepare written reports to document the results of all inspections and tests and any discussions thereof with the Contractor. Consultant shall also take photographs and other means of documentation as may be appropriate. Consultant shall be prepared to take photographs of any inspection where such photograph assists in the understanding of the condition of the site or facility being inspected.

**8.3 Inspection Reports.** Consultant shall make a written report of each inspection indicating whether there is compliance with the project drawings and specifications, project specific criteria, and applicable codes. This report must be completed before leaving the project site. A copy of the inspection report listing necessary corrections shall be left with the Contractor's superintendent. Consultant shall make note of all retests and associated expenses on the monthly invoice. Consultant shall provide a copy of all reports to the Building Official, DFCM's Representative, and the A/E (Architect/ Engineer) within two (2) business days of the inspection. This delivery may be accomplished by courier, fax, electronic mail, or other means approved by the DFCM.

**8.4 Monthly Reports.** Consultant shall provide a printed monthly report to the Building Official, DFCM's Representative, and the A/E. In addition to the inspection reports, the monthly report shall include a list of testing and inspection issues that are not resolved as of the end of the month. It shall also include photographs as

appropriate to document and explain the information contained in the report.

**8.5 Special Inspection and Testing Reports.** Consultant shall provide a report of the results of special inspections and materials tests to the Building Official, DFCM's Representative, and the A/E within two (2) business days. Consultant shall notify Building Official of test or inspections that have failed and are not immediately correctable.

**8.6 Immediate Notification of Unusual Problems.** In addition, Consultant shall promptly notify the Building Official by telephone of any unusual problems discovered during the inspection. If the Building Official does not answer the telephone call, then a voice message shall be left for the Building Official.

**8.7 Final Report.** Within 30 days of substantial completion of the project, Consultant shall provide to the Building Official an electronic copy of all inspection and testing documentation related to the project.

**8.8 Copies to Agencies.** Upon Request, Consultant shall provide a copy of the above reports to the Using Agency.

**8.9 Modification to Report Requirements.** Notwithstanding the provisions of Article 2, the requirements of this Article 8 may be modified through alternative provisions contained in the attachments to this Agreement.

**ARTICLE 9. APPEAL OF CONSULTANT'S DECISIONS.** Consultant shall cooperate with and participate in any appeal made pursuant to the DFCM's appeal process of Consultant's decisions. Consultant shall provide reports, documentation, and testimony as required. Consultant shall be compensated for its reasonable costs to respond to an appeal only if the Consultant's decision is upheld in the appeal.

**ARTICLE 10. HAZARDOUS OR EMERGENCY SITUATIONS; STOP WORK ORDERS.** If the Consultant encounters a hazardous or emergency situation, the Consultant is authorized to issue any warranted Stop Work Order or any other customary means of resolving the hazardous or emergency situation. The Consultant

shall immediately inform the Building Official and the DFCM Representative of any action taken and provide a detailed analysis in the report prepared at the site. On the same day that the Stop Work Order is issued, Consultant shall provide a copy of this report to the Building Official and the DFCM Representative. This delivery may be accomplished through electronic means.

**ARTICLE 11. 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. Consultant shall require that the insurance requirements contained in this Article be met by each testing and inspection firm with which it subcontracts to accomplish its responsibilities under this Agreement. The following are minimum coverages that may be supplemented by additional requirements contained in the Request for Consultant Services or any other document used to procure Consultant's services.

**11.1 Professional Liability Insurance.**

The Consultant shall maintain, at its expense, Professional Liability Insurance, on a "claims made" basis, with an aggregate policy limit of not less than \$2,000,000 and not less than \$1,000,000 per occurrence. Any change in this insurance requirement shall be noted in an attachment to this Agreement. Unless project specific insurance is required by the DFCM through a provision in the Request for Consultant Services or an attachment to this Agreement, this coverage may be written under a practice policy with limits applicable to all projects undertaken by the Consultant but the coverage must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the consultant under this Agreement. The policy must contain a "retroactive" or "prior-acts" date which precedes the earlier of, the date of this Agreement or the commencement of the Consultant's services. The 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 Consultant's policy.

**11.2 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. Employer's Liability Insurance shall provide the following limits of liability: \$100,000 for each accident; \$500,000 for Disease-Policy Limit; and \$100,000 for Disease-Each Employee.

**11.3 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

**11.4 Other Insurance Coverages.**

Consultant shall maintain the following insurance at levels Consultant determines: 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 Request 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.

**11.5 Not Relieve Responsibility.**

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 12. TERMINATION**

**12.1 Termination by Consultant.** This Agreement may be terminated by Consultant upon seven (7) calendar days written notice should the DFCM fail substantially to perform, through no fault of the Consultant and the DFCM has failed to cure the failure to perform within fourteen calendar(14) days of the DFCM's receipt of written notice of its failure to perform. Upon termination of this Agreement, the Consultant shall deliver all work performed to the DFCM. In the event of 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 of default and such default is not successfully challenged by DFCM, its total remedy and monetary recovery from the DFCM is limited to full payment for all work performed, reimbursables, under this Agreement up to the date of termination as well as any reasonable monies owed as a result of the Consultant having to terminate contracts necessarily entered into by the Consultant pursuant to this Agreement. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

### **12.2 Termination by DFCM.**

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

comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

## **ARTICLE 13. PRELIMINARY RESOLUTION EFFORTS, CLAIMS AND DISPUTES;**

### **13.1 GENERAL CONDITIONS**

**REQUIREMENTS APPLY.** The provisions of Articles 7.7. through and including 7.14 of the General Conditions 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 Subcontractors at any tier under this Agreement, respectively.

### **13.2. TIME FOR FILING.**

Notwithstanding paragraph 13.1 above, the PRE must be filed in writing with the DFCM Representative within twenty-one (21) days of any of the following:

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

13.2.2. 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 the General Conditions; or

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

### **13.3 NOT LIMIT DFCM RIGHTS.**

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

**ARTICLE 14. MISCELLANEOUS PROVISION.**

**14.1 Safety.** The Consultant shall ensure that all employees and Subconsultants are aware of safety requirements before arriving on site. Safety requirements include, but are not limited to, wearing approved hard hat, safety glasses, and footwear.

**14.2 Ownership of Work Product.** All work product, which includes, but is not limited to all manuals, forms, contracts, schedules, reports, documentation, photographs, data, electronic data, comments and any and all documents supplied to or produced by Consultant under this Agreement are the property of the DFCM. Said work product and the information contained therein are the exclusive property of the DFCM and are not to be used by Consultant on any other projects with any other parties except by the advance written agreement of the DFCM. Consultant agrees to maintain the level of confidentiality, to the extent permitted by law, needed to protect the State's interest in the design, construction, and management of the project.

**14.3 Legal Relationship.** 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. The Consultant shall have no authorization, expressed or implied, to bind the DFCM or the State of Utah to any agreement, settlement, liability, or understanding whatsoever, nor to perform any acts as agent for the DFCM or the State of Utah except as specifically set forth in this Agreement. The DFCM shall identify the desired performance outcome and the Consultant shall determine the manner and method of achieving that outcome consistent with professional and customary practices. Nothing in this section is intended to limit or reduce any governmental immunities to the extent any may be available to Consultant by reason of its performance of inspections on behalf of the State of Utah.

**14.4 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.

**14.5 Hold Harmless Requirement.** To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and save harmless the State of Utah, the Division of Facilities Construction and Management, their officers, agents and employees any anyone for whom DFCM may be held liable from and against any and all claims, damages or liabilities arising from negligent or wrongful acts, errors or omissions of the Consultant and its Subconsultants or subcontractors at any tier and anyone for whom Consultant may be liable.

**14.6 Ownership of Documents.** All work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents supplied to or produced by Consultant under this Agreement are the property of the DFCM, whether the work for which they are made is executed or not.

**14.7 DFCM Reviews, Limitations.** No review by the DFCM or any entity/user, approval or acceptance, or payment for any of the services required under this Agreement shall be construed to operate as a waiver by the DFCM of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the Consultant shall be and remain liable to the DFCM in accordance with applicable law for all damages to the DFCM caused by the Consultant's acts, errors and/or omissions.

**14.8 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.

**14.9 Performance Evaluation.** DFCM may conduct a performance evaluation of the Consultant's services, including specific personnel of Consultant or any Subconsultant at any time. Results of any evaluation will be made available to the Consultant.

**14.10 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:

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

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

**14.11.3 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.

**14.11.4 "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.

**14.12 Waivers.** No waiver by the DFCM or Consultant of any default shall constitute a waiver of the same default at a later time or of a different default.

**14.13 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 be in the Salt Lake County, State of Utah.

**14.14 Authority To Execute.** The Consultant and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CONSULTANT: \_\_\_\_\_

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

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

State of \_\_\_\_\_ )  
:ss.  
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 FORM:  
ATTORNEY GENERAL  
May 22, 2006  
By: Alan S. Bachman  
Asst Attorney General

**DIVISION OF FACILITIES CONSTRUCTION  
& MANAGEMENT**

\_\_\_\_\_  
Lynn Hinrichs, Manager Date  
Capital Development

Approved for expenditure:

Approved as to availability of funds:

\_\_\_\_\_  
Division of Finance Date

\_\_\_\_\_  
David D. Williams, Jr. Date  
DFCM Administrative Services Director