



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

**STANDARD LOW BID PROJECT – INVITATIONAL
(Project Budgets \$25,000 to \$100,000)**

DATE

PROJECT TITLE
AGENCY
LOCATION

DFCM Project Number:

Design Firm

INVITATION TO BID

Only firms that have been invited to submit bids on this project are allowed to bid on this project.

Emailed bids will be received by the Division of Facilities Construction and Management (DFCM) for:

PROJECT TITLE:

AGENCY/LOCATION:

DFCM PROJECT NO:

Invited Company

Contact Name

Email

Project Description:

Bids will be in accordance with the attached Contract Documents. For questions regarding this project, please contact _____, DFCM, at 801-_____. No others are to be contacted regarding this project. Construction estimate for this project is \$ _____.

A mandatory pre-bid meeting will be held at _____ AM/PM on _____ day, _____, 2014 at _____, _____, Utah. All bidders wishing to bid on this project are required to attend this meeting.

Bids are to be emailed to dfcmcontracts@utah.gov by _____ PM on _____ day, _____, 2014. A bid tabulation will be emailed to contractors who have submitted responsive bids.

The Division of Facilities Construction and Management reserves the right to reject any or all bids or to waive any formality or technicality in any bid in the interest of DFCM.

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



PROJECT SCHEDULE INVITATIONAL

PROJECT NAME:				
AGENCY/LOCATION:				
DFCM PROJECT NO.				
Event	Day	Date	Time	Place
Bidding Documents Available				Email
Mandatory Pre-bid Site Meeting				
Last Day to Submit Questions				Project Manager Email
Addendum Deadline (exception for bid delays)				Email
Prime Contractors Email Bid				dfcmcontracts@utah.gov
Substantial Completion Date				



BID FORM - INVITATIONAL

NAME OF BIDDER _____ DATE: _____

Email To: Division of Facilities Construction and Management dfcmcontracts@utah.gov

The undersigned, responsive to the "Invitation to Bid" and in accordance with the "Standard Low Bid Project - Invitational" for the (PROJECT NAME) _____ (AGENCY/LOCATION) _____, UTAH DFCM PROJECT NO. _____, and having examined the Contract Documents and the site of the proposed Work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of labor, hereby proposes to furnish all labor, materials and supplies as required for the Work in accordance with the Contract Documents as specified and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the Work required under the Contract Documents of which this bid is a part:

I/We acknowledge receipt of the following Addenda: _____

Base Bid: For all work shown on the Drawings and described in the Specifications and Contract Documents, I/we agree to perform for the sum of: _____ DOLLARS (\$ _____) (In case of discrepancy, written amount shall govern)

Additive Alternates: None / or Prioritize Individually

I/We guarantee that the Work will be Substantially Complete by _____, should I/we be the successful proposer, and agree to pay liquidated damages in the amount of \$ _____ per day for each day after expiration of the Contract Time as stated in Article I. Paragraph G. of the Limited Scope Construction Agreement. Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within ten (10) days, unless a shorter time is specified in the Contract Documents. This bid shall be good for 45 days after bid opening.

Type of organization (corporation, partnership, individual, etc): _____

Respectfully submitted,

Address:

 Authorized Signature

Please type or print clearly

Phone #: _____

Utah Contractor's License #: _____

Email: _____

**DIVISION OF FACILITIES CONSTRUCTION & MANAGEMENT
LIMITED SCOPE CONSTRUCTION AGREEMENT**

For:

This Contractor's Limited Scope Construction Agreement, made this ____th day of _____, 2014, by and between the Division of Facilities Construction and Management, hereinafter referred to as "DFCM", and _____, a licensed contracting firm/person with the State of Utah, whose address is _____, hereinafter referred to as "Contractor", agree to all of the following terms and conditions for Work to perform in _____, Utah for the consideration stated herein:

ARTICLE I. GENERAL REQUIREMENTS.

A. Scope of the Work. The Contractor shall perform the Work in accordance with this Agreement including the Contractor's bid dated __ which is hereby attached and made part of this Agreement.

B. Review of Scope of the Work (including all Contract Documents) and Field Conditions by Contractor. The Contractor shall study information provided by DFCM, study the site and take any customary field measurements and shall at once notify to the DFCM any errors, inconsistencies or omissions discovered. Contractor shall be responsible for any extra costs resulting in not notifying DFCM of any such problems that a Contractor of ordinary skill and expertise for the type of Work involved should have discovered.

C. Compensation. DFCM will pay Contractor for performance of Contractor's obligations under the Scope of the Work, the sum of ____ DOLLARS (\$). This sum can only be changed by a Change Order executed by DFCM and Contractor.

Contractor must submit appropriate invoices and any documentation reasonably requested by DFCM for payment. Contractor shall be paid no more than once a month and only upon certificate approved by DFCM for Work performed during the preceding month, 95% of value of labor properly performed and 95% value of proper materials furnished in place or on the site. Contractor shall comply with Utah law regarding any retainage that Contractor imposes upon Subcontractors. DFCM shall have no responsibility in enforcing Contractor's retainage requirements under Utah law.

D. Labor and Materials. The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities, supplies, consumables and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

E. Notice to Proceed. The Contractor shall not prematurely commence operations on the site or elsewhere prior to the issuance of a notice to proceed by the DFCM.

F. Contract Time. Time is of the essence. By executing this Agreement, Contractor confirms that the Contract Time is adequate to perform the Work. The Work shall be Substantially Complete as defined in this Agreement (except for minor punchlist items which do not impact State's immediate and lawful use) as __. The Contractor shall provide a schedule indicating the final completion of the Work.

G. Liquidated Damages. Contractor agrees to pay liquidated damages in the amount of \$____ per day commencing after expiration of the Contract Time until Substantial Completion. The provision for liquidated damages is: (a) to compensate the DFCM for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Contractor's Agreement; (c) is not a penalty; and (d) shall not prevent the DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.

H. Permits, Surveys, and Taxes. Contractor will obtain and pay for all permits and licenses, and also pay any applicable taxes.

I. Applicable Codes, Laws, Rule and Regulations. Contractor shall comply with all applicable codes, laws, rules and regulations to the Work, regardless of the enacting entity.

J. Responsibility for Subcontractors/ Suppliers. The Contractor is responsible for the guaranty and warranty of all Work, whether performed by it or by the Contractor, its Subcontractors or suppliers at any tier.

ARTICLE II. DEFINITIONS

CHANGE ORDER. "Change Order" means a written instrument signed by the DFCM and Contractor, stating DFCM's agreement for changes of the Agreement as specified on the required DFCM's change order form.

PRELIMINARY RESOLUTION EFFORT, CLAIM. "Preliminary Resolution Effort" of "Claim" means as defined in the dispute resolution provisions incorporated by reference in this Agreement. A requested amendment, requested change order, or a Construction Change Directive (CCD) is not a PRE or Claim unless an agreement cannot be reached.

CONSTRUCTION CHANGE DIRECTIVE. A "Construction Change Directive" means a written order signed by the DFCM, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The DFCM may by Construction Change Directive, without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions or other revisions; even if it may impact the Contract Sum and Contract Time.

CONTRACT SUM. The term "Contract Sum" means the Contract Sum as stated in this Agreement and, including authorized and signed adjustments to this Agreement, is the total amount payable by the DFCM to the Contractor for performance of the Work under the Scope of Work described above.

CONTRACT TIME. "Contract Time" means the period of time, including DFCM executed written adjustments for Substantial Completion of the Work.

CONTRACTOR. The Contractor is the person or entity identified as such in this Agreement and is referred to throughout this Agreement and the Scope of the Work as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

DAY. The term "day" or "days" as used in this Agreement shall mean calendar day unless otherwise specifically defined.

DFCM REPRESENTATIVE. "DFCM Representative" means the Division of Facilities Construction and Management person directly assigned to work with the Contractor on a regular basis.

WORK OR SCOPE OF THE WORK. The "Work" or "Scope of The Work" means the scope of the work as described in Article 1A and as modified by any Change Order or Construction Change Directive executed by DFCM.

SUBSTANTIAL COMPLETION. "Substantial Completion" is the date certified by DFCM and means the date the Work is sufficiently complete in order for the State to be able to use the Work for its intended use and is in compliance with all applicable laws, rules, regulations and codes for such occupied use.

ARTICLE III. SAFETY REQUIREMENTS.

A. Protection of Persons and Property. The Contractor shall confine operations to the site in accordance with this Agreement and all applicable law, rules, ordinances and regulations. Contractor shall take all reasonable means to secure the site, post signs, erect barriers, and provide those items necessary to protect persons and property as is customary in the industry for the work performed. The site shall be left free and clear of refuse and the site shall not be subject to spilled liquids and chemicals, toxic or otherwise. Should such an incident occur while the Contractor has control of the site, the Contractor shall be responsible to clean the site and pay all associated costs, fines and penalties.

B. Hazardous Materials. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or any other hazardous waste or substance which may endanger the health of those persons performing the Work or being on the site, the Contractor shall immediately stop Work in the area affected and immediately report the condition to the DFCM Representative by phone with a follow-up document in writing. The Work in the affected area shall be resumed when written direction is provided by the DFCM Representative. DFCM shall use a licensed abatement contractor qualified to remove the hazardous material.

C. Historical and Archeological Considerations. In the event the Contractor knows or should have known of any cultural, historical or archeological material that is either recognized as an item to be protected under Federal, State, or local law or regulation, or is an item of obvious value to the State of Utah, the Contractor shall cease any work that would interfere with such discovery and immediately report the condition to the DFCM Representative by phone with a follow-up document in writing. Work shall resume based upon the direction of the DFCM Representative. Contractor cooperation with any DFCM recognized archaeologist or other cultural/historical expert is required.

D. Contractor Liability. If the Contractor fails in any of its obligations in this Article II, the Contractor shall be liable to any damages to DFCM, the State of Utah or any third party resulting from such noncompliance. The Contractor shall also be liable for any mitigation or restoration effort resulting from such noncompliance.

ARTICLE IV. CHANGE ORDERS AND CONSTRUCTION CHANGE DIRECTIVES (CCD)

A. Modifications; In General. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by any of the following issued by DFCM: change order or construction change directive. The Contractor must have the change order or construction change directive executed by DFCM prior to proceeding with any Work sought to be an extra.

B. Proposal Request Initiated by DFCM. DFCM may file a Proposal Request (PR) with the Contractor seeking information, data and/or pricing relating to a change in the Contract Time and or monies owing for particular scope changes or other modifications to this Agreement. The PR shall provide a time limit for the Contractor to file a response with the DFCM Representative. If a proposal is not timely provided by the Contractor, DFCM may calculate the corresponding Change Order. Upon receipt of the proposal, one of the following shall occur:

(1) **If Agreement, Change Order Issued.** The DFCM Representative may reach an agreement with the Contractor and issue a Change Order.

(2) **If Disagreement.** If the DFCM Representative disagrees with the Contractor's proposal, the DFCM representative may negotiate with the Contractor, may issue a Change Order upon such later agreement, may retract the PR, or may issue a Construction Change Directive.

C. Evaluation of Proposal for Issuing Change Orders.

(1) **Adjusting Sum and Time Based Upon Agreement.** The sum and time may be adjusted by agreement of the parties and based upon this Agreement and any customary documentation.

(2) **DFCM Resolution of Sum and Time and Standards in the Absence of an Agreement.** In the

absence of an agreement, the DFCM shall make the adjustment based on an itemized accounting of customary and reasonable costs and savings supported by appropriate data.

For purposes of this calculation, the markups below provide a liquidated formula which is not a penalty but a reasonable calculation agreed upon at the time of execution of this Agreement as the actual amount due for said overhead and profit cannot easily be ascertained at the time of such execution.

The markups below are to cover the Contractor's home office and on-site overhead and profit. Overhead and profit includes, but is not limited to the Contractor's project manager and cost estimator. Each request for pricing shall stand on its own and not be combined with other requests for pricing in determining the allowed markup described below. A particular request for pricing shall include all items reasonably related together and determinable at the time of the request. If several unrelated requests for pricing are grouped together in a single Change Order, each request for pricing will be considered separately for purposes of calculating the markup under the following formula:

- (a) A markup of 15% shall be applied to the cost of each individual charge up to \$20,000 in cost, but in no case shall the markup be less than \$150;
 - (b) A markup of 10% shall be applied to the portion of the cost of each individual charge in excess of \$20,000;
 - (c) Subcontractors at any tier shall be entitled to markup their costs related to a Change Order with the same percentages as specified above, except that the minimum markup shall be \$50 for any individual change.
- (3) **Credits.** The amount of credit to be allowed by the Contractor to the DFCM for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed to DFCM based upon corroboration by an appropriate source.

D. Construction Change Directives.

(1) **When Used and Contractor's Right to Challenge.** A Construction Change Directive may be issued by the DFCM Representative in the case of a need for the Work to commence. At any time that the DFCM and the Contractor agree upon the time and money related to a Construction Change Directive, a Change Order shall be executed by the parties. Additionally, the Construction Change Directive shall be converted to a Change Order if the Contractor fails to file a written objection within twenty-one (21) calendar days after receiving DFCM's written final position in regard to time and cost.

(2) **Proceed With Work and Notify DFCM About Adjustment Method.** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved.

E. Special Notices and Requirements Related to Agreement Modifications and Delay/ Disruption. In order to be eligible for a change order under the following circumstances, the Contractor must meet the following requirements:

(1) **Concealed or Unknown Conditions.** The Contractor must file a written notice with the DFCM Representative within seven (7) calendar days that the Contractor knew or should have known of a site condition that was not reasonably foreseeable at the time of entering this Agreement, including any reasonable investigation of the site and provided information or the Contractor shall be deemed to waive any right to file any request for additional monies or time (including filing any PRE or Claim) related to such condition.

(2) **Increase in Contract Time.** If the Contractor encounters a situation in which the Contractor knows or should have known that such situation would cause a delay, disruption, interruption, or suspension to the Work, the Contractor must file a written notice with the DFCM Representative within seven (7) working days or the Contractor shall be deemed to waive any right to request additional monies or time (including filing any PRE or Claim) related to such circumstance. Failure to file the notice with DFCM, shall not excuse the Contractor from any liquidated damages liability or other liability for damages under this Agreement.

(3) **Delay or Disruption.** If the Contractor alleges any delay or disruption and seeks damages from DFCM, the Contractor must demonstrate how the DFCM's actions directly created the delay or disruption, that such delay or disruption was not reasonably contemplated at the time of entering this Agreement; that any time period of concurrent delay by the Contractor is disallowed, and that the Contractor provided DFCM with 7 calendar days notice of such act causing the delay or disruption. The delay or disruption period commences after the receipt by DFCM of said required notice.

(4) **Compensable Delay Formula.** To the extent of the compensable delay, the Contractor's total entitlement for all compensable delay damages is the computed result of the following formula: Contract Sum divided by Contract Time; the result of which is then multiplied by 0.05; and the result of which is multiplied by the number of calendar days of compensable days allowed under this Agreement that are beyond the Contract Time. To the extent the Contractor is entitled to receive the 10% or 15% markup under this Agreement, this provision shall be inapplicable and the markup shall be deemed to include all the compensable delay damages provided by this paragraph.

F. Resolution of Disputes. Any dispute, notices relating any disagreement with DFCM or notices requesting additional monies or time (Preliminary Resolution Effort or PRE) or Claim between the parties shall be subject to the provisions of the DFCM document entitled "Dispute Resolution Provisions for Limited Scope Construction Agreements" dated May 25, 2005 available at the office of DFCM or on the DFCM website at <http://dfcm.utah.gov>, which Dispute Resolution Provisions are hereby incorporated by reference.

ARTICLE V. TESTS AND INSPECTIONS

A. In General. Tests, inspections and approvals of portions of the Work required by this Agreement or by laws, ordinances, rules, regulations, resolutions or orders of public authorities having jurisdiction shall be made at an appropriate time. DFCM shall contract for such tests, inspections and approvals and the DFCM shall bear all related costs of tests, inspections and approvals except as provided below. If any of the Work is required to be inspected or approved by the terms of this Agreement or by any public authority, the Contractor shall, at least two working days prior to the time of the desired inspection, request such inspection or approval to be performed. Work shall not proceed without the required inspection.

B. Nonconforming Work. If such procedures for testing, inspection or approval reveal failure of portions of the Work to comply with the requirements established by the this Agreement, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the DFCM's expenses, including the cost of retesting for verification of compliance if necessary, until the DFCM accepts the Work in question as complying with the requirements of this Agreement.

C. Uncover Uninspected Work. If a portion of the Work is covered prior to an inspector's approval to proceed, it must, be uncovered for the inspector's review and be replaced at the Contractor's expense without change in the Contract Time.

D. Certificates. Required certificates of testing, inspection or approval shall be secured by the Contractor and promptly delivered to the DFCM.

ARTICLE VI. SUBSTANTIAL AND FINAL COMPLETION.

A. Substantial Completion. Contractor shall notify DFCM when the Work is Substantially Complete. DFCM shall have the Work inspected and if Substantially Complete will issue a Substantial Completion certificate. DFCM may also issue a punchlist and indicate a reasonable time for punchlist completion.

When the Work or designated portion thereof is Substantially Complete, the DFCM shall prepare the Certificate of Substantial Completion which shall establish the date of Substantial Completion; shall establish responsibilities of the DFCM and Contractor for security, maintenance, heat, utilities, damage to the work and insurance; and shall fix the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. If there is a punchlist, the Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on the punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with this Agreement.

Warranties required by this Agreement and the Scope of the Work shall commence on the date of Substantial Completion of the Work or designated portion thereof except to the extent as provided otherwise expressly provided therein or if such warranty is related to an item where the work is not complete. Such warranty documents shall state the length of the warranty, which must comply with this Agreement and the Scope of the Work.

Except to the extent the DFCM Representative otherwise approves in advance and in writing, when applicable, the Contractor shall submit the following documents in order to achieve Substantial Completion: written warranties, operation and maintenance manuals, and complete Record Drawings. The Contractor must also provide or obtain any required approvals for occupancy.

B. Final Completion. If there is a punchlist and a need for a final inspection, the Contractor shall notify the DFCM and request a final inspection. DFCM shall arrange for the final inspection. When all punchlist items are completed a final pay request will be provided by the Contractor.

ARTICLE VII. GUARANTY PERIOD.

A. Guaranty and Correction After Substantial Completion. If within **one year** after the date of Substantial Completion of the Work, any of the Work is found to be not in accordance with the requirements of this Agreement, including failure to perform for its intended purpose, the Contractor shall correct it promptly after receipt of written notice from the DFCM to do so. This obligation of the Contractor shall be operative notwithstanding the acceptance of the Work under this Agreement, the final payment, partial or total occupancy and/or termination of the Agreement. The DFCM shall give notice of observed defects with reasonable promptness, however, failure to give such notice shall not relieve the Contractor of its obligation to correct the Work at the cost that the Contractor would have incurred if the DFCM did so report with reasonable promptness. All corrected Work shall be subject to a one-year guaranty period the same in all respects as the original Work, except that such guaranty period shall commence from the time of Substantial Completion of the corrected Work. This guaranty period does not affect the DFCM's right to pursue any available remedies against Contractor.

B. Not Limit Other Obligations. The aforesaid one-year guarantee period is a special period that applies to the Contractor's duty to correct the Work and does not affect any other rights or statute of limitations for DFCM to enforce this Agreement at any later time.

ARTICLE VIII. ADDITIONAL WARRANTIES.

The following warranties shall apply:

A. Contractor warrants to the DFCM that materials and equipment furnished under the Agreement will be of good quality and new.

B. Contractor also warrants to the DFCM that the Work will be free from defects not inherent in the quality required or permitted and that the Work will conform with the requirements of this Agreement. Work not conforming to said requirements, including substitutions not properly approved and authorized, may be considered defective at the DFCM's option.

ARTICLE IX. INDEMNIFICATION AND INSURANCE.

A. Indemnification. The Contractor shall indemnify and hold harmless the State of Utah and DFCM and any entity or person associated with the State of Utah and DFCM (hereinafter "indemnities") from and against every kind and character of claims, damages, losses and expenses caused in whole or in part by the negligent or wrongful act or omission of the Contractor or anyone for whom the Contractor is responsible.

This indemnification shall apply regardless of whether or not it is caused in part by a party indemnified hereunder. The Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto. The State of Utah shall have the right, at its option, to participate in the defense of any such action without relieving the Contractor of any obligation hereunder.

B. Liability Insurance. Contractor shall obtain and maintain in force during the entire period of this Agreement without interruption, at its own expense, the following insurance from insurance companies authorized to do business in the State of Utah in a form and content satisfactory to the DFCM and rated "A-" or better with a financial size category of Class VII or larger. Said rating and financial size category shall be as published by A.M. Best Company at the time the Agreement is executed.

(1) **Workers' Compensation Insurance and Employers' Liability Insurance.** Worker's Compensation Insurance shall cover full liability under the Worker's Compensation Laws of the jurisdiction in which the Work is located at the statutory limits required by said jurisdiction's laws. The Contractor shall require all Subcontractors to take and maintain similar policies of Workers' Compensation Insurance.

(2) **Contractor's Insurance.** Prior to performing any work, Contractor will obtain and maintain during the term of this Agreement: Commercial General Liability Insurance, Automobile Liability Insurance and Employer's Liability Insurance. Contractor's Commercial General Liability Insurance shall be \$500,000 per occurrence and \$1,000,000 aggregate. Automobile Liability Insurance will be for "any auto" for which Contractor may be legally responsible, and will not be less than \$100,000 combined single limit coverage.

(3) **Contractor Liability.** Irrespective of the requirements as to insurance to be carried by Contractor as provided herein; insolvency, bankruptcy or failure of any insurance company to pay all claims accruing, shall not be held to relieve Contractor of any obligations hereunder.

(4) **Deductible Liability.** The allowable deduction for any insurance policy required to be purchased by the Contractor under this Agreement shall be no more than \$1,000.

(5) **"Builder's Risk" Property Insurance.**

(a) **In General.** The State shall provide "Builder's Risk" property insurance to protect the State, as well as all Contractors and subcontractors, and include them as insureds, with respect to Work performed hereunder at the State's own cost and expense, according to the policies and forms currently in force with insurance carriers selected by the State's Risk Manager or issued by the State of Utah Risk Management Fund. The State of Utah's Risk Manager shall furnish, upon request, all parties in interest with copies of said policies authenticated by authorized agents of the insurers or the State of Utah's Risk Management Fund.

(b) **Inspections, Compliance.** DFCM, the Division of Risk Management and the Builder's Risk insurers shall have the right to inspect the Work. The Contractor shall comply with reasonable risk control recommendations made by insurers or the Division of Risk Management. Such inspections or recommendations do not relieve the Contractor of any of its responsibilities under this Agreement.

(c) **Deductible.** The above described "Builders Risk" policies shall be subject to a total deductible of \$5,000 per loss occurrence, which shall be assumed by the Contractor.

(d) **Adjusted With And Payable To Risk Manager As Trustee.** Any insured property loss is to be adjusted with the State of Utah Risk Manager, and made payable to the State of Utah Risk Manager as trustee for the Contractor subject to the requirements of any applicable loss payable clause.

i. **Waiver.** Contractor, including all subcontractors, and DFCM hereby waive all rights against each other for damages caused by perils insured against under the "Builder's Risk" insurance provided by DFCM, except such rights as Contractor may have to the proceeds of such insurance held by the State of Utah's Risk Manager as trustee. The DFCM and the Contractor each shall require similar waivers from their contractors, subcontractors, subconsultants and agents, at any tier.

ii. **Special Hazards.** DFCM shall bear the risk of loss, delay and/or damage due to earthquake and/or flood and may either insure or self-insure that risk. If the Contractor requests in writing that insurance for other special hazards be included in the "Builder's Risk" policy, the State of Utah's Risk Manager shall, if possible, include such insurance in the policy and the cost thereof shall be charged to the Contractor by Change Order.

ARTICLE X. SPECIAL PAYMENT PROVISIONS:

A. Payment Upon Substantial Completion. Upon Substantial Completion of the Work as reasonably determined by DFCM, the DFCM shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in this Agreement and the Scope of the Work. To the extent allowed by law, the DFCM may retain up to 200% of the fair market value of the work that has not been completed in accordance with this Agreement and the Scope of the Work.

B. Final Payment. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the DFCM the following to the extent required by the DFCM Representative: Appropriate documentation that the State will not be subject to any encumbrance, receipt of Record Drawings, the warranties, and operation and maintenance manuals. The DFCM may require consent of Surety to the final payment.

C. Waiver by DFCM Regarding Final Payment. The making of final payment shall constitute a waiver of Claims by the DFCM except those arising from:

- (1) Liens, Claims, security interests or encumbrances arising out of the Agreement and unsettled;
- (2) Failure of the Work to comply with this Agreement;
- (3) Terms of warranties required by this Agreement; or
- (4) The one-year guaranty period and any corrected Work.

D. Waiver by Contractor Accepting Final Payment. Acceptance of final payment by the Contractor shall constitute a waiver of Claims by that payee except those Claims previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

E. Payment of Subcontractors and Suppliers. Contractor will promptly pay for all labor, materials, and equipment used to perform the Work.

F. When Withheld. The DFCM may decide not to certify payment and may withhold payment for:

- (1) Defective Work not remedied;
- (2) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (3) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- (4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; or
- (5) Damage to the State or another contractor.

G. Late Payment Interest. Except as otherwise provided by law, if any payment is late based upon the provisions of this Agreement and the Scope of the Work, the Contractor 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.

ARTICLE XI. TERMINATION.

A. Termination of Agreement by Contractor. In the event DFCM materially breaches any term of this Agreement, Contractor shall provide DFCM a written notice explaining the breach and DFCM shall have seven (7) calendar days to cure the breach. If the breach is not cured, Contractor may terminate this Agreement, be paid for all work properly performed to date plus an additional 5% of the unpaid Agreement balance as liquidated damages for such termination, which is not a penalty; compensates Contractor for termination due to DFCM's breach; is provided for herein because actual damages can not be readily ascertained at the time of execution of this Contractor's Agreement; and is Contractor's sole remedy for such termination.

B. Termination of Agreement by DFCM for Cause. Should Contractor make a general assignment for benefit of its creditors, fail to apply a sufficient and skilled workforce, or fail to comply with this Agreement, DFCM shall provide Contractor a written notice explaining the breach and Contractor shall have seven (7) calendar days to cure the breach. If the breach is not cured, DFCM may terminate this Agreement. In event of such termination by DFCM for cause, Contractor shall be paid for work properly performed less 5% of the value of the Work unperformed as liquidated damages for such termination, which is not a penalty; is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Contractor's Agreement; and is Contractor's sole remedy for such termination. If, after notice of termination for cause, it is determined that the cause was unjust, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience provisions.

C. Termination of Agreement by DFCM for Convenience. DFCM may, without cause and in its absolute discretion, terminate the Agreement at any time. In the event of such termination for convenience by DFCM, Contractor shall be paid fully for all work properly performed up to the date of termination as well as any documented damages the Contractor has suffered as a result of reasonable contracts the Contractor has entered into for labor or materials in order to meet the obligations under this Agreement.

D. DFCM's Right to Stop the Work. In addition to other rights of DFCM to stop the Work, if the Contractor fails to comply with this Agreement, DFCM may order the Work to be stopped.

ARTICLE XII. MISCELLANEOUS PROVISIONS.

- A. Independent Contractor.** Contractor's relationship to the State is that of an independent Contractor. No officer, director partner, agent or anyone associated with Contractor shall, by reason of this Agreement, become an employee of the State of Utah.
- B. Review of Submittals.** The State's or any A/E's review of the Contractor's submittals shall not relieve the Contractor of the obligations under this Agreement.
- C. Successors and Assigns.** The DFCM and Contractor respectively bind themselves and all associated with each and their successors and assigns to the obligations contained in this Agreement. The Contractor shall not assign the Agreement without the prior written consent of the DFCM, nor shall the Contractor assign any amount due or to become due as well as any rights under the Agreement, without prior written consent of the DFCM.
- D. Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice. Fax notice is only allowed if it is confirmed by the party to receive the fax, that such has been received.
- E. Rights, Remedies, Waiver.** Duties and obligations imposed by this Agreement and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. Any waiver under this Agreement must be in writing. Any waiver does not waive the right to any future performance, even if similar.
- F. Commencement of Statutory Limitation Period.** Except as provided below, the statute of limitation shall commence to run upon issuance of final payment to the Contractor or the date of correction of any Work, whichever is later. No applicable statute of limitations shall be deemed to have commenced until such matter is discovered by DFCM when the Work is not in accordance with the Agreement, is not visible or apparent upon conducting a reasonable investigation at the time noted above, and which is not discovered by the DFCM until such date.
- G. Not Discriminate, No Sexual Harassment.** Pursuant to the laws of the State of Utah, the Contractor, Subcontractors, or anyone for whose act any of them may be liable, will take affirmative action to 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. Contractor, Subcontractors, or anyone for whose act any of them 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.
- H. Construction of Words.** Unless otherwise stated in the Scope of Work or Definitions of this Agreement, words, which have well-known technical or construction industry meanings, shall be construed as having such recognized meanings. Unless the context requires otherwise, all other technical words shall be construed in accordance with the meaning normally established by the particular, applicable profession or industry. All other words, unless the context requires otherwise, shall be construed with an ordinary, plain meaning.
- I. No Third Party Rights.** This Agreement creates rights and duties only as between DFCM and Contractor.
- J. Preserve and Make Available Records.** Contractor shall, from the date of final completion until the expiration of three years thereafter, preserve and make available to the DFCM at all reasonable times at the office of the Contractor, but without direct charge to the DFCM, all books, records, documents and other evidence bearing on the costs and expenses of the Contractor and/or payments under this Agreement.

K. Applicable Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Utah. Venue for any judicial suit or action shall in Salt Lake County, State of Utah.

L. Authority to Execute and Perform Agreement. Contractor 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.

CONTRACTOR: _____

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
January 2, 2013
By: ALAN S. BACHMAN
Assistant Attorney General

**DIVISION OF FACILITIES
CONSTRUCTION & MANAGEMENT**

*/S/ DFCM
DFCM

Approved for expenditure:

Approved as to availability of funds:

*/S/ Division of Finance
Division of Finance

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

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