

Contract # MA3921**STATE OF UTAH COOPERATIVE CONTRACT**

1. CONTRACTING PARTIES: This contract is between the Division of Purchasing and the following Contractor:

Northern Construction LLC

Name

2882 Commerce Way

Address

Ogden

UT

84401

City

State

Zip

LEGAL STATUS OF CONTRACTOR

- ☐ Sole Proprietor
☐ Non-Profit Corporation
☒ For-Profit Corporation
☐ Partnership
☐ Government Agency

Contact Person Shane Mollenhauer Phone #801-690-4962 Email shane@northernconstruction.usVendor #VC209610 Commodity Code #72120

2. CONTRACT PORTFOLIO NAME: Job Order Contracting
3. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide: Job Order Contracting Services for Regions 1, 2, 6.
4. PROCUREMENT: This contract is entered into as a result of the procurement process on Bid#KL22-90.
5. CONTRACT PERIOD: Effective Date: 5-1-2022 Termination Date: 4-30-2027 unless terminated early or extended in accordance with the terms and conditions of this contract. Renewal options (if any): None.
6. Payment: Prompt Payment Discount (if any): NA.
7. Administrative Fee, as described in the Solicitation and Attachment A: 0.4%
8. ATTACHMENT A: State of Utah Standard Terms and Conditions for ☒ Goods ☒ Services, or ☐ IT
 ATTACHMENT B: DFCM – General Conditions
 ATTACHMENT C: Catalog
 ATTACHMENT D: Scope of Work
 ATTACHMENT E: Region Map
 ATTACHMENT E-1: County Break-Out
 ATTACHMENT F: Cost Schedule
 ATTACHMENT G: DFCM Checklist

Any conflicts between Attachment A and the other Attachments will be resolved in favor of Attachment A.

9. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:
- All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
 - Utah State Procurement Code, Procurement Rules, and Contractor's response to solicitation #KL22-90.
10. Each person signing this Agreement represents and warrants that he/she is duly authorized and has legal capacity to execute and deliver this Agreement and bind the parties hereto. Each signatory represents and warrants to the other that the execution and delivery of the Agreement and the performance of each party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on the parties and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed. Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract shall be the date provided within Section 5 above.

CONTRACTOR

Contractor's signature

4/26/2022

Date

STATE

Nick Hughes (Apr 27, 2022 11:08 MDT)

Director, Division of Purchasing

04/27/2022

Date

Shane Mollenhauer Project Manager/Estimator

Type or Print Name and Title

<u>Kevin Lucas</u>	<u>801-957-7281</u>		<u>klucus@utah.gov</u>
Division of Purchasing Contact Person	Telephone Number	Fax Number	Email

(Revised 4/22/20 RS)

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR GOODS AND SERVICES

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) "**Confidential Information**" means information that is deemed as confidential under applicable state and federal laws, including personal information. The Eligible User reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) "**Contract**" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" shall include any purchase orders that result from this Contract.
 - c) "**Contract Signature Page(s)**" means the State of Utah cover page(s) that the Division and Contractor signed.
 - d) "**Contractor**" means the individual or entity delivering the Procurement Item identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) "**Custom Deliverable**" means the Work Product that Contractor is required to deliver to the Eligible User under this Contract.
 - f) "**Division**" means the Division of Purchasing and General Services.
 - g) "**Eligible User(s)**" means those authorized to use State Cooperative Contracts and includes the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
 - h) "**End User Agreement**" means any agreement that Eligible Users are required to sign in order to participate in this Contract, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement.
 - i) "**Procurement Item**" means a supply, a service, Custom Deliverable, construction, or technology that Contractor is required to deliver to the Eligible User under this Contract.
 - j) "**Response**" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the Solicitation.
 - k) "**Solicitation**" means an invitation for bids, request for proposals, notice of a sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
 - l) "**State of Utah**" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - m) "**Subcontractors**" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction, including a trade contractor or specialty contractor.
 - n) "**Work Product**" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Procurement Items delivered and/or performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
5. **PERMITS:** If necessary Contractor shall procure and pay for all permits, licenses, and approvals necessary for the execution of this Contract.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, to sole sources that are included within a Request for Proposal, and when Contractor employs any personnel in Utah.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

- b. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the Division or the State of Utah, unless disclosure has been made to the Division.
 8. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Division or the State of Utah.
 9. **CONTRACTOR RESPONSIBILITY:** Contractor is solely responsible for fulfilling the contract, with responsibility for all Procurement Items delivered and/or performed as stated in this Contract. Contractor shall be the sole point of contact regarding all contractual matters. Contractor must incorporate Contractor's responsibilities under this Contract into every subcontract with its Subcontractors that will provide the Procurement Item(s) to the Eligible Users under this Contract. Moreover, Contractor is responsible for its Subcontractors compliance under this Contract.
 10. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional wrongful act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the fault of an Eligible User. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
 11. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees. Contractor agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
 12. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
 13. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, or declared ineligible by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
 14. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved and conforming Procurement Items ordered prior to date of termination. In no event shall the Eligible Users be liable to the Contractor for compensation for any Procurement Item neither requested nor accepted by an Eligible User. In no event shall the Division's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the Eligible Users for any damages or claims arising under this Contract.

15. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, a purchase order that results from this Contract may be terminated in whole or in part at the sole discretion of an Eligible User, if an Eligible User reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, an Eligible User will reimburse Contractor for the Procurement Item(s) properly ordered and/or properly performed until the effective date of said notice. An Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

16. **SALES TAX EXEMPTION:** The Procurement Item(s) under this Contract will be paid for from an Eligible User's funds and used in the exercise of an Eligible Users essential functions. Upon request, an Eligible User will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request an Eligible User's sales tax exemption number. It also

is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

17. **WARRANTY OF PROCUREMENT ITEM(S):** Contractor warrants, represents and conveys full ownership and clear title, free of all liens and encumbrances, to the Procurement Item(s) delivered to an Eligible User under this Contract. Contractor warrants for a period of one (1) year that: (i) the Procurement Item(s) perform according to all specific claims that Contractor made in its Response; (ii) the Procurement Item(s) are suitable for the ordinary purposes for which such Procurement Item(s) are used; (iii) the Procurement Item(s) are suitable for any special purposes identified in the Contractor's Response; (iv) the Procurement Item(s) are designed and manufactured in a commercially reasonable manner; (v) the Procurement Item(s) are manufactured and in all other respects create no harm to persons or property; and (vi) the Procurement Item(s) are free of defects. Unless otherwise specified, all Procurement Item(s) provided shall be new and unused of the latest model or design. Remedies available to an Eligible User under this section include, but are not limited to, the following: Contractor will repair or replace Procurement Item(s) at no charge to the Eligible User within ten (10) days of any written notification informing Contractor of the Procurement Items not performing as required under this Contract. If the repaired and/or replaced Procurement Item(s) prove to be inadequate, or fail its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies an Eligible User may otherwise have under this Contract.
18. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
 - Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

19. **RESERVED.**

20. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the Division, Contractor also agrees that the Contractor's Response will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
21. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to an Eligible User, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
22. **ACCEPTANCE AND REJECTION:** An Eligible User shall have thirty (30) days after delivery of the Procurement Item(s) to perform an inspection of the Procurement Item(s) to determine whether the Procurement Item(s) conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Procurement Item(s) by the Eligible User. If Contractor delivers nonconforming Procurement Item(s), an Eligible User may, at its option and at Contractor's expense: (i) return the Procurement Item(s) for a full refund; (ii) require Contractor to promptly correct or replace the nonconforming Procurement Item(s); or (iii) obtain replacement Procurement Item(s) from another source, subject to Contractor being responsible for any cover costs. Contractor shall not redeliver corrected or rejected Procurement Item(s) without: first, disclosing the former rejection or requirement for correction; and second, obtaining written consent of the Eligible User to redeliver the corrected Procurement Item(s). Repair, replacement, and other correction and redelivery shall be subject to the terms of this Contract.
23. **INVOICING:** Contractor will submit invoices within thirty (30) days after the delivery date of the Procurement Item(s) to the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time

of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

24. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by an Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Eligible User from all claims and all liability to the Contractor. An Eligible User's payment for the Procurement Item(s) and/or Services shall not be deemed an acceptance of the Procurement Item(s) and is without prejudice to any and all claims that the Eligible User may have against Contractor. Contractor shall not charge Eligible Users electronic payment fees of any kind.
25. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the Division, the Eligible Users, and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the Division, the Eligible User, or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
26. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The Division, the Eligible User, and Contractor each recognizes that each has no right, title, or interest, proprietary or otherwise, in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Procurement Item(s), documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.
27. **OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible User, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for the Eligible User and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible User, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible User any and all copyrights in and to the Custom Deliverables, subject to the following:
 1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of the Eligible User (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
 4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible User.

Contractor agrees to grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible User and the State of Utah to use the Custom Deliverables. The Eligible User reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's and the State of Utah's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's and the State of Utah's internal business operation under this Contract. The Eligible User and the State of Utah may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.
29. **REMEDIES:** Any of the following events will constitute cause for an Eligible User to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. An Eligible User may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, an Eligible User may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division; or (v) demand a full refund of any payment that the Eligible User has made to Contractor under this Contract for Procurement Item(s) that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither an Eligible User nor Contractor will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. An Eligible User may terminate a purchase order resulting from this Contract after determining such delay will prevent Contractor's successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify an Eligible User of any potential or actual misuse or misappropriation of Confidential Information.
- Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Eligible User, including anyone for whom the Eligible User is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.
- Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.
32. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
33. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Procurement Items based upon the same terms, conditions, and prices of this Contract.
34. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Procurement Items from this Contract will be treated as individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
35. **REPORTS AND FEES:**
- Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 - Quarterly Reports: Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor..>
 - Report Schedule: Quarterly utilization reports shall be made in accordance with the following schedule:

Period End	Reports Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31
 - Fee Payment: After the Division receives the quarterly utilization report, it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
 - Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.
36. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
37. **END USER AGREEMENTS:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion of termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.
38. **PUBLICITY:** Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.
39. **WORK ON STATE OF UTAH OR ELIGIBLE USER PREMISES:** Contractor shall ensure that personnel working on the premises of an Eligible User shall: (i) abide by all of the rules, regulations, and policies of the premises; (ii) remain in authorized

areas; (iii) follow all instructions; and (iv) be subject to a background check, prior to entering the premises. The Eligible User may remove any individual for a violation hereunder.

40. **CONTRACT INFORMATION:** During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies within the State of Utah.
41. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.
42. **SUSPENSION OF WORK:** Should circumstances arise which would cause an Eligible User to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Eligible User.
43. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity who participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
44. **CHANGES IN SCOPE:** Any changes in the scope of the services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services.
45. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
46. **TRAVEL COSTS:** If travel expenses are permitted by the Solicitation All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the vendor for correction.
47. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
48. **STANDARD OF CARE:** The services performed by Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the services that are the subject of this Contract. Contractor shall be liable to the Eligible User for claims, liabilities, additional burdens, penalties, damages, or third party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
49. **REVIEWS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
50. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division or an Eligible User, after consultation with Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division or an Eligible User appoints such an expert or panel, the Division or the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
51. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of an Eligible User, the Division, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
52. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice Eligible Users' right to enforce this Contract with respect to any default of this Contract or defect in the Procurement Item(s) that has not been cured, or of any of the following clauses, including: Governing Law and Venue, Laws and Regulations, Records Administration, Remedies, Dispute Resolution, Indemnity, Newly Manufactured, Indemnification Relating to Intellectual Property, Warranty of Procurement Item(s), Insurance.
53. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
54. **ERRORS AND OMISSIONS:** Contractor shall not take advantage of any errors and/or omissions in this Contract. The Contractor must promptly notify the Division of any errors and/or omissions that are discovered.
55. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
56. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah Statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.



GENERAL CONDITIONS

Attachment B

August 03, 2020

ARTICLE 1. GENERAL PROVISIONS

1.1 Definitions

ARTICLE 2. DFCM

2.1 Information and Services Required of DFCM

- 2.1.1 DFCM's Representative
- 2.1.2 Specialists and Inspectors
- 2.1.3 Surveys and Legal Description
- 2.1.4 Prompt Information and Services
- 2.1.5 Copies of Contract Documents

2.2 Construction by DFCM or By Separate Contractors

- 2.2.1 DFCM's Right to Perform Construction and to Award Separate Contracts
- 2.2.2 Coordination of the Work
- 2.2.3 Coordination of Schedules
- 2.2.4 Reporting Problems to DFCM
- 2.2.5 Contractor Remedial Work

ARTICLE 3. A/E

3.1 A/E's Administration of the Contract

- 3.1.1 In General
- 3.1.2 Site Visits
- 3.1.3 Communications Facilitating Contract Administration
- 3.1.4 A/E May Reject Work, Order Inspection, Tests
- 3.1.5 A/E Review Contractor's Submittals

3.2 Ownership and Use of A/E's Drawings, Specifications, and Other Documents

ARTICLE 4. CONTRACTOR

4.1 Review of Contract Documents and Field Conditions by Contractor

- 4.1.1 Reviewing Contract Documents, Information, Reporting Errors, Inconsistencies or Omissions
- 4.1.2 Review of Field Conditions
- 4.1.3 Subsurface Investigations
- 4.1.4 Perform in Accordance with Contract Documents and Submittals

Table of Contents

4.1.5	Performance to Produce the Complete System and Intended Results
4.1.6	Intent and Hierarchy
4.1.7	Dividing Work and Contractor Representation
4.1.8	Planning and Priority
4.2	Supervision and Representatives
4.2.1	Supervision and Control
4.2.2	Persons Performing Work
4.2.3	Designated Representatives
4.2.4	Discipline and Competence
4.2.5	Responsibility
4.2.6	Not Relieved of Obligations
4.2.7	Inspections and Approvals
4.3	Payment by Contractor
4.4	Taxes and Other Payments to Government
4.5	Permits, Fees, Notices, Labor and Materials
4.5.1	Permits and Fees
4.5.2	Compliance, Notices
4.5.3	Correlation of Contract Documents and Laws
4.5.4	Failure to Give Notice
4.6	Time and Contractor's Construction Schedules
4.6.1	Progress and Completion
4.6.2	Schedule Preparation
4.6.3	Schedule Submittal
4.6.4	Schedule Content Requirements
4.6.5	Interim Completion Dates and Milestones
4.6.6	Float Time
4.6.7	Updates
4.6.8	Schedule of Submittals
4.6.9	Schedule Recovery
4.6.10	Schedule Changes and Modifications
4.6.11	Excusable Delay
4.6.12	Compensable Delay, Suspension or Interruption.
4.6.13	Time Extension Requests
4.6.14	Liquidated Damages
4.7	Documents and Samples at the Site, Certifying "As-Built"
4.8	Shop Drawings, Product Data and Samples
4.8.1	Not Contract Documents
4.8.2	Promptness
4.8.3	Not Perform Until A/E Approves
4.8.4	Representations by Contractor
4.8.5	Contractor's Liability
4.8.6	Direct Specific Attention to Revisions

- 4.8.7 Informational Submittals
- 4.8.8 Professional Services
- 4.9 Use of Site
 - 4.9.1 In General
 - 4.9.2 Access to Neighboring Properties
- 4.10 Access to Work
- 4.11 Intellectual Property Licenses
- 4.12 Indemnification
 - 4.12.1 Not Exclusive
 - 4.12.2 Not Limited

ARTICLE 5. SUBCONTRACTORS

- 5.1 Award of Subcontracts and Other Contracts For Portions of the Work
 - 5.1.1 Subcontracting Work Permitted; Conditions
 - 5.1.2 Subsequent Changes
 - 5.1.3 Business and Licensing Requirements
 - 5.1.4 Bonding of Subcontractors
 - 5.1.5 Subcontractor Default Insurance
- 5.2 Subcontractor Relations
 - 5.2.1 Contractor Fully Responsible
 - 5.2.2 Comply with Contact Documents
 - 5.2.3 Rights
 - 5.2.4 Sub-Subcontractors
 - 5.2.5 Document Copies
- 5.3 Contingent Assignment of Subcontracts

ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY

- 6.1 Safety of Persons and Property
 - 6.1.1 Contractor Responsibility
 - 6.1.2 Safety Program, Precautions
 - 6.1.3 Compliance with Laws
 - 6.1.4 Erect and Maintain Safeguards
 - 6.1.5 Utmost Care
 - 6.1.6 Prompt Remedy
 - 6.1.7 Safety Designee
 - 6.1.8 Load Safety
 - 6.1.9 Off-Site Responsibility
 - 6.1.10 Emergencies
- 6.2 Hazardous Materials
- 6.3 Historical and Archeological Considerations
- 6.4 Contractor Liability

ARTICLE 7. MODIFICATIONS, PRs & PCOs, PRE AND CLAIMS PROCESS

- 7.1 Modifications: In General
 - 7.1.1 Types of Modifications and Limitations
 - 7.1.2 By Whom Issued
 - 7.1.3 Contractor to Proceed Unless Otherwise Stated
 - 7.1.4 Adjusting Unit Prices

- 7.1.5 Concealed or Unknown Conditions
- 7.1.6 Increase in Contract Time
- 7.1.7 Allowances
- 7.2 Contractor Initiated Requests
 - 7.2.1 The Request for Information, RFI, Process and Time to File
 - 7.2.2 Proposed Change Order (“PCO”)
 - 7.2.3 Substitutions
- 7.3 Proposal Request Initiated by DFCM
 - 7.3.1 If Agreement, Change Order Issued
 - 7.3.2 If Disagreement
- 7.4 Change Orders
 - 7.4.1 Adjusting Price Based Upon Agreement
 - 7.4.2 DFCM Resolution of Price in the Absence of an Agreement Under Paragraph 7.4.1
 - 7.4.3 Credits
 - 7.4.4 Effect of a Change Order
- 7.5 Construction Change Directives
 - 7.5.1 When Used and Contractor’s Right to Challenge
 - 7.5.2 Proceed with Work
 - 7.5.3 Interim Payments by DFCM
- 7.6 ASI
- 7.7 Procedure for Preliminary Resolution Efforts
 - 7.7.1 Request for Preliminary Resolution Effort (PRE)
 - 7.7.2 Time for Filing
 - 7.7.3 Content Requirement
 - 7.7.4 Supplementation
 - 7.7.5 Subcontractors
 - 7.7.6 Information and Meetings
 - 7.7.7 Contractor Required to Continue Performance
 - 7.7.8 Decision
 - 7.7.9 Decision Final Unless Claim Submitted
 - 7.7.10 Extension Requires Mutual Agreement
 - 7.7.11 If Decision Not Issued
 - 7.7.12 Payment for Performance
- 7.8 Resolution of Claim
 - 7.8.1 Claim
 - 7.8.2 Subcontractors
 - 7.8.3 Time for Filing
 - 7.8.4 Content Requirement
 - 7.8.5 Extension of Time to Submit Documentation
 - 7.8.6 Contractor Required to Continue Performance
 - 7.8.7 Agreement of Claimant on Method and Person(s) Evaluating the Claim
 - 7.8.8 The Evaluation Process, Timeframes of Evaluator(s), Director’s Determination, Administrative Appeal to the Executive Director and Judicial Review

- 7.8.9 Appeal Process Prerequisite for Further Consideration or Judicial Review
- 7.8.10 Payment of Claim
- 7.8.11 Allocation of Costs of Claim Resolution Process.
- 7.8.12 Alternative Procedures
- 7.8.13 Impact on Future Selections
- 7.8.14 Report to Building Board
- 7.8.15 DFCM's Right to Have Issues, Disputes or Claims Considered

ARTICLE 8. PAYMENTS AND COMPLETION

- 8.1 Schedule of Values
- 8.2 Applications for Payment
 - 8.2.1 In General
 - 8.2.2 Payment for Material and Equipment
 - 8.2.3 Warranty of Title
 - 8.2.4 Holdback by DFCM
- 8.3 Certificates for Payment
 - 8.3.1 Issued by A/E
 - 8.3.2 A/E's Representations
- 8.4 Decisions to Withhold Certification
 - 8.4.1 When Withheld
 - 8.4.2 Certification Issued When Reasons for Withholding Removed
 - 8.4.3 Continue Work Even if Contractor Disputes A/E's Determination
 - 8.4.4 DFCM Not in Breach
- 8.5 Progress Payments
 - 8.5.1 In General, Interest on Late Payments
 - 8.5.2 Contractor and Subcontractor Responsibility
 - 8.5.3 Information Furnished by A/E or DFCM to Subcontractor
 - 8.5.4 DFCM and A/E Not Liable
 - 8.5.5 Certificate, Payment or Use Not Acceptance of Improper Work
- 8.6 Payment Upon Substantial Completion
- 8.7 Partial Occupancy or Use
 - 8.7.1 In General
 - 8.7.2 Inspection
 - 8.7.3 Not Constitute Acceptance
 - 8.7.4 Insurance
- 8.8 Final Payment
 - 8.8.1 Certificate for Payment
 - 8.8.2 Conditions for Final Payment
 - 8.8.3 Waiver of Claims: Final Payment
 - 8.8.4 Delays Not Contractor's Fault
 - 8.8.5 Waiver by Accepting Final Payment

ARTICLE 9. TESTS AND INSPECTIONS, SUBSTANTIAL AND FINAL COMPLETION, UNCOVERING, CORRECTION OF WORK AND GUARANTY PERIOD

- 9.1 Tests and Inspections
 - 9.1.1 In General
 - 9.1.2 Failure of an Inspector to Appear
 - 9.1.3 Nonconforming Work
 - 9.1.4 Certificates
 - 9.1.5 A/E Observing
 - 9.1.6 Promptness
- 9.2 Uncovering of Work
 - 9.2.1 Uncover Uninspected Work
 - 9.2.2 Observation Prior to Covering
 - 9.2.3 When an Inspector Fails to Appear or A/E or DFCM Did Not Make Prior Request
- 9.3 Inspections: Substantial and Final
 - 9.3.1 Substantial Completion Inspection
 - 9.3.2 Final Completion Inspection
 - 9.3.3 Punchlist Completion
- 9.4 Correction of Work and Guaranty Period
 - 9.4.1 Contractor Correct the Work
 - 9.4.2 Guaranty and Correction After Substantial Completion
 - 9.4.3 Removal of Work
 - 9.4.4 Not Limit Other Obligations
- 9.5 Additional Warranties
 - 9.5.1 In General
 - 9.5.2 Exclusion
 - 9.5.3 Furnish Evidence on Request
- 9.6 Acceptance of Nonconforming Work

ARTICLE 10. INSURANCE AND BONDS

- 10.1 Contractor's Liability Insurance
 - 10.1.1 In General
 - 10.1.2 Coverage
 - 10.1.3 Endorsements
 - 10.1.4 Terms
 - 10.1.5 Failure to Provide
 - 10.1.6 Certificates
 - 10.1.7 No Limitation
- 10.2 "Builder's Risk" Insurance
 - 10.2.1 In General
 - 10.2.2 Deductible
 - 10.2.3 Duties in the Event of Loss
 - 10.2.4 Waiver of Subrogation
 - 10.2.5 Special Hazards
 - 10.2.6 Non-Eligible Projects
- 10.3 Performance Bond and Payment Bond

ARTICLE 11. MISCELLANEOUS PROVISIONS

- 11.1 A/E's Responsibilities
- 11.2 Successors and Assigns
- 11.3 Written Notice
 - 11.3.1 Personal Delivery and Registered or Certified Mail
 - 11.3.2 E-mail
- 11.4 Rights and Remedies
 - 11.4.1 Not Limit
 - 11.4.2 No Waiver
- 11.5 No Discrimination, No Sexual Harassment
- 11.6 Applicable Laws and Enforcement
- 11.7 Interpretation
- 11.8 Venue
- 11.9 Severability
- 11.10 Construction of Words
- 11.11 No Third-Party Rights

- 12.3.6 Deductions
- 12.3.7 Partial Termination
- 12.3.8 Partial Payments
- 12.3.9 Preserve and Make Available Records
- 12.3.10 Suspension, Delay or Interruption of Work by DFCM for Convenience
- 12.4 DFCM's Right to Stop the Work

ARTICLE 12. TERMINATION OR SUSPENSION OF THE CONTRACT

- 12.1 Termination by Contractor for Cause
 - 12.1.1 In General
 - 12.1.2 Notice
- 12.2 Termination by DFCM for Cause
 - 12.2.1 In General
 - 12.2.2 DFCM's Right to Carry Out the Work Upon Termination for Cause
 - 12.2.3 Items Required to Be Transferred or Delivered
 - 12.2.4 Payment
 - 12.2.5 DFCM Protection if Liable
 - 12.2.6 Credits and Deficits
 - 12.2.7 If Contractor Found Not in Default or Excusable
 - 12.2.8 Rights and Remedies Not Exclusive
 - 12.2.9 Time Period for Claims
- 12.3 Termination for Convenience of DFCM
 - 12.3.1 In General
 - 12.3.2 Contractor Obligations
 - 12.3.3 Termination Claim
 - 12.3.4 Agreed Upon Payment
 - 12.3.5 Payment Not Agreed Upon



GENERAL CONDITIONS

August 03, 2020

THESE GENERAL CONDITIONS (“General Conditions”) are part of and subject to the Contractor’s Agreement (defined below) between DFCM (defined below) and Contractor (defined below).

ARTICLE 1. GENERAL PROVISIONS.

1.1 DEFINITIONS.

ARCHITECT/ENGINEER OR A/E. “Architect / Engineer” or “A/E” means the person or entity practicing as a design professional, including architect, engineer, interior designer, and/or landscape architect, retained under separate agreement with DFCM to act on behalf of DFCM according to the Contract Documents (defined below) and the A/E’s employees, representatives and consultants. For Work (defined below) where there is no A/E hired by DFCM, references in these General Conditions to A/E shall be deemed to refer to DFCM’s Representative.

ADDENDA. “Addenda” means the written or graphic instruments issued prior to the execution of the Contractor’s Agreement (defined below) that clarify, correct, or change the bidding documents or the Contract Documents.

A/E’s SUPPLEMENTAL INSTRUCTION OR ASI. “A/E’s Supplemental Instruction” or “ASI” means a supplemental instruction issued by the A/E to Contractor that results in a clarification, correction, or minor change in the Work and does not affect the Contract Time (defined below) or the Contract Price (defined below).

AMENDMENT. “Amendment” means any document or communication that changes (or purports to change) the terms of Contractor’s Agreement and/or the General Conditions, except as to: (1) scope of the Work; (2) Contract Price; and/or (3) Contract Time. With the exception of Supplemental General Conditions (defined below), no Amendment shall be valid and/or binding on DFCM unless: (1) the Amendment is set forth in a separate document, clearly titled “Amendment”; and (2) the Amendment is specifically and expressly accepted in writing by the Director (defined below).

BID. “Bid” means the offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

BONDS. “Bonds” means collectively the bid bond, performance bond, payment bond, and any other instruments of security.

CHANGE ORDER. “Change Order” means a written instrument signed by both DFCM and Contractor, issued after the execution of the Contractor’s Agreement on DFCM’s form, authorizing: (1) a change in the Work; (2) an adjustment of the Contract Price; and/or (3) an adjustment of the Contract Time.

CLAIM. “Claim” means a dispute, demand, assertion or other matter submitted by Contractor, including a subcontractor at any tier, subject to the provisions of these General Conditions. The claimant may seek, as a matter of right, modification, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. A request for Preliminary Resolution Effort

(“PRE”) (defined below) shall not be considered a “Claim”. A request for an amendment of the Contract Documents, requested Change Order or a Construction Change Directive (“CCD”) (defined below) is not a PRE or Claim unless agreement cannot be reached, and the procedures of these General Conditions are followed.

CONSTRUCTION CHANGE DIRECTIVE. “Construction Change Directive” means a written order signed by DFCM, issued after execution of the Contractor’s Agreement, directing Contractor to perform a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Price and/or Contract Time.

CONTRACT DOCUMENTS. “Contract Documents” means collectively Contractor’s Agreement, these General Conditions of Contractor’s Agreement, applicable Supplemental General Conditions, Drawings (defined below), Specifications (defined below), Addenda, other documents listed in the Contractor’s Agreement, authorized Amendments and Supplementary Conditions and Modifications (defined below) issued after execution of the Contractor’s Agreement. The Contract Documents shall also include the bidding/proposal documents, including the Instructions to Bidders/Proposers, Notice to Contractors and the Bid/Proposal Form, to the extent not in conflict with the other above-stated Contract Documents and other documents and oral representations which are memorialized in writing and documented as an attachment to the Contractor’s Agreement.

CONTRACT PRICE. “Contract Price” means the total amount payable by DFCM to Contractor for performance of the Work, including any authorized changes in the Work.

CONTRACT TIME. “Contract Time” means the time within which Contractor shall complete the Work, including any authorized changes in the Work

CONTRACTOR. “Contractor” means the person or entity identified as such in the Contractor’s Agreement. As used in the Contract Documents, “Contractor” includes Contractor’s employees, agents, representatives, subcontractors at any tier, and any other third party hired by Contractor to perform a portion of the Work and is referred to throughout the Contract Documents as if singular in number.

CONTRACTOR’S AGREEMENT. “Contractor’s Agreement” means, unless the context requires otherwise, the agreement executed by the Contractor and DFCM for the Work.

DAY. “Day” or “days” means calendar day unless otherwise specifically defined.

DEFECTIVE. “Defective” is an adjective which when modifying the word “Work” refers to Work that does not conform to the Contract Documents, or does not meet the requirements of any inspection, referenced standard, code, test or approval referred to in the Contract Documents, or which fails to meet generally accepted craft standards, or which has been damaged.

DIRECTOR. “Director” means the Director of the Division of Facilities Construction and Management, unless the context requires otherwise. Director may include a designee selected by the Director for a particular function described in the Contract Documents.

DFCM. “DFCM” means the State of Utah, Division of Facilities Construction and Management. Unless the context requires otherwise, DFCM is the “Owner” as that term is commonly understood in the construction industry.

DRAWINGS. “Drawings” means the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work and generally includes drawings, elevations, sections, details, schedules, and diagrams, including electronic copies.

EXECUTIVE DIRECTOR. “Executive Director” means the Executive Director of the Utah Department of Government Operations, including unless otherwise stated, the Executive Director’s duly authorized designee.

FINAL COMPLETION. “Final Completion” means the date when all Work to be performed by Contractor has been completed and accepted in writing by DFCM.

INSPECTION. “Inspection” or its derivatives means a review of the Work, including but not limited to a visual review of the Work completed to date to ascertain if the Work is in accordance with the Contract Documents, including all applicable building codes and construction standards.

MODIFICATION. “Modification” means: (1) a Change Order; (2) a Construction Change Directive; or (3) an ASI. Contractor’s Agreement may be amended or modified only by: (1) an authorized Amendment; or (2) a Modification.

NOTICE TO PROCEED. “Notice to Proceed” means a document prepared by DFCM that authorizes Contractor to commence Work. It shall be deemed issued upon being sent by DFCM to Contractor’s address specified in Contractor’s Bid.

PRELIMINARY RESOLUTION EFFORT OR PRE. “Preliminary Resolution Effort” or “PRE” means the processing of a request for preliminary resolution or any similar notice about an issue that could potentially lead to a Claim and is prior to reaching the status of a Claim.

PRODUCT DATA. “Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

PROPOSAL REQUEST OR PR. “Proposal Request” or “PR” means a request made by DFCM to Contractor requesting a proposal to resolve an issue as part of the Change Order process.

PROPOSED CHANGE ORDER OR PCO. “Proposed Change Order” or “PCO” means a request by Contractor submitted to the DFCM Representative to commence the Change Order process. It shall not be considered a “PRE” or a “Claim”. The PCO may be related to any potential or actual delay, disruption, unforeseen condition or any other matter for which Contractor intends to seek an increase in the Contract Price and/or extension of the Contract Time.

REQUEST FOR INFORMATION OR RFI. “Request for Information” or “RFI” means a written request from Contractor to the A/E seeking information, direction, or clarification related to the Contract Documents, including Drawings and/or Specifications.

RULE. “Rule”, unless the context requires otherwise, means a rule of the Utah Administrative Code.

SALES TAX AND/OR USE TAX. “Sales Tax” and/or “Use Tax”, unless the context requires otherwise, means the sales tax and/or use tax collected or to be collected by the Utah State Tax Commission and shall include any sales and/or use tax that the Utah State Tax Commission collects on behalf of any special district, local government, or political subdivision.

SAMPLES. “Samples” mean physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work shall be judged.

SHOP DRAWINGS. “Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by Contractor, or a subcontractor at any tier, manufacturer, supplier or distributor to illustrate some portion of the Work.

SPECIFICATIONS. “Specifications” means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, installation and workmanship for the Work and performance of related systems and services.

SUBCONTRACTOR. “Subcontractor” means any person or entity under contract with Contractor to provide services or labor for the Work. “Subcontractor” includes a trade contractor or specialty contractor. “Subcontractor” does not include suppliers who provide only materials, equipment or supplies to Contractor or a Subcontractor. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or authorized representative of the Subcontractor. The term “Sub-subcontractor” means a person or entity that has a contract with a Subcontractor to provide services or labor for the Work and also includes all lower tier sub-subcontractors. The terms “Subcontractor” and “Sub-subcontractor” do not include a separate contractor retained by DFCM or subcontractors or sub-subcontractors of a separate contractor retained by DFCM.

SUBSTANTIAL COMPLETION. “Substantial Completion” and its derivatives means the date certified in accordance with Section 9.2 when the Work, or a designated portion thereof, is sufficiently complete, and any lack of completion or performance does not materially interfere with DFCM’s intended use of the Work, in accordance with the Contract Documents, so that DFCM can occupy and use the Work for its intended use. DFCM’s “intended use” or “occupy” as used in this definition, shall include any intended use or occupation by any agency or entity that DFCM intends to use or occupy the Work.

SUPPLEMENTAL GENERAL CONDITIONS. “Supplemental General Conditions” means the Supplemental General Conditions identified on DFCM’s website, dfcm.utah.gov, applicable to the Work, if any, that supplements these General Conditions. Supplemental General Conditions are authorized Amendments.

SUPPLEMENTARY CONDITIONS. “Supplementary Conditions” means the part of the Contract Documents, if any, that amends or supplements these General Conditions and/or applicable Supplemental General Conditions. Supplementary Conditions, if authorized, are an Amendment.

WORK. “Work” means the construction, services, supervision, labor, tools, equipment, materials, products and transportation, to be furnished by Contractor, so as to fulfill the Contractor’s obligations as required by the Contract Documents.

ARTICLE 2. DFCM.

2.1 INFORMATION AND SERVICES REQUIRED OF DFCM.

2.1.1 DFCM’S REPRESENTATIVE. DFCM shall designate a representative authorized to act on behalf of DFCM with respect to the Work (“DFCM’s Representative”). Unless the context requires otherwise, “DFCM’s Representative” is the “Owner’s representative” as that term is commonly understood in the construction industry. DFCM’s Representative shall have authority to review and approve the Work, including the time schedule for completion, and the authority (but not a duty) to stop the Work for any reason, including, without limitation, unsafe conditions, or to direct Contractor to remedy, repair, or replace any Work, if necessary, to ensure its proper execution. DFCM and DFCM’s Representative shall endeavor to render decisions pertaining to documents submitted by the A/E and/or Contractor to avoid a delay in the orderly and sequential progress of the Work. Contractor shall be responsible for time lost and the cost of correcting Work that in DFCM’s judgment was executed improperly. DFCM shall be the final interpreter of the Contract Documents; the decision of DFCM in the absence of arbitrary or capricious conduct shall be conclusive. Notwithstanding anything to the contrary in the Contract Documents, DFCM’s approval shall not relieve Contractor of Contractor’s sole responsibility for the Work.

2.1.2 SPECIALISTS AND INSPECTORS. DFCM shall provide building inspection services in accordance with the applicable building codes, including routine and special inspections unless otherwise noted in the Contract Documents. DFCM may assign an inspector or specialist to note deviations from, or necessary adjustments to, the Contract Documents or to report deficiencies or defects in the Work. The inspector's or specialist's activities in no way relieve Contractor from the responsibilities set forth in the Contract Documents.

2.1.3 SURVEYS AND LEGAL DESCRIPTION. Except to the extent not applicable to the type of Work to be performed pursuant to Contractor's Agreement, DFCM shall furnish surveys describing physical characteristics, legal limitations and utility locations for the Work site, and a legal description of the Work site. The Contractor shall be entitled to rely on the accuracy of such survey information furnished by DFCM but shall exercise proper precautions relating to the safe performance of the Work. The Contractor recognizes that the exact location of underground or hidden utilities, plumbing and electrical runs may be somewhat different from the location indicated on such surveys furnished by DFCM or in the Contract Documents. The Contractor shall exercise reasonable skill and care to locate underground or hidden utilities, plumbing and electrical runs that are to remain to prevent damage thereto. The Contractor shall review the survey information provided by DFCM and shall promptly provide written notice to DFCM of any survey information that Contractor knows or discovers to be inaccurate.

2.1.4 PROMPT INFORMATION AND SERVICES. Upon receipt of a written request from Contractor, DFCM shall endeavor to furnish information or services under DFCM's control with reasonable promptness to avoid delay in the orderly progress of the Work.

2.1.5 COPIES OF CONTRACT DOCUMENTS. Unless otherwise provided in the Contract Documents, DFCM shall provide or make available to Contractor, free of charge, paper or electronic copies of Contract Documents, as determined by DFCM, as are reasonably necessary for execution of the Work. DFCM's website may also provide Contract Documents for the Work.

2.2 CONSTRUCTION BY DFCM OR BY SEPARATE CONTRACTORS.

2.2.1 DFCM'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS. DFCM reserves the right to enter into contracts with third parties in connection with the Work and to perform construction or other activities itself on or about the Work site.

2.2.2 COORDINATION OF WORK. Contractor shall afford DFCM and the separate contractors or subcontractors retained by DFCM adequate opportunity for the introduction and storage of their materials and equipment and the execution of their work. Contractor shall properly connect and coordinate the Work with the work of DFCM and separate contractors or subcontractors.

2.2.3 COORDINATION OF SCHEDULES. Contractor shall cooperate with DFCM and any separate contractors and subcontractors hired by DFCM in performing the Work so that all portions of the Work may be completed in the shortest possible time within normal working hours. Contractor shall furnish separate contractors and subcontractors' full information regarding time schedules for Contractor's Work. Contractor shall coordinate the Work with the workers who may be retained by DFCM, all separate contractors and subcontractors, and their activities in the vicinity of the Work site.

2.2.4 REPORTING PROBLEMS TO DFCM. If part of Contractor's Work depends on work by DFCM or a separate contractor, Contractor shall, prior to proceeding with that portion of the Work, promptly report in writing to DFCM any apparent defects in workmanship of the work of DFCM and/or such separate contractor that would render it unsuitable for proper execution of the Work. Failure of Contractor to report defects shall constitute an acknowledgment that DFCM's or the separate contractors completed or partially

completed work is fit and proper to receive Contractor's Work, except as to defects in workmanship not then reasonably discoverable.

2.2.5 CONTRACTOR REMEDIAL WORK. If Contractor causes damage to the work of DFCM or any separate contractors or subcontractors, Contractor shall promptly remedy such damage and shall use all reasonable efforts to promptly negotiate a settlement with DFCM and such separate contractors and subcontractors.

ARTICLE 3. A/E.

3.1 A/E'S ADMINISTRATION OF THE CONTRACT.

3.1.1 IN GENERAL. The A/E shall assist DFCM in administering the Contract in accordance with the Contract Documents. The A/E shall have authority to act on behalf of DFCM, but only to the extent provided in the Contract Documents and/or A/E's agreement with DFCM.

3.1.2 SITE VISITS.

3.1.2.1 Site visits or inspections by the A/E or DFCM shall in no way limit or affect Contractor's responsibility to comply with all the requirements and the overall design concept of the Contract Documents as well as all federal, state, and local laws, rules, regulations, ordinances and orders of public authorities applicable to the Work.

3.1.2.2 The A/E shall promptly submit to DFCM a written report subsequent to each site visit detailing the visit.

3.1.3 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION. Except as authorized by DFCM or as otherwise provided in the Contract Documents, including these General Conditions, the A/E and Contractor shall communicate through DFCM on issues regarding the timing of the Work, cost of the Work, and scope of the Work. Communications by and with the A/E's consultants shall be through the A/E. Communications by and with Subcontractors shall ordinarily be through Contractor. Communications by and with separate contractors shall be through DFCM.

3.1.4 A/E MAY REJECT WORK, ORDER INSPECTIONS, TESTS. The A/E shall have the authority to reject Work which, based upon the A/E's knowledge or what may be reasonably inferred from the A/E's site observations and review of data, does not conform to the Contract Documents. Whenever the A/E considers it necessary or advisable for implementation of the intent of the Contract Documents, the A/E shall have the authority to require additional inspections or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed, or completed; however, the A/E must obtain DFCM's prior written approval of any such additional inspections or testing. Neither this authority of the A/E nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the A/E to Contractor, Subcontractors, their agents or employees or other persons performing portions of the Work, including separate contractors. If Contractor disputes the rejection of any Work and the correction thereof shall involve additional cost or time, it shall be DFCM's option to accept such Work whether it shall be conforming or nonconforming.

3.1.5 A/E REVIEW OF CONTRACTOR'S SUBMITTALS.

3.1.5.1 Contractor shall submit Shop Drawings, Product Data, and Samples and other submittals required by the Contract Documents to the A/E as required by the approved submittal schedule.

3.1.5.2 The A/E shall review and take appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the purpose of checking for conformance with the information and design concepts expressed in the Contract Documents. A/E action taken on a submittal shall not constitute a Modification.

3.1.5.3 The A/E's action shall be taken no later than fourteen (14) days following A/E's receipt of the submittal, unless agreed to otherwise by Contractor and DFCM, in order to avoid a delay in the Work of Contractor or of separate contractors while allowing sufficient time in the A/E's professional judgment to permit adequate review.

3.1.5.4 Review of such submittals shall not be conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents.

3.1.5.5 The A/E's review of Contractor's submittals shall not relieve Contractor of Contractor's obligations under the Contract Documents.

3.1.5.6 The A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the A/E, of any construction means, methods, techniques, sequences, or procedures.

3.1.5.7 The A/E's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

3.1.5.8 When professional certification of performance characteristics of materials, systems, or equipment is the responsibility of the Contractor under the Contract Documents, the A/E shall be entitled to rely upon such certifications to establish that the materials, systems or equipment shall meet the performance criteria required by the Contract Documents.

3.2 OWNERSHIP AND USE OF A/E'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS. All Drawings, Specifications, and other documents prepared by the A/E for the Work are and shall remain the property of DFCM, and DFCM shall retain all common law, statutory, and other reserved rights with respect thereto. Said documents are intended for use as an integrated set for the Work. Neither Contractor nor A/E shall modify or use Contract Documents on any other project without the prior written consent of DFCM. Any such non-permissive use or modification by Contractor, Contractor's Subcontractors at any tier, or anyone else for whose acts Contractor is liable, shall be at Contractor's sole risk. To the fullest extent permitted by law, Contractor shall release, indemnify, hold harmless, and defend DFCM, and require all Subcontractors to release, indemnify, hold harmless, and defend DFCM, from and against any and all liabilities, claims, demands, actions, damages, losses, and expenses, including but not limited to attorney fees and costs of litigation, arising out of such non-permissive use or modification by Contractor or its Subcontractors. Contractor, including its Subcontractors, are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by the A/E appropriate to and for use in the execution of the Work. Contractor shall preserve the copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the A/E for the Work, on all copies. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to the Work shall not be construed as a publication in derogation of DFCM's copyright or other reserved rights.

ARTICLE 4. CONTRACTOR.

4.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.

4.1.1 REVIEW OF DOCUMENTS. Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by DFCM and shall at once report to DFCM and A/E all errors, omissions, inconsistencies and/or ambiguities discovered. Contractor shall not be liable to DFCM or A/E for damage resulting from errors, omissions, inconsistencies and/or ambiguities in the Contract Documents unless Contractor recognized such error, omission, inconsistency and/or ambiguity or a contractor of ordinary skill and expertise for the type of Work involved would have readily so recognized such error, omission, inconsistency and/or ambiguity, and Contractor failed to report such to DFCM and A/E. If Contractor performs any Work without such notice to DFCM and A/E and prior to resolution of the error, omission, inconsistency and/or ambiguity, Contractor shall be responsible for such performance and shall bear the costs for correction.

4.1.2 REVIEW OF FIELD CONDITIONS. Contractor shall take field measurements, verify field conditions and carefully compare such field measurements and conditions and other information known to Contractor, or information that a contractor of ordinary skill and expertise for the type of Work involved would have known, before commencing Work. Contractor shall immediately report to DFCM and A/E all errors, omissions, inconsistencies and/or ambiguities discovered. If Contractor performs any Work without such notice to DFCM and A/E and prior to resolution of the error, omission, inconsistency and/or ambiguity, Contractor shall be responsible for such performance and shall bear the costs for correction.

4.1.3 SUBSURFACE INVESTIGATIONS. If DFCM has provided the Contractor with reports of subsurface investigations and/or tests of soils at the Work site (“Geotechnical Report”) as part of the Contract Documents, the Contractor may rely upon the accuracy of the technical data contained in such Geotechnical Report at the locations where the data was obtained and to the depth indicated. However, Contractor acknowledges that the conditions indicated in any Geotechnical Report of any subsurface investigations and/or tests of soils at the Work site may not be representative of conditions existing at locations and/or at depths other than where data was obtained or that conditions different than those indicated by such Geotechnical Report may exist at the Work site. Contractor shall not be entitled to any increase in the Contract Price and/or increase in the Contract Time based on any opinion and/or recommendation in any Geotechnical Report and/or any inaccuracy, incompleteness, mistake and/or error in any Geotechnical Report except to the extent that Contractor is entitled to an increase in the Contract Price and/or extension of the Contract Time for a concealed or unknown condition as provided in Section 7.1.5.

4.1.4 PERFORM IN ACCORDANCE WITH CONTRACT DOCUMENTS AND SUBMITTALS. Contractor shall perform the Work in accordance with the Contract Documents and submittals to which no exception has been taken in accordance with the Contract Documents.

4.1.5 PERFORMANCE TO PRODUCE THE COMPLETE SYSTEM AND INTENDED RESULTS. The Contract Documents shall be read as a whole and wherever possible, the provisions shall be construed in order that all provisions are operable. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor, whether or not specifically set forth in the Contract Documents, for the Contract Price and within the Contract Time. Performance by Contractor shall be required to the extent consistent with and reasonably inferable from the Contract Documents as being necessary to allow the Work to function for its intended use.

4.1.6 INTENT AND HIERARCHY. The Contract Documents are complimentary, and what is required by one Contract Document or provisions thereof, shall be as binding as if required by all the Contract Documents or provisions thereof. In case of an irreconcilable conflict between provisions within a Contract Document or between Contract Documents, the following priorities shall govern as listed below:

4.1.6.1 A Modification or authorized Amendment (including authorized Supplementary Conditions) shall govern over all Contract Documents listed in Sections 4.1.6.2 – 4.1.6.6 or previous Modifications or authorized Amendments (including authorized Supplementary Conditions).

4.1.6.2 The Contractor's Agreement shall govern over all Contract Documents listed in Sections 4.1.6.3 – 4.1.6.6.

4.1.6.3 Supplemental General Conditions shall govern over all Contract Documents listed in Sections 4.1.6.4 – 4.6.1.6.

4.1.6.4 These General Conditions shall govern over the Contract Documents listed in Sections 4.1.6.5 – 4.1.6.6.

4.1.6.5 The Drawings and Specifications shall govern over the Contract Documents listed in Section 4.1.6.6.

4.1.6.6 Attachments to the Contractor's Agreement, Contractor's management plan, bidding/proposal documents, including the Instructions to Bidders/Proposers, Notice to Contractors and the Bid/Proposal Form and/or documented interview information, if any, are Contract Documents, binding on Contractor, but are subordinate to the Contract Documents listed in Sections 4.1.6.1 – 4.1.6.5.

4.1.6.7 An Addendum shall govern over all other Contract Documents and any previously issued Addendum.

4.1.6.8 In case of a conflict or ambiguity within the same level of hierarchy of described documents, DFCM reserves the right to revise the documents to select the most stringent requirement unless the preponderance of the Contract Documents indicate a less stringent requirement.

4.1.7 DIVIDING WORK AND CONTRACTOR REPRESENTATION. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings, shall not control Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Contractor shall ensure that the Subcontractors at any tier, manufacturers and suppliers engaged or to be engaged by Contractor, are and shall be familiar with the requirements for performance by them of their obligations.

4.1.8 PLANNING AND PRIORITY. Contractor shall plan and schedule the Work and shall maintain the schedule to Substantially Complete the Work within the Contract Time.

4.2 SUPERVISION AND REPRESENTATIVES.

4.2.1 SUPERVISION AND CONTROL. Contractor shall supervise and direct the Work using Contractor's best skill and attention to complete the Work within the Contract Time. Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, except to the extent that the Contract Documents specifically and expressly state otherwise.

4.2.2 PERSONS PERFORMING WORK. Contractor shall perform the Work using qualified employees, consultants, and Subcontractors selected and paid for by Contractor, adequately trained in the requirements of their particular jobs, and skilled in the Work assigned to them. Contractor shall use all reasonable efforts to maintain a stable project team and minimize changes in key members of the team where loss of key members could have an adverse impact on the Contract Time. Any change in key personnel assigned to the Work must be approved by DFCM in writing.

4.2.3 DESIGNATED REPRESENTATIVES. Contractor shall employ a competent superintendent and necessary assistants, fluent in spoken and written English, who shall be at the Work site during performance of the Work. Contractor's superintendent shall maintain communication between DFCM, the A/E, and Contractor

and be responsible for the management of Contractor's activities and deliverables described in the Contract Documents, as well as management of any third-party resources hired by Contractor to provide services or products under the Contract Documents. Contractor's superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed in writing on written request in each case.

4.2.4 DISCIPLINE AND COMPETENCE. Contractor shall enforce safety procedures, strict discipline, and good order among Contractor's employees, Contractor's Subcontractors, agents, representatives and other persons performing the Work under the Contract Documents. If DFCM reasonably determines that a particular person does not follow safety procedures, is unfit or unskilled for the assigned Work, disregards instructions, ignores the environmental restraints of the Work, or jeopardizes the goodwill between DFCM and the public, Contractor shall immediately replace the person upon receipt of DFCM's request to do so and shall not employ the person again on the Work.

4.2.5 RESPONSIBILITY. Contractor shall be responsible to the State of Utah and DFCM for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees and other persons performing portions of the Work under a contract with Contractor or on behalf of Contractor.

4.2.6 NOT RELIEVED OF OBLIGATIONS. Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of DFCM or DFCM's agents in DFCM's administration of the Contractor's Agreement, or by tests, inspections, or approvals required or performed by persons other than Contractor or for those that Contractor is liable.

4.2.7 INSPECTIONS AND APPROVALS.

4.2.7.1 All Work performed by Contractor shall be subject to the inspection and approval of DFCM to determine whether the Work is in accordance with the Contract Documents. Contractor shall permit and facilitate inspection of the Work at all times by DFCM, DFCM's representatives and governmental authorities having jurisdiction.

4.2.7.2 Contractor shall be responsible for requesting inspections for various stages and portions of the Work required under the Contract Documents in a timely manner in accordance with the process and document requirements of the applicable inspection authority. In the event Work is not in a condition to be inspected at the time scheduled for the inspection of such Work for causes for which the Contractor is responsible, Contractor shall bear all associated costs and expenses without reimbursement by DFCM.

4.2.7.3 If any of the Work is required to be inspected or approved by the terms of the Contract Documents, Contractor shall timely request such inspection or approval to be performed in accordance with Article 9. Except as provided in Article 9, Work shall not proceed without any required inspection and the associated authorization to proceed. Contractor shall promptly notify DFCM if the inspector fails to appear at the site.

4.2.7.4 Contractor shall work with the inspector to maintain an Open Issues Log and Contractor shall proceed diligently to resolve all open issues.

4.3 PAYMENT BY CONTRACTOR. Except to the extent it is otherwise stated in the Contract Documents, Contractor shall provide and pay for all supervision, labor, tools, equipment, materials and transportation, including, without limitation: construction equipment and machinery; water; heat; utilities; 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.

4.4 TAXES AND OTHER PAYMENTS TO GOVERNMENT. Contractor shall pay Sales Tax and/or Use Tax, consumer, employment-related and similar taxes related to the Work or portions thereof provided by Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Contractor shall comply with the laws and regulations regarding the payment of Sales Tax and/or Use Tax and any exemptions. The procurement documents may have a provision regarding specific items which are exempt from State of Utah Sales Tax and/or Use Tax. Any such exemption shall be used only for the items and the project specified in the procurement documents. Any such exemption does not apply to taxes levied by the federal government or any taxing entity outside of the State of Utah. If Contractor properly relies upon a provision(s) of the bidding or proposal documents indicating exemption from State of Utah Sales Tax and/or Use Tax, and if State of Utah Sales Tax and/or Use Tax subsequently becomes due, then Contractor shall be paid such tax amount not included in the bid/proposal amount due to the reliance upon such provision.

4.5 PERMITS, FEES, NOTICES, LABOR AND MATERIALS.

4.5.1 PERMITS AND FEES. Unless otherwise required in the Contract Documents, it shall not be necessary for Contractor to obtain or pay for local building permits, plan check fees, electrical permits, plumbing permits, connection fees, or impact fees, nor shall it be necessary to pay fees for inspections pertaining thereto.

4.5.2 COMPLIANCE, NOTICES. Contractor shall comply with and give notices required by all federal, state, and local laws, rules, regulations, ordinances, and orders of public authorities applicable to the Work.

4.5.3 CORRELATION OF CONTRACT DOCUMENTS AND LAW. It is not Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable federal, state and/or local laws, rules, regulations, ordinances, and/or orders of public authorities having jurisdiction. However, if Contractor observes, or if such would be readily observable to a contractor of ordinary skill and expertise for the type of Work involved, that a portion of the Contract Documents is at variance therewith, Contractor shall promptly notify the A/E and DFCM in writing, and necessary changes shall be accomplished by appropriate Modification and/or Amendment.

4.5.4 FAILURE TO GIVE NOTICE. If Contractor, or any Subcontractor, performs Work without complying with the requirements of this Section 4.5, Contractor shall assume responsibility for such Work and shall bear the appropriate amount of the applicable costs of correction.

4.6 TIME AND CONTRACTOR'S CONSTRUCTION SCHEDULES.

4.6.1 PROGRESS AND COMPLETION.

4.6.1.1 Time is of the essence in this Contract. By executing the Contractor's Agreement, Contractor confirms that the Contract Time is adequate to perform the Work. The Contractor shall proceed expeditiously with adequate forces to achieve Substantial Completion within the Contract Time.

4.6.1.2 Contractor shall commence and complete the Work within the Contract Time and pursuant to the schedule, an initial version of which shall be prepared and provided by Contractor to DFCM and the A/E for approval, as it may be modified with DFCM's consent. Unless and except to the extent that preliminary Work at the Work site is authorized in writing by DFCM, Contractor shall not prematurely commence the Work at the Work site or elsewhere until DFCM issues a Notice to Proceed or prior to the effective date of insurance required by Article 10 to be furnished by Contractor, whichever is later. Contractor shall proceed expeditiously with adequate forces to achieve Substantial Completion within the Contract Time. All other Work shall be completed no later than the date established for Final Completion. Contractor shall notify DFCM when Contractor considers the entire Work to be completed. DFCM shall be entitled to a final inspection to determine whether the Work has been completed in accordance with the Contract Documents. The date of Substantial Completion shall be established by a certificate of Substantial Completion issued by the A/E or a written acknowledgement of Substantial Completion signed by DFCM.

4.6.1.3 INITIAL CONTRACT TIME. Unless otherwise specified in the bidding documents, the initial Contract Time shall be the time identified in the Contractor's Agreement.

4.6.2 SCHEDULE PREPARATION.

4.6.2.1 Promptly after being awarded the Work, Contractor shall prepare and submit for DFCM's and the A/E's approval, a planned progress schedule for the Work. Contractor shall plan and schedule the Work to facilitate the Work and shall maintain a schedule to place proper priority to sequence the Work to complete the Work within the Contract Time. Contractor shall commence and complete the Work by the dates set forth in the agreed upon schedule and Contractor's Agreement.

4.6.2.2 The schedule shall include a time-line for procurement, fabrication, construction, and testing activities, including interdependence of items necessary to complete the Work, duration of activities, interim completion dates, milestones, closeout and commissioning, submittals, and critical path.

4.6.2.3 Contractor shall advise and consult with DFCM during progress of the Work and keep DFCM fully informed as to the status of the Work at intervals as required by DFCM. Contractor shall provide DFCM with a daily listing of personnel and equipment used on the Work. If the Work is not on schedule, Contractor shall immediately advise DFCM in writing of Contractor's proposed action to bring it on schedule.

4.6.2.4 DFCM may take reasonable exception to activity duration, activity placement, construction logic, and time frame for any element of the Work to be scheduled and may recommend revisions.

4.6.3 SCHEDULE SUBMITTAL.

4.6.3. Contractor shall develop the CPM schedule using Primavera, MS Project or Phoenix unless otherwise authorized by DFCM. The critical path shall be identified, including the critical paths for interim completion dates and milestones.

4.6.3.2 Contractor shall update the schedule at least once a month and submit the updated schedule with each Application for Payment.

4.6.3.3 No progress payments shall be approved until Contractor has submitted a detailed CPM schedule covering the first ninety (90) days of the Work with a general CPM schedule for the entire Work. The detailed schedule for the entire Work shall be completed prior to the second Application for Payment, unless otherwise authorized in writing by DFCM.

4.6.4 SCHEDULE CONTENT REQUIREMENTS.

4.6.4.1 The schedule shall indicate the duration of activities and order, sequence and interdependence of all items known to be necessary to complete the Work, including construction, procurement, fabrication and delivery of materials and equipment, commissioning, submittals and approvals of submittals or other documents. Work items of DFCM, other contractors, utilities, and other third parties that may affect or be affected by Contractor shall be included.

4.6.4.2 If DFCM is required by the Contract Documents to furnish any materials, equipment, or other items to be incorporated into the Work by Contractor, Contractor shall submit, with the first schedule submittal, a letter clearly indicating the dates that such items are required at the Work site.

4.6.4.3 The schedule shall indicate an early Substantial Completion date for the Work that is no later than the Work's required Substantial Completion date.

4.6.4.4 The schedule, including duration of all activities, shall be given in calendar days and indicate all of the following:

4.6.4.4.1 Interfaces with the Work of outside contractors (e.g., utilities, power, and any separate contractors retained by DFCM);

4.6.4.4.2 Description of activity including activity number/numbers;

4.6.4.4.3 Estimated duration time for each activity and remaining duration;

4.6.4.4.4 Early start, late start, early finish, late finish date, and predecessor/successors including stop-start relationships with lead and lag time for each activity – all activities shall have a predecessor and a successor, except for the start milestone and finish milestone;

4.6.4.4.5 Total Float and Free Float available to each path of activities;

4.6.4.4.6 Actual start date for each activity begun;

4.6.4.4.7 Actual finish date for each activity completed;

4.6.4.4.8 The percentage complete of each activity in progress or completed;

4.6.4.4.9 Identification of all critical path activities;

4.6.4.4.10 The critical path for the Work, with the path of activities being clearly and easily recognizable on the time-scaled network diagram. The path(s) with the least amount of float must be identified. Except as may otherwise be explicitly and specifically provided in the Contract Documents, no more than forty-percent (40%) of all activities may be identified as critical path items. The relationship between non-critical activities and activities on the critical path shall be clearly shown on the network diagram. Near critical path activities shall also be identified.

4.6.4.4.11 Unless otherwise authorized by DFCM, all activities on the schedule representing construction on the site may not have a duration longer than fourteen (14) days. Construction items that require more than fourteen (14) days to complete must be broken into identifiable activities on the schedule with durations less than fourteen (14) days. The sum of these activities represents the total length required to complete that construction item; and

4.6.4.4.12 Additional requirements, if any, as specified in the Supplemental General Conditions and/or authorized Supplementary Conditions.

4.6.5 INTERIM COMPLETION DATES AND MILESTONES. The schedule must include contractually specified interim completion dates and milestones (which completion milestones must have a “finish on or before” soft constraint added). The milestones and completion dates indicated are considered essential to the satisfactory performance of the Contractor’s Agreement and to the coordination of all Work. The milestone dates listed are not intended to be a complete listing of all Work or of interfaces with other contractors.

4.6.6 FLOAT TIME. “Total Float” is defined as the amount of time that an activity can be delayed from its early without delaying Substantial Completion. “Free Float” is the amount of time that an activity can be delayed without delaying the early start date of any successor activity. Total Float time and Free Float time shall belong to the project and DFCM and Contractor have the right to use the Total Float time and/or Free Float Time for non-critical path activities until Contractor has reallocated such time on a newly submitted schedule.

4.6.7 UPDATES. Prior to any approval of an Application for Payment, DFCM, A/E, and Contractor shall review Contractor’s schedule compared to the Work completed. The amount of Work completed shall be approved by DFCM as supported by the schedule of values and as verified by the determination of Work completed. If necessary, Contractor shall then update and submit to DFCM the schedule with the Application for Payment; all of which shall be in accordance with DFCM’s approval. All updates shall be provided in electronic and hard copy formats. At each scheduled meeting with DFCM, Contractor shall provide a four week look ahead, with long lead items identified. If the Work is not on schedule, Contractor shall immediately advise DFCM in writing of Contractor’s proposed action to bring it on schedule.

4.6.8 SCHEDULE OF SUBMITTALS. Contractor shall prepare and keep current, for the A/E’s and DFCM’s review and approval, a schedule of submittals required by the Contract Documents, which shall be coordinated with Contractor’s construction schedule and allow the A/E a reasonable time to review the submittals. The submittal schedule shall be included as part of the construction schedule. Submittals requiring expedited review must be clearly identified as such in the schedule of submittals. Contractor shall coordinate and agree upon a submittal schedule with A/E. If a submittal does not pass a second review, then a meeting will be held to determine a path to proceed and expedite approval. Contractor shall notify A/E in writing if expedited review of a submittal is critical.

4.6.9 SCHEDULE RECOVERY. If the Work represented on the critical path falls behind more than seven (7) days, Contractor shall redo the schedule within seven (7) days, showing how the Contractor shall recover the time. Contractor’s schedule must have an approved baseline schedule before the schedule may be updated. A narrative that addresses the changes in the schedule from the previously submitted schedule shall be submitted along with the updated schedule in electronic .pdf format and on the written request of DFCM in native electronic copy format of the scheduling software utilized by Contractor. Contractor shall comply with the most recent schedules.

4.6.10 SCHEDULE CHANGES.

4.6.10.1 The Contract Time may only be shortened or extended by a Change Order or Construction Change Directive.

4.6.10.2 Should Contractor, after approval of the complete detailed construction schedule, desire to change Contractor's plan of construction, Contractor shall submit its requested revisions to DFCM and the A/E, along with a written statement of the revisions including a description of the sequence and duration changes for rescheduling the Work, methods of maintaining adherence to intermediate milestones and the completion dates, and the reasons for the revisions. Requested changes to the approved baseline schedule shall include a narrative that addresses the requested changes. If the requested changes are acceptable to DFCM, which acceptance shall not be unreasonably withheld, they shall be incorporated into the schedule in the next reporting period by Contractor. If after Contractor submits a request for change in the schedule, DFCM does not agree with the request, DFCM shall schedule a meeting with Contractor to discuss the differences.

4.6.10.3 The critical path schedule, as the term is used in these General Conditions, shall be based on the current version of Contractor's schedule for the Work and accepted by DFCM just prior to an asserted change in the Work, asserted delay, suspension, or interruption. If Contractor believes it is entitled to an extension of Contract Time under the Contract Documents, Contractor shall submit a PCO in accordance with Section 7.2 to the A/E and DFCM accompanied by an analysis ("Requested Time Adjustment Schedule") in accordance with the Contract Documents for time extensions. The "Requested Time Adjustment Schedule" shall include "fragnets" that represent the added or changed Work to the schedule. The impact on unchanged activities caused by the changes and/or delays being analyzed shall be included in these fragnets. A "fragnet" as used in these General Conditions and when used in the context of project scheduling is a subset of project activities that are inter-related by predecessor and successor relationships that are tied into the main schedule with identified start and completion points. Each fragnet may or may not be on the critical path. An entire schedule consists of a series of inter-related fragnets.

4.6.11 EXCUSABLE DELAY.

4.6.11.1 If Contractor is unreasonably delayed in the progress of the Work on the critical path schedule by an act or neglect of DFCM; or separate contractors retained by DFCM; or by a Force Majeure Delay (defined below) that DFCM reasonably determines may justify delay beyond the date for Substantial Completion, then the Contract Time shall be extended by Change Order for the period of time caused by such delay. The Contract Price shall not be increased, and the Contract Time shall not be extended for any delays that are concurrent with Contractor delays.

4.6.11.1.1 For purposes of the Contractor's Agreement, a Force Majeure Delay shall mean a delay to the commencement or the progress of the Work by reason of events or causes beyond the control of DFCM, the Contractor, and the Contractor's Subcontractors and Sub-subcontractors of any tier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Notwithstanding anything to the contrary set forth herein, Force Majeure Delays shall not include: (1) labor disputes confined to the Work site or relating solely to the Work that are due to a breach of a collective bargaining agreement by the Contractor or its Subcontractors or Sub-subcontractors of any tier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable; (2) adverse weather conditions, except as provided in Section 4.6.11.2; (3) a failure of the Contractor or its Subcontractors or Sub-subcontractors of any tier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, to comply with any laws, codes or orders of governmental authorities with jurisdiction of the Work; or (4) any financial inability of the Contractor or its Subcontractors or Sub-subcontractors of any tier, or anyone directly or indirectly employed by them, to perform their obligations under the Contract Documents.

4.6.11.1.2 Delays which according to the schedule do not affect any critical path milestone dates or the completion dates shown on the schedule at the time of the delay shall not be the basis for a change in the Contract Time.

4.6.11.1.3 Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of delay. Notwithstanding the foregoing, to the extent any of the causes for delay were caused by Contractor, reasonably foreseeable by Contractor, or avoidable by Contractor, then to such extent the delay shall not be cause for a change in the Contract Price and/or Contract Time. For purposes of this Section, “Contractor” shall include all Subcontractors and others under the responsibility of the Contractor.

4.6.11.1.4 The determination of the total amount of time extension, if any, shall be based upon the current schedule in effect at the inception of the change and/or delay and upon all data relevant to the extension as supported by appropriate substantiating relative data in the project record. Once approved, such data shall be incorporated in the next monthly update of the schedule by Contractor.

4.6.11.2 The Contract Price shall not be increased and the Contract Time shall not be extended for normal bad weather or any weather that is reasonably foreseeable at the time of entering into the Contractor’s Agreement. The Contract Time as stated in the Contract Documents includes due allowance for days on which Work cannot be performed out of doors. Contractor acknowledges that Contractor may lose days due to weather conditions. The Contract Time may be extended at no cost to DFCM if all of the following are met, which must be established by Contractor:

4.6.11.2.1 That the weather prevented Work from occurring that is on the critical path for the Work based upon a critical path schedule previously submitted to DFCM and to the extent accepted by DFCM;

4.6.11.2.2 There are no concurrent delays for which Contractor is responsible;

4.6.11.2.3 Contractor took all reasonable steps to alleviate the impact of the weather and made reasonable attempts to prevent the delay and despite such reasonable actions of Contractor, the weather impacted the critical path as described above; and

4.6.11.2.4 In connection with the weather event for which delay is claimed by Contractor, the weather was either exceptionally adverse, such as a tornado, severe wind storm, or severe hail storm, or one of the following occurred:

4.6.11.2.4.1 for any day between November 1 and March 31 for which delay is claimed by Contractor, the recorded minimum temperature at the Work site, as verifiably documented by Contractor, fell below the mean minimum temperature for the station closest to the Work site (“Proximate Station”) for the applicable month according to the Western Regional Climate Center Website, <http://www.wrcc.dri.edu/summary> (“WRCCW”), as shown on the *Average of Minimum Temperature* chart on the WRCCW for the Proximate Station, less the mean extreme minimum temperature for the Proximate Station for the applicable month, as shown on the *Minimum of Minimum Temperature Chart* on the WRCCW for the Proximate Station, divided by Two (2);

4.6.11.2.4.2 for any day between November 1 and March 31 for which delay is claimed by Contractor, the recorded maximum temperature at the Work site, as verifiably documented by Contractor, fell below the mean minimum temperature as shown on the *Average of Minimum Temperature* chart on the WRCCW for the Proximate Station;

4.6.11.2.4.3 for any day for which delay is claimed by Contractor, the recorded precipitation at the Work site, as verifiably documented by Contractor, exceeded seventy-five percent (75%) of the daily extreme for the applicable month as shown on the *POR – Daily Precipitation Average and Extreme* chart on the WRCCW for the Proximate Station;

4.6.11.2.4.4 for any day for which delay is claimed by Contractor, the recorded snowfall at the Work site, as verifiably documented by Contractor, exceeded seventy-five percent (75%) of the daily extreme for the applicable month as shown on the *POR – Daily Snowfall Average and Extreme* chart on the WRCCW for the Proximate Station.

4.6.12 COMPENSABLE DELAY, SUSPENSION OR INTERRUPTION.

4.6.12.1 In addition to the other requirements of the Contract Documents, a compensable delay, suspension, or interruption of the Work occurs only when the following conditions are met:

4.6.12.1.1 The delay is caused by DFCM for a reason not permitted by the Contract Documents; and

4.6.12.1.2 Contractor delivers a written notice to the A/E and DFCM within seven (7) days that Contractor knows or should have known of the condition giving rise to the purported compensable delay, suspension, or interruption, and the condition affects the Contract Time as indicated by the last agreed upon critical path schedule.

4.6.12.2 To the extent of the compensable delay, Contractor's total entitlement for all compensable delay damages is the computed result of the following formula: Contract Price divided by Contract Time (in calendar days); 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 these General Conditions that are beyond the Contract Time. Notwithstanding any other provision of these General Conditions or the Contract Documents, to the extent Contractor is entitled to receive a markup under Sections 7.4.2.5.1 or 7.4.2.5.2 this provision shall be inapplicable, and the markup shall be deemed to include all the compensable delay damages provided by this Section.

4.6.12.3 The length and extent of compensable delay shall be determined, with the use of the Work's critical path schedule by ascertaining the number of additional days added to the Contract Time are needed in order to perform the Work in accordance with the Contract Documents as a result of the delay, suspension, or interruption after receipt of the written notice received by the A/E and DFCM under Section 4.6.12.1.2.

4.6.12.4 Notwithstanding any other provision of these General Conditions, to the extent a non-compensable delay occurs at the same time as a compensable delay, DFCM shall not be responsible for any compensation to Contractor and the Contract Price shall not be increased for the period of the non-compensable delay.

4.6.13 TIME EXTENSION REQUESTS. Contractor shall notify DFCM within seven (7) days of a potential delay and Contractor shall request any and all Contract Time extensions within twenty-one (21) days after Contractor knew or should have known about the delay. Contractor must support any request for a Contract Time extension with a critical path schedule analysis.

4.6.14 LIQUIDATED DAMAGES.

4.6.14.1 Time is of the essence in the Contract Documents. DFCM will suffer damages that are difficult to ascertain for each calendar day the date for Substantial Completion is delayed. Therefore, as agreed damages and not as a penalty, DFCM may offset from any payments due Contractor the sum stated in the Contractor's Agreement, as augmented in Section 4.6.14.2 in the case of continuing delay, for each day Substantial Completion is delayed beyond the date established for Substantial Completion of the Work by the Contract Documents.

4.6.14.2 For each day subsequent to the fourteenth (14th) day after the date established for Substantial Completion of the Work by the Contract Documents, the liquidated damages amount stated in the Contractor's

Agreement shall be increased by ½ percent (0.5%) of the amount stated in the Contractor's Agreement for each day Substantial Completion is delayed beyond the date established for Substantial Completion of the Work by the Contract Documents.

4.6.14.3 The sum for liquidated damages due DFCM by Contractor has been agreed upon by reason of the inconvenience and added costs of administration, engineering, supervision, and other expenses resulting from Contractor's default.

4.6.14.4 To the extent liquidated damages exceed any amounts that would otherwise be due Contractor, Contractor shall be liable for such excess to DFCM.

4.6.14.5 Notwithstanding any other provision of these General Conditions, the availability of liquidated damages to DFCM shall not limit DFCM's right to seek damages or other remedies available under law or equity to the extent such damages or remedies are not based upon delay.

4.6.15 NO WAIVER OF DFCM'S RIGHTS. Permitting Contractor to continue any part of the Work after the time fixed for completion or beyond any authorized extension thereof shall in no way operate as a waiver or estoppel on the part of DFCM of any of its rights under the Contract Documents, including the right to liquidated damages or any other remedies or compensation.

4.7 DOCUMENTS AND SAMPLES AT THE SITE, CERTIFYING "AS-BUILTS". Contractor shall maintain at the Work site one record copy of the Drawings, Specifications, Addenda, authorized Amendments and Modifications, in good order and marked weekly to record changes and selections made during construction, as well as approved Shop Drawings, Product Data, Samples and similar submittals. These items shall be available to the A/E and shall be delivered to the A/E for submittal to DFCM upon completion of the Work, signed by Contractor, certifying that they show complete and exact "as-built" conditions, stating sizes, kind of materials, piping, conduit locations, and similar matters. All notes of encountered or changed conditions shall be included.

4.8 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

4.8.1 NOT CONTRACT DOCUMENTS. Shop Drawings, Product Data, Samples and other submittals are not Contract Documents. The submittal shall demonstrate, for those portions of the Work for which the submittal is required, the way Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

4.8.2 PROMPTNESS. Contractor shall coordinate submittals prepared by Subcontractors and Sub-subcontractors, review, approve, and submit to the A/E, Shop Drawings, Product Data, Samples and other submittals required by the Contract Documents with reasonable promptness and according to an agreed submittal schedule in such sequence as to cause no delay in the Work, or the activities of DFCM, or separate contractors.

4.8.3 NOT PERFORM UNTIL A/E APPROVES. Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, mock-ups where required or other submittals (including deferred submittals) until the applicable submittal has been approved in writing by the A/E. Contractor shall perform the Work in accordance with the approved submittals. Submittals marked "No-exceptions taken" or its equivalent by the A/E are considered approved for purposes of this Section 4.8.3.

4.8.4 REPRESENTATIONS BY CONTRACTOR. By approving and submitting Shop Drawings, Product Data, Samples, and other submittals, Contractor represents that Contractor has determined and verified materials, field measurements, field construction criteria, manufacturer installation instructions and

procurement and delivery dates related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.8.5 CONTRACTOR'S LIABILITY. Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the A/E's approval of Shop Drawings, Product Data, Samples, or similar submittals unless Contractor has specifically informed the A/E in writing of such deviation at the time of the submittal and the A/E has given written approval to the specific deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or other submittals by the A/E's review and approval.

4.8.6 DIRECT SPECIFIC ATTENTION TO REVISIONS. Contractor shall direct specific attention in writing to all revisions on resubmitted Shop Drawings, Product Data, Samples, or other submittals, except those requested by the A/E and indicated on previous submittals.

4.8.7 INFORMATIONAL SUBMITTALS. Informational submittals upon which the A/E is not expected to take responsive action may be so identified in the Contract Documents.

4.8.8 PROFESSIONAL SERVICES. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, DFCM and the A/E will specify performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed Design Professional (as that term is defined in Section 4.8.8.1 of these General Conditions), whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Each Design Professional providing such services shall carry professional errors and omissions insurance in an amount of at least Two Million Dollars (\$2,000,000.00) per claim/annual aggregate with a deductible or self-insured retention of not greater than One Hundred Thousand Dollars (\$100,000.00), unless different amounts are authorized by DFCM in writing. Shop Drawings and other submittals related to the Work designed or certified by such Design Professional, if prepared by others, shall bear such Design Professional's written approval when submitted to the A/E. DFCM and the A/E shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such Design Professional, provided DFCM and A/E have specified to the Contractor performance and design criteria that such services must satisfy. Pursuant to this Section 4.8, the A/E will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

4.8.8.1 A "Design Professional" is any and all employees or independent contractors directly or indirectly employed by the Contractor, a Subcontractor or a Sub-subcontractor of any tier to perform any professional design services required by the Contract Documents. The Contractor or its Subcontractors or Sub-subcontractors of any tier employing the Design Professional shall require the Design Professional to agree in writing to be bound by the terms of the Contract Documents insofar as they apply to the design services of the Design Professional in the performance of the Work.

4.8.8.2 The Contractor hereby assigns to DFCM all common law, statutory and other rights that the Contractor may have in the drawings, specifications and other documents prepared by the Design Professional for the Work (the "Design Documents"), including all copyrights. The Contractor shall endeavor to obtain a similar assignment to DFCM by the Design Professional and by the Subcontractors or Sub-subcontractors of

any tier employing the Design Professional of their common law, statutory and other rights (including copyrights) in the Design Documents. At the date of final payment or upon the earlier termination of the Contractor's Agreement, the Contractor shall promptly deliver to DFCM hardcopy originals of all Design Documents and all Design Documents in reproducible (not read only) electronic media.

4.8.8.3 The Contractor shall require and hereby represents and warrants to DFCM that the Design Professional is appropriately registered with and licensed by the State of Utah to perform the services required by the Contract Documents to be performed by the Design Professional.

4.8.8.4 All services provided by the Design Professional shall be performed consistent with the professional skill and care ordinarily provided by other design professionals: (1) with the same or similar license; and (2) providing the same or similar design professional service (A) in the same or similar locality, (B) at the same or similar time and (C) under the same or similar circumstances, provided that, if the nature of the project reasonably requires specialized design expertise, the Design Professional shall perform design professional services consistent with such specialized design expertise.

4.8.8.5 Notwithstanding any approval of DFCM or A/E of any Design Documents, the Contractor shall be responsible for assuring that all Design Documents (whether prepared by a Design Professional employed by the Contractor, a Subcontractor or a Sub-subcontractor of any tier) are technically adequate and accurate and are in accordance with all laws, ordinances, codes, regulations or other requirements of governmental authorities having jurisdiction of the Work applicable to the Work on the day of the issuance of such documents and on the day of the use of such documents on the Work.

4.8.8.6 The Contractor shall be responsible and liable to DFCM for any and all losses, costs, and/or expenses incurred by DFCM arising out of, related to and/or connected with errors or omissions in the services provided hereunder by the Design Professional, to the extent that such errors or omissions were caused by the failure of the Design Professional to perform services consistent with the requirements of Section 4.8.8.4 or by other fault of the Design Professional, whether or not such losses, costs and/or expenses were caused by any negligence or other fault of the Contractor. This responsibility and liability shall survive completion of the Work or termination of the Contractor's Agreement.

4.8.8.7 The Contractor shall indemnify and hold harmless DFCM and the other Indemnified Parties (as defined in Section 4.12) from and against any and all third-party claims, demands, losses, liabilities, judgments, costs, expenses and/or attorney fees arising of, related to and/or connected with errors or omissions in the services provided hereunder by the Design Professional, to the extent that such errors or omissions were caused by the failure of the Design Professional to perform services consistent with the requirements of Section 4.8.8.4 or by other fault of the Design Professional, whether or not such third-party claims, demands, losses, liabilities, judgments, costs, expenses and/or attorney fees were caused by any negligence or other fault of the Contractor. This indemnity is in addition to the indemnity provided in Section 4.12 and shall survive completion of the Work or termination of the Contractor's Agreement.

4.8.8.8 The Contractor's or its Subcontractor's or Sub-subcontractor of any tier's agreement with the Design Professional for design services in the performance of the Work shall state that DFCM and its successors and assigns are intended third-party beneficiaries of such agreement and such agreement with the Design Professional shall require the Design Professional to deliver to DFCM a separate agreement wherein the Design Professional shall expressly contract with DFCM to provide the Design Professional's professional services consistent with the standard of care established by Section 4.8.8.4.

4.8.8.9 The Contractor shall indemnify, defend and hold harmless DFCM and the other Indemnified Parties (as defined in Section 4.12 of these General Conditions) from and against any and all claims, demands, losses, liabilities, judgments, costs, expenses and/or attorney fees caused by any suits or claims of infringement of any patent rights or copyrights for materials, methods or systems depicted upon or required by Design Documents

prepared by the Design Professional. This indemnity is in addition to the indemnity provided in Sections 4.11 and 4.12 of these General Conditions and shall survive completion of the Work or termination of the Contractor's Agreement.

4.9 USE OF SITE.

4.9.1 IN GENERAL. Contractor shall confine its equipment, the storage of materials, and the operations of its workers at the Work site to areas permitted by the Contract Documents, laws, rules, regulations, ordinances, orders, and permits and shall not unreasonably encumber the Work site with materials or equipment. Contractor shall take all reasonable steps to secure the Work site and protect the Work from any damage. Upon completion of the Work, Contractor shall leave the Work site free and clear of all waste materials, rubbish, tools, equipment, and surplus materials. Contractor shall at all times keep the Work site free from spilled liquids and chemicals, toxic or otherwise. If such a spill occurs while Contractor has control of the Work site, Contractor shall be responsible to clean the affected areas on or about the Work site and pay all associated costs, fines, and penalties. Notwithstanding the foregoing, Contractor shall not be responsible for any damage to the Work site or the Work to the extent caused by DFCM or DFCM's agents.

4.9.2 ACCESS TO NEIGHBORING PROPERTIES.

4.9.2.1 Contractor shall not, except as provided in the Contract Documents or with DFCM's advance written consent when necessary to perform the Work, interfere with access to properties neighboring the Work site by the owners of such properties and their respective tenants, agents, invitees and guests.

4.9.2.2 Various federal, state, and local agencies and private landowners may own or control lands and facilities either crossed by or adjacent to the Work site. DFCM shall secure and pay for all necessary rights of access to the Work site. Contractor shall comply with all stipulations provided by DFCM and shall maintain a cooperative relationship with all agencies and landowners. Contractor shall not retain on the Work site any person who in the judgment of DFCM prejudices or tends to endanger this cooperation. Contractor shall not enter into any agreement with such agencies or landowners related to the Work without prior approval by DFCM.

4.10 ACCESS TO WORK. Contractor shall provide DFCM and the A/E access to the Work in preparation and progress, at all times and wherever located.

4.11 INTELLECTUAL PROPERTY LICENSES. Contractor shall obtain and pay for all royalties and other license fees for all equipment, property, or processes of Contractor used or purchased in connection with performance of the Work. Contractor shall defend suits or claims for infringement of intellectual property rights and shall hold DFCM and the A/E harmless from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if Contractor has reason to believe that the required design, process or product is an infringement of any third party's intellectual property right, Contractor shall be responsible for such defense or loss unless such information is promptly furnished to DFCM in writing.

4.12 INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall release, indemnify, hold harmless, and defend the State of Utah, the State of Utah's institutions, agencies (including, but not limited to, DFCM), departments, divisions, authorities, and instrumentalities, boards, commissions, elected or appointed officers, employees, agents and authorized volunteers (collectively "Indemnified Parties") from and against any and all claims, liabilities, demands, actions, damages, losses and expenses of any nature whatsoever, including, but not limited to, attorneys' fees and defense costs (collectively "Liabilities"), and including those events covered under the blanket Contractual Liability Coverage required under the Contract Documents, arising out of, related to, or connected with any act or omission in the performance of the Work, including the Work of all Subcontractors and their employees, provided that any Liabilities are caused in whole or in part by

the negligent, intentional, or other wrongful act or omission of Contractor, any Subcontractor, their employees, or anyone directly or indirectly employed or the agent of any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by an Indemnified Party. Without relieving Contractor of any obligation under the Contract, the Indemnified Parties shall have the right, at their option, to fully participate in the investigation, defense and settlement of any Liabilities.

4.12.1 NOT EXCLUSIVE. The foregoing obligations in this Section 4.12 shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person under the Contract Documents.

4.12.2 NOT LIMITED. The foregoing obligations in this Section 4.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 5. SUBCONTRACTORS.

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

5.1.1 SUBCONTRACTING WORK PERMITTED; CONDITIONS.

5.1.1.1 Contractor may subcontract portions of the Work.

5.1.1.2 DFCM reserves the right to reject on reasonable ground any Subcontractor. Contractor shall not contract with any person or entity to whom DFCM has made reasonable objection. Contractor shall not be required to contract with anyone to whom Contractor has made reasonable and timely objection, provided that any additional costs associated with Contractor replacing a Subcontractor objected to by Contractor with a replacement Subcontractor not objectionable to Contractor shall be at no cost to DFCM.

5.1.2 SUBSEQUENT CHANGES. After execution of Contractor's Agreement Subcontractors listed by Contractor in accordance with Utah Code § 63A-5b-605 and Rule R23-1-615 may be changed by Contractor only in accordance with the requirements of Utah Code § 63A-5b-605 and R23-1-615.

5.1.2.1 DFCM shall pay the additional costs for a DFCM-requested change in Subcontractor if all of the following conditions are met:

5.1.2.1.1 If DFCM in writing requests the change of a Subcontractor;

5.1.2.1.2 The original Subcontractor is a responsible subcontractor that meets the requirements of the Contract Documents; and

5.1.2.1.3 The original Subcontractor did not withdraw as a Subcontractor on the Work.

5.1.2.2 In all other circumstances, Contractor shall pay the additional cost for a change in a Subcontractor.

5.1.3 BUSINESS AND LICENSING REQUIREMENTS. All Subcontractors used by Contractor shall have secured, at their own expense, all necessary professional accreditations, registrations, and licenses in the state of Utah.

5.1.4 BONDING OF SUBCONTRACTORS. Subcontractors, as identified by DFCM in the procurement documents, may be required to submit performance and payment bonds to cover the full extent of

their portion of the Work. This provision does not in any way limit the right of Contractor to have Subcontractors at any tier be required to have a performance and/or payment bond at Contractor's expense.

5.1.5 SUBCONTRACTOR DEFAULT INSURANCE. If the Contract Price includes any amount to compensate the Contractor for Subcontractor Default Insurance ("SDI"), then, notwithstanding anything in the Contract Documents to the contrary:

5.1.5.1 DFCM shall be added to the SDI by a financial interest endorsement reasonably acceptable to DFCM at no cost to DFCM;

5.1.5.2 If the Contract Documents provide for Contractor contingency, no Contractor contingency may be expended for any Subcontractor default or for any expenses and/or losses arising out of, connected with and/or related to any Subcontractor default;

5.1.5.3 Contractor shall in no event be entitled to an increase in the Contract Price and/or extension of the Contract Time for a Subcontractor default or for expense, losses and/or delays arising out of, connected with and/or related in any way to a Subcontractor default; and

5.1.5.4 The cost of SDI is included in Contractor's overhead and profit for purposes of Article 7.

5.2 SUBCONTRACTUAL RELATIONS.

5.2.1 CONTRACTOR FULLY RESPONSIBLE. Subcontracting any portion of the Work shall not relieve Contractor of Contractor's obligations or duties under the Contract Documents, Contractor shall be fully responsible and liable to DFCM for the acts and omissions of all Subcontractors at any tier and their employees and agents and Contractor shall maintain complete control over all Subcontractors. Neither the consent of DFCM to a Subcontractor proposed by Contractor, nor anything contained in the Contract Documents shall be deemed to create a contractual relationship between a Subcontractor at any tier and DFCM.

5.2.2 COMPLY WITH CONTRACT DOCUMENTS. By appropriate enforceable agreement Contractor shall require each Subcontractor to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities that Contractor, by the Contract Documents, assumes towards DFCM and the A/E.

5.2.3 RIGHTS. Each Subcontractor agreement shall preserve and protect the rights of DFCM under the Contract Documents with respect to that portion of the Work to be performed by the Subcontractor so that subcontracting any portion of the Work shall not prejudice any rights of DFCM under the Contract Documents, and shall allow to the Subcontractor, unless specifically provided otherwise in the Subcontractor agreement, the benefit of all rights and remedies against Contractor that Contractor, by the Contract Documents, has against DFCM.

5.2.4 SUB-SUBCONTRACTORS. Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors and to require such Sub-subcontractors to enter into similar agreements with lower tier Sub-subcontractors that comply with the requirements of Sections 5.2.2 and 5.2.3.

5.2.5 DOCUMENT COPIES. Contractor shall make available to each proposed Subcontractor, prior to execution of the Subcontractor agreement, copies of the Contract Documents to which the Subcontractor shall be bound. Contractor shall require Subcontractors to make copies of applicable portions of the Contract Documents available to their respective proposed Sub-subcontractors.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS TO DFCM. Contractor contingently assigns each Subcontractor agreement with a Subcontractor for a portion of the Work to DFCM, provided that

the assignment is effective only after termination of the Contractor's Agreement by DFCM for cause pursuant to Section 12.2 or stoppage of the Work by DFCM pursuant to Section 12.5, and only for those Subcontractor agreements that DFCM accepts by notifying the Subcontractor in writing. Contractor shall remain liable for all obligations incurred under assigned Subcontractor agreements prior to DFCM's acceptance of such assignment.

ARTICLE 6. PROTECTION OF PERSONS AND PROPERTY.

6.1 SAFETY OF PERSONS AND PROPERTY.

6.1.1 CONTRACTOR RESPONSIBILITY. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall seek to minimize the risk of bodily injury, property damage, and environmental harm by taking all reasonable precautions to protect:

6.1.1.1 All persons at and/or in proximity to the Work site;

6.1.1.2 Materials and equipment to be incorporated in the Work, whether in storage on or off the Work site, under the care, custody, or control of Contractor or a Subcontractor;

6.1.1.3 Property and structures located at the Work site and adjacent to the Work site, whether or not such property and structures are part of the Work, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

6.1.1.4 The environment.

6.1.2 SAFETY PROGRAM, PRECAUTIONS. Contractor shall institute and provide to DFCM a project specific safety program at the start of the Work to minimize accidents. The program shall continue to the final completion of the Work and conform to applicable laws, rules, and regulations. including without limitation. the Utah Occupational Safety and Health Rules as published by the Utah Labor Commission - UOSH Division at Utah Administrative Code, R614. Contractor shall post signs, erect barriers, and provide those items necessary to implement the safety program. As soon as Contractor proceeds with the Work, Contractor shall have all workers and all visitors on the Work site wear safety hard hats, as well as all other appropriate safety apparel such as safety glasses and shoes, and obey all safety laws, rules, and regulations. Contractor shall post a sign in a conspicuous location indicating the necessity of wearing hard hats, and Contractor shall loan such hard hats to visitors. Contractor shall maintain a clean and orderly Work site.

6.1.3 COMPLIANCE WITH LAWS. Contractor shall give notices and comply with applicable laws, rules, regulations, ordinances, and orders of public authorities applicable to the safety of persons and property and their protection from damage, injury and loss. In particular, Contractor shall comply with all applicable provisions of federal, state and municipal safety laws, rules and regulations, specifically including, without limitation, building codes, to prevent accidents and injury to persons on, about or adjacent to the Work site.

6.1.4 ERECT AND MAINTAIN SAFEGUARDS. As required by existing conditions at the Work site and proper and safe performance of the Work, Contractor shall erect and maintain safeguards for safety and protection, including effective fences, danger signs, barricades and other warnings against hazards. Contractor shall also promulgate safety regulations and notify owners and users of adjacent sites and/or utilities before performing Work that may impact such adjacent sites and/or utilities.

6.1.5 UTMOST CARE. When use or storage of explosives or other dangerous materials or equipment or unusual methods are necessary for execution of the Work, Contractor shall exercise utmost care and carry on such activities under the supervision of properly qualified personnel.

6.1.6 PROMPT REMEDY. Contractor shall promptly remedy any damage and loss (other than damage or loss insured under property insurance required by Section 10.2) to persons, property and/or the environment arising in conjunction with the Work caused in whole or in part by Contractor, Subcontractors, or any person or entity for whose acts Contractor is responsible, without cost or expense to DFCM.

6.1.7 SAFETY DESIGNEE. Contractor shall designate a responsible member of Contractor's organization at the Work site whose duty shall be the prevention of accidents, damage, injury and loss. This person shall be Contractor's superintendent, unless otherwise designated by Contractor in writing to DFCM and the A/E.

6.1.8 LOAD SAFETY. Contractor shall not load or permit any part of the construction or Work site to be loaded so as to endanger its safety and/or the safety of persons at or in the vicinity of the Work site.

6.1.9 OFF-SITE RESPONSIBILITY. In addition to its other obligations under this Article 6, the Contractor shall, at Contractor's sole cost and expense, promptly repair any damage or disturbance to walls, utilities, streets, ways, sidewalks, curbs and the property of the State and third parties (including municipalities and other governmental agencies) resulting from the performance of the Work, whether by Contractor or by Contractor's Subcontractors at any tier. The Contractor shall not cause materials, including soil and debris, to be placed or left on streets or ways.

6.1.10 EMERGENCIES. In an emergency affecting safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Contractor shall promptly notify DFCM of the action taken.

6.2 HAZARDOUS MATERIALS. In the event Contractor encounters at the Work site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other hazardous waste or substance that may endanger the health of persons performing Work or being at the Work site that is not part of the Work and/or disclosed by the Contract Documents, Contractor shall immediately stop Work in the area affected and immediately report the condition to DFCM and the A/E by phone with a follow-up email. Contractor shall resume the Work in the affected area upon written direction provided by DFCM. Except to the extent provided otherwise in the Contract Documents, or if the presence of hazardous materials is due to the fault of Contractor, Contractor shall not be required to perform, without Contractor's consent, any Work relating to asbestos, polychlorinated biphenyl (PCB), or any other hazardous waste or substance.

6.3 HISTORICAL AND ARCHEOLOGICAL CONSIDERATIONS. In the event Contractor discovers 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, Contractor shall cease any Work that would interfere with such discovery and immediately report the condition to DFCM and the A/E by phone with a follow-up email. Contractor shall resume the Work upon the direction of DFCM. Contractor shall ensure cooperation with any DFCM-recognized archaeologist or other cultural/historical expert.

6.4 CONTRACTOR LIABILITY. If Contractor fails in any of its obligations in Sections 6.2 through 6.3, Contractor shall be liable for any damages to DFCM, the State of Utah, or any third party resulting from such noncompliance. Contractor shall also be liable for any mitigation or restoration effort resulting from such noncompliance. To the extent all the following is met, the presence of hazardous material or cultural, historical, or archeological material at the Work site shall qualify as a concealed or unforeseen condition under Section 7.1.5:

6.4.1 The presence of such material is not reasonably foreseeable given the site conditions that Contractor is or should have been aware of;

- 6.4.2** The presence of such material is not identified in any part of the Contract Documents;
- 6.4.3** Contractor has undertaken all proper action to mitigate any impact of the discovery of such material on the Contract Time and/or Contract Price;
- 6.4.4** The discovery of such material increases the Contract Time and/or Contract Price from what is stated in the Contract Documents; and
- 6.4.5** The requirements of Section 7.1.5 and the Contract Documents are met.

ARTICLE 7. MODIFICATIONS, PRs & PCOs, PRE AND CLAIM PROCESS.

7.1 MODIFICATIONS: IN GENERAL.

7.1.1 TYPES OF MODIFICATIONS AND LIMITATIONS. Changes in the Work may be accomplished after execution of the Contractor's Agreement, and without invalidating the Contract Documents, by ASI, Change Order or Construction Change Directive, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. Contractor must have a written Change Order or Construction Change Directive executed by DFCM under this Article 7 prior to proceeding with any Work for which Contractor intends to request an increase in the Contract Price and/or an extension of the Contract Time.

7.1.2 BY WHOM ISSUED. The A/E or DFCM may issue ASIs not involving an adjustment in the Contract Price or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents. A Change Order or Construction Change Directive shall be issued by DFCM. The A/E shall prepare Change Orders and Construction Change Directives with specific documentation and data for DFCM's approval and execution in accordance with the Contract Documents.

7.1.3 CONTRACTOR TO PROCEED UNLESS OTHERWISE STATED. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the ASI, Change Order or Construction Change Directive.

7.1.4 ADJUSTING UNIT PRICES. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed shall cause a substantial inequity to DFCM or Contractor, the applicable unit prices may be equitably adjusted.

7.1.5 CONCEALED OR UNKNOWN CONDITIONS. Contractor must file a written notice with DFCM within seven (7) calendar days of the date that Contractor knew or should have known of a site condition described below or Contractor shall be deemed to waive any right to file any PCO, PRE, or Claim for an increase in the Contract Price and/or extension of the Contract Time related to such condition:

7.1.5.1 If Contractor encounters unknown and reasonably unforeseeable subsurface or otherwise concealed physical conditions, including hazardous or historical/cultural/archeological materials under Article 6, which differ materially from those indicated by the Contract Documents or which would have been revealed by a reasonably thorough site inspection; or

7.1.5.2 If Contractor encounters unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents.

7.1.6 INCREASE IN CONTRACT TIME. To the extent DFCM and/or the State of Utah is damaged by the failure of Contractor to provide the notice required by Section 7.1.5 after the Contractor knows or should

have known of such site condition, Contractor shall be liable for liquidated damages attributable thereto, as well as any damages to the State of Utah and/or DFCM that are allowable in addition to liquidated damages.

7.1.7 ALLOWANCES.

7.1.7.1 The Contractor has included in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as DFCM may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

7.1.7.2 Unless otherwise provided in the Contract Documents:

7.1.7.2.1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the Work site and all required taxes, less applicable trade discounts;

7.1.7.2.2 Allowances shall cover the Contractor's costs of unloading and handling at the Work site, labor, installation costs and other expenses contemplated for allowance items of the Work, including the Contractor's overhead and profit.

7.1.7.2.3 Whenever costs are more than or less than allowances, the Contract Price for the Work shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 7.1.7.2.1 and (2) changes in Contractor's costs under Section 7.1.7.2.2.

7.1.7.3 Materials and equipment under an allowance shall be selected by DFCM with reasonable promptness.

7.2 CONTRACTOR INITIATED REQUESTS.

7.2.1 THE REQUEST FOR INFORMATION ("RFI") PROCESS AND TIME TO FILE. Contractor may file an RFI with the A/E regarding any question the answer to which will assist Contractor in the proper completion of the Work, including, but not limited to, issues related to the Contract Documents, Drawings, and Specifications. The RFI shall be filed with the A/E in a timely manner so as not to prejudice DFCM as to the quality, time, or cost related to the Work.

7.2.2 PROPOSED CHANGE ORDER ("PCO"). Within seven (7) days after Contractor knows or should know of a situation or condition for which Contractor anticipates requesting an increase in the Contract Price and/or extension of the Contract Time, Contractor must file a Proposed Change Order ("PCO") with DFCM, or Contractor shall be deemed to waive any right to claim an increase in the Contract Price and/or extension of the Contract Time related to such situation or condition. The PCO shall include all documentation supporting the PCO available to Contractor at the time of filing and Contractor shall thereafter diligently pursue the supplementation(s) of such documentation and promptly deliver such supplementation(s) to DFCM.

7.2.2.1 One of the following may occur after a PCO is filed with DFCM:

7.2.2.1.1 DFCM, after considering any input by the A/E, may reach an agreement with Contractor and issue a Change Order.

7.2.2.1.2 DFCM, after considering any input by the A/E, may issue a Construction Change Directive.

7.2.2.1.3 If DFCM, after considering any input by the A/E, disagrees with Contractor's PCO, DFCM may seek additional information or verification from Contractor, the A/E, or other sources, and may negotiate with

Contractor, may issue a Change Order upon such later agreement, may issue or retract an issued PR, or may issue a Construction Change Directive.

7.2.2.2 If a Construction Change Directive is issued which identifies DFCM's position in regard to a Contract Price and/or Contract Time adjustment or if a PCO is denied by DFCM, Contractor must file a PRE no later than twenty-one (21) days after Contractor's receipt of the Construction Change Directive or such denial of the PCO. Failure to timely file a PRE shall be deemed to waive any right to an increase in the Contract Price and/or extension of the Contract Time related to a Construction Change Directive beyond that identified by DFCM in the Construction Change Directive, if any, or denial of the PCO. Such waiver shall entitle DFCM to convert a Construction Change Directive into a Change Order, whether or not executed by Contractor.

7.2.2.3 If a Construction Change Directive leaves open the determination of an increase in the Contract Price and/or extension of the Contract Time related to a change in the Work, then the time period for commencement of filing the PRE shall not accrue until such time as DFCM has conveyed to Contractor DFCM's position as to increase, if any, in the Contract Price and/or extension, if any, of the Contract Time as a result of the change in the Work.

7.2.2.4 The Contractor must continually cooperate with DFCM in providing data, documentation and efforts to resolve any issues related to a PCO.

7.2.3 SUBSTITUTIONS. The Contractor may make substitutions only with the consent of DFCM, after evaluation by the A/E and in accordance with a Change Order. Substitutions will be considered after the award of the Contractor's Agreement only when a PCO is submitted by the Contractor to substitute a non-specified product for a product specified in the Contract Documents, under the following conditions:

7.2.3.1 The PCO is accompanied by complete data on the proposed substitution substantiating compliance with the design intent and performance requirements of the Contract Documents, including product identification and description, performance and test data, references and samples where applicable, comparison of the proposed substitution with the products specified or named in the Contract Documents, and the impact of the substitution upon the Contract Time.

7.2.3.2. The PCO is accompanied by accurate cost data on the proposed substitution and comparison with the products specified, whether or not modification of the Contract Price is to be a consideration.

7.2.3.3 The Contractor is responsible for any additional costs for the A/E's additional services caused by the evaluation of the proposed substitution and/or the substitution of products.

7.2.3.4 The PCO for substitution by the Contractor shall constitute a certification by the Contractor that the Contractor has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; the cost data presented by the Contractor is complete and includes all related costs under the Contract Documents, including the A/E's additional services; the Contractor waives all claims for additional costs related to the substitution which subsequently become apparent; the Contractor will provide the same guarantee or warranty for the substituted product that the Contractor would have provided for the product specified in the Contract Documents; and the Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be properly completed in all respects.

7.2.3.5 Substitutions will not be considered by the A/E or DFCM if they are intended or implied by submittals of Shop Drawings, Product Data or Samples without a PCO for substitution or when for their implementation they require a substantial revision of the Contract Documents in order to accommodate their use.

7.3 PROPOSAL REQUEST INITIATED BY DFCM. DFCM may submit a Proposal Request to Contractor seeking information, data, impact on the Contract Price and/or impact on the Contract Time for a change in the Work or other modification to the Contract Documents. The PR shall provide a time limit for Contractor to file a response with the A/E and DFCM. If a proposal is not timely provided by Contractor, DFCM may calculate a Change Order under Section 7.4.2. Upon timely receipt of a proposal, one of the following shall occur:

7.3.1 IF AGREEMENT, CHANGE ORDER ISSUED. DFCM, after considering any input by the A/E, may reach an agreement with the Contractor and issue a Change Order.

7.3.2 IF DISAGREEMENT. If DFCM disagrees with Contractor's proposal, after considering any input from the A/E, DFCM may seek additional information or verification from Contractor or other sources, may negotiate with Contractor, may issue a Change Order upon such later agreement, may retract the PR, or may issue a Construction Change Directive. If a Construction Change Directive is issued that identifies DFCM's position in regard to the increase, if any in the Contract Price and/or extension, if any, of the Contract Time, Contractor must file a PRE within twenty-one (21) days of Contractor's receipt of the Construction Change Directive, or Contractor shall be deemed to waive any right for an increase in the Contract Price and/or extension of the Contract Time as a result of the issuance of the Construction Change Directive beyond that identified by DFCM in the Construction Change Directive, if any. Such waiver shall entitle DFCM to convert the Construction Change Directive into a Change Order, whether or not executed by Contractor. If the Construction Change Directive leaves open the determination of an increase, if any, in the Contract Price and/or extension, if any, of the Contract Time related to the change in the Work, then the time period for commencement of filing the PRE shall not accrue until such time as DFCM has conveyed to Contractor DFCM's position as to the increase, if any, in the Contract Price and/or extension, if any, of the Contract Time resulting from the change in the Work.

7.4 CHANGE ORDERS.

7.4.1 ADJUSTING PRICE BASED UPON AGREEMENT. If a Change Order provides for an adjustment to the Contract Price, the adjustment shall be based on the mutual agreement of Contractor and DFCM, including any terms mandated by unit price agreements or other terms of the Contract Documents.

7.4.2 DFCM RESOLUTION OF PRICE IN THE ABSENCE OF AN AGREEMENT UNDER SECTION 7.4.1. In the absence of an agreement under Section 7.4.1, the adjustment in Contract Price shall be based on an itemized accounting of costs and savings supported by appropriate data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section shall be limited to the following:

7.4.2.1 All direct and indirect costs of labor; including workers' compensation insurance, social security, and other federal and state payroll-based taxes, and payroll-based fringe benefits paid by Contractor so long as they are reasonable and no higher than that charged to other clients;

7.4.2.2 Costs of materials, on-site temporary facilities, supplies, and equipment (except hand tools) required for or incorporated into the Work;

7.4.2.3 Rental costs of machinery, equipment, tools (except hand tools), and on-site temporary facilities, whether rented from Contractor or others;

7.4.2.4 Costs of permits and other fees, sales, use or similar taxes related to the Work; and

7.4.2.5 Overhead and profit. The markups stated herein for overhead and profit are intended to cover the Contractor's profit and all indirect costs associated with a change in the Work. Items covered by such markups include, but are not limited to: home office expenses, branch office and field office overhead expense of any

kind; project management; estimating, engineering; coordinating; expediting; purchasing; billing and invoicing; detailing; legal, accounting, data processing or other administrative expenses; computer and telephone costs (including computer and phone allowances); shop drawings; liability insurance premium, auto insurance premium, performance and payment bond premium and SDI; vehicle costs (including vehicle allowances); ESOP related costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by such markups. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than Seven Hundred Fifty Dollars (\$750).

7.4.2.5.1 The maximum markup percentage to be paid to any contractor (regardless of tier) including Contractor, a Subcontractor and/or Sub-subcontractor on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net increased direct cost of: (A) direct labor and allowable labor burden costs applicable to the change in the Work; (B) the net cost of material and installed equipment incorporated into the change in the Work, and (C) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work;

7.4.2.5.2 With respect to pricing the portion of Change Orders involving work performed by lower tier contractors, including Subcontractors and Sub-subcontractors, the maximum markup percentage allowable to the Contractor, Subcontractor or Sub-subcontractor supervising the lower tier contractor's work shall not exceed seven percent (7%) of the net increase of all approved changes in the Work performed by all contractors combined for any particular Change Order.

7.4.2.5.3 Contractor agrees to include these limitations on Change Order pricing in Contractor's subcontracts with Subcontractors and shall likewise require all of Contractor's Subcontractors to include the same provisions in all sub-subcontracts with their respective Sub-subcontractors of any tier.

7.4.3 CREDITS. The amount of credit to be allowed by Contractor to DFCM for a deletion or change in the Work which results in a net decrease in the Contract Price shall be actual net cost as confirmed to DFCM based upon corroboration by an appropriate source, provided, however, the application of the markup percentages referenced in Section 7.4.2.5 for overhead and profit will apply only to additive change orders. In those instances where a change in the Work involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive amount, if any.

7.4.4 EFFECT OF A CHANGE ORDER. A Change Order signed by the Contractor constitutes the Contractor's agreement that, when implemented by DFCM, the adjustment in the Contract Price, if any, and/or the adjustment in the Contract Time, if any, for the change in the Work shall fully and finally compensate the Contractor and its Subcontractors and Sub-subcontractors of any tier for any and all additional costs, damages or expenses arising directly or indirectly out of the change in the Work described in the Change Order.

7.4.4.1 All Change Orders shall be conclusively presumed to constitute settlement of all Claims for direct or indirect damages of the Contractor, its Subcontractors and their respective Sub-subcontractors of any tier arising out of the change in the Work. This shall include, but is not limited to, any and all so-called "delay," "equitable adjustment," "impact," "cumulative impact," "acceleration," "constructive acceleration," "inefficiency," "interference," "indirect," "ripple" or "consequential" claims, costs or damages and all direct or indirect costs pertaining to the Contractor's home office, branch offices, or field site office and all other costs and effects whatsoever relating to the change in the Work.

7.4.4.2 Any statement unilaterally added by the Contractor to a Change Order or contained in any transmittal or separate correspondence wherein the Contractor unilaterally attempts to reserve rights to seek any further increases in the Contract Price and/or further extensions of the Contract Time for a change in the Work that is the subject of the Change Order and/or arising out of, related to and/or connected with the change in the Work described in the Change Order shall be null and void.

7.5 CONSTRUCTION CHANGE DIRECTIVES.

7.5.1 WHEN USED AND CONTRACTOR'S RIGHT TO CHALLENGE. Without invalidating the Contractor's Agreement, DFCM reserves the right to unilaterally issue, in DFCM's sole discretion, a Construction Change Directive that requires Contractor to proceed with a change in the Work. DFCM may order minor changes within the scope of Work without granting an adjustment in the Contract Price or an extension of the Contract Time if such minor changes within the scope of Work are consistent with the intent of the Contract Documents. In order to expedite the Work and avoid or minimize delays in the Work that may affect the Contract Price or Contract Time, the Contract Documents shall be amended as described below. If the Construction Change Directive leaves open the determination of an increase, if any, in the Contract Price and/or extension, if any, of the Contract Time related to the change in the Work, then the Construction Change Directive shall indicate the timeframe(s) in which Contractor shall provide further information to resolve such open issue(s). When DFCM and Contractor agree upon an increase, if any, in the Contract Price and/or extension, if any, in the Contract Time related to a Construction Change Directive, the parties shall execute a Change Order. Additionally, the Construction Change Directive may be converted to a Change Order under Section 7.2.2.2 or Section 7.3.2.

7.5.2 PROCEED WITH WORK. Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved.

7.5.3 INTERIM PAYMENTS BY DFCM. Pending the final determination of the increase in the Contract Price, if any, associated with a Construction Change Directive, DFCM shall pay any undisputed amount to Contractor.

7.6 ASI. The A/E may at any time that is consistent with maintaining the quality, safety, time, budget, and function of the Work, issue to Contractor an ASI after approval from DFCM is obtained.

7.7 PROCEDURE FOR PRELIMINARY RESOLUTION EFFORTS.

7.7.1 REQUEST FOR PRELIMINARY RESOLUTION EFFORT (PRE). If Contractor wishes to raise an issue related to an alleged breach of contract by DFCM or an issue concerning time or money, Contractor shall file a PRE as a prerequisite for any consideration of the issue by DFCM. The labeling of the notice or request shall not preclude the consideration of the issue by DFCM.

7.7.2 TIME FOR FILING. The PRE must be filed in writing with DFCM within twenty-one (21) days of any of the following:

7.7.2.1 Issuance of a Construction Change Directive that states the adjustment in Contract Price and/or Contract Time, if any, if Contractor disagrees with such adjustment;

7.7.2.2 Issuance of a statement of DFCM's position with respect to the adjustment in Contract Price and/or Contract Time, if any, in a previously issued Construction Change Directive that left open the adjustment in Contract Price and/or Contract Time, if Contractor disagrees with such statement;

7.7.2.3 Issuance of a denial of a PCO by DFCM;

7.7.2.4 In the case of a Subcontractor, after the expiration of the time period for the Contractor/Subcontractor PRE process under Section 7.7.5; or

7.7.2.5 Except as provided in Section 7.2.2, when Contractor knows or should have known about any other issue where Contractor seeks an adjustment in the Contract Price, Contract Time and/or other relief from DFCM.

7.7.3 CONTENT REQUIREMENT. The PRE shall be required to include in writing to the extent information is reasonably available at the time of filing of the PRE:

7.7.3.1 A description of the issue;

7.7.3.2 The potential impact on the Work, Contract Price and/or Contract Time; and

7.7.3.3 An indication of the relief sought.

7.7.4 SUPPLEMENTATION. Additional detail of the content requirement under Section 7.7.3 shall be provided later if the detail is not yet available at the initial filing as follows:

7.7.4.1 While the issue is continuing or the impact is being determined, Contractor shall provide a written updated status report every thirty (30) days or as otherwise reasonably requested by DFCM; and

7.7.4.2 After the issue is concluded and/or the impact is determinable, complete information, including any impacts on Contract Price, Contract Time and/or other relief requested, if any, must be provided to DFCM within twenty-one (21) days of the earlier of the date the issue is concluded or the impact is determinable.

7.7.5 SUBCONTRACTORS. Contractor must include the provisions of this Section 7.7.5 in Contractor's subcontract with each Subcontractor and require each Subcontractor to do likewise in each Subcontractor's sub-subcontracts with Sub-subcontractors. At Contractor's discretion, Contractor may allow a Sub-subcontractor at the second tier and beyond to submit a PRE directly to Contractor.

7.7.5.1 In order for a Subcontractor at any tier to be involved with the PRE of DFCM, the following conditions and process shall apply:

7.7.5.1.1 The Subcontractor must have attempted to resolve the issue with Contractor, including the submission of a PRE with Contractor.

7.7.5.1.2 The Subcontractor must file a copy of the PRE with DFCM;

7.7.5.1.3 The PRE to Contractor must meet the time, content, and supplementation requirements of Sections 7.7.2, 7.7.3 and 7.7.4. The triggering event for a Subcontractor to file a PRE shall be the time at which the issue cannot be resolved through negotiation;

7.7.5.1.4 The PRE submitted to Contractor shall only be eligible for consideration in DFCM's PRE process to the extent the issue is reasonably related to the performance of DFCM or an entity for which DFCM is liable;

7.7.5.1.5 Contractor shall resolve the PRE with the Subcontractor within sixty (60) days of its submittal to Contractor or such other time period as subsequently agreed to by the Subcontractor in writing. If Contractor fails to resolve the PRE with the Subcontractor within such required time period, the Subcontractor may submit in writing the PRE with Contractor and DFCM. In order to be eligible for DFCM's consideration of the PRE, the Subcontractor must submit the PRE within twenty-one (21) days of the expiration of the time period for the Contractor/Subcontractor PRE process. DFCM shall consider the PRE as being submitted by Contractor on behalf of the Subcontractor;

7.7.5.1.6 Upon such PRE being submitted, Contractor shall cooperate with DFCM in reviewing the issue;

7.7.5.1.7 DFCM shall not be obligated to consider any submission which is not in accordance with any provision of this Section 7.7;

7.7.5.1.8 The Subcontractor may accompany Contractor in participating with DFCM regarding the PRE raised by the Subcontractor. DFCM shall not be precluded from meeting with Contractor separately, and it shall be the responsibility of Contractor to keep the Subcontractor informed of any such meetings; and

7.7.5.1.9 Notwithstanding any provision of this Section 7.7.5, a Subcontractor shall be entitled to pursue a payment bond claim.

7.7.6 INFORMATION AND MEETINGS. DFCM may request additional information and may meet with the parties involved with the issue.

7.7.7 CONTRACTOR REQUIRED TO CONTINUE PERFORMANCE. Pending the final resolution of the issue, unless otherwise agreed upon in writing by DFCM, Contractor shall proceed diligently with performance of the Work and DFCM shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

7.7.8 DECISION. DFCM shall issue to Contractor, and any other third party brought into the process by DFCM as being potentially liable to DFCM, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under Sections 7.7.3 and 7.7.4.

7.7.9 DECISION FINAL UNLESS CLAIM SUBMITTED. The decision by DFCM shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with these General Conditions.

7.7.10 EXTENSION REQUIRES MUTUAL AGREEMENT. Any time period specified in Section 7.7 may be extended by mutual agreement of Contractor and DFCM.

7.7.11 IF DECISION NOT ISSUED. If the decision is not issued within the thirty (30) day period, stated in Section 7.7.8 including any agreed to extensions, the issue may be pursued as a Claim.

7.7.12 PAYMENT FOR PERFORMANCE.

7.7.12.1 Except as otherwise provided in the Contract Documents, any final decision where DFCM is to pay additional monies to Contractor, shall not be delayed by any PRE, Claim, or appeal by another party.

7.7.12.2 Payment to Contractor in accordance with any final decision shall be made by DFCM consistent with the Contract Documents.

7.7.12.3 Notwithstanding any other provision of the Contract Documents, payment to Contractor shall be subject to any set-off, claims, or counterclaims of DFCM.

7.7.12.4 Payment to Contractor for a Subcontractor issue submitted by the Contractor shall be paid by Contractor to Subcontractor in accordance with the subcontract between Contractor and Subcontractor.

7.7.12.5 Any payment or performance determined owing by Contractor to DFCM shall be made in accordance with the Contract Documents.

7.8. RESOLUTION OF CLAIM.

7.8.1 CLAIM. If the decision on the PRE is not issued within the required timeframe or if Contractor is not satisfied with the decision, Contractor, or other party brought into the process by DFCM, may submit a Claim in accordance with this Section 7.8 as a prerequisite for any further consideration by DFCM or the right to any judicial review of the issue giving rise to the Claim.

7.8.2 SUBCONTRACTORS. In order for a Subcontractor to have its issue considered in the Claim process by DFCM, the Subcontractor that had its issue considered under Section 7.7.5 may submit the issue as a Claim by filing it with Contractor and DFCM within the same timeframe and with the same content requirements as required of a Claim submitted by Contractor under this Section 7.8.2. DFCM shall consider the Claim as being submitted by Contractor on behalf of the Subcontractor. Under no circumstances shall any provision of these General Conditions or the Contract Documents be construed so as to create any contractual relationship between DFCM and any Subcontractor.

7.8.2.1 Upon such Claim being submitted, the Contractor shall fully cooperate with the Director, the person(s) evaluating the claim and any subsequent reviewing authority.

7.8.2.2 The Director shall not be obligated to consider any submission which is not in accordance with this Section 7.8.2.

7.8.2.3 The Subcontractor may accompany Contractor in participating with the Director, the person(s) evaluating the Claim and any subsequent reviewing authority regarding the Claim. The Director, the person(s) evaluating the Claim, and any subsequent reviewing authority is not precluded from meeting with Contractor separately, and it shall be the responsibility of Contractor to keep the Subcontractor informed of any such meetings and matters discussed.

7.8.2.4 Notwithstanding any provision of this Section 7.8, a Subcontractor shall be entitled to pursue a payment bond claim.

7.8.3 TIME FOR FILING. The Claim must be filed in writing promptly with the Director of DFCM, but in no case more than twenty-one (21) days after the decision is issued on the PRE under Section 7.7.8 or no more than twenty-one (21) days after the thirty (30) day period under Section 7.7.11 has expired with a decision not issued.

7.8.4 CONTENT REQUIREMENT. The written Claim shall include:

7.8.4.1 A description of the issues in dispute;

7.8.4.2 The basis for the Claim, including documentation and analysis required by the Contract Documents and applicable law and rules that allow for the proper determination of the Claim;

7.8.4.3 A detailed cost estimate for any amount sought, including copies of any related invoices; and

7.8.4.4 A specific identification of the relief sought.

7.8.5 EXTENSION OF TIME TO SUBMIT DOCUMENTATION. The time period for submitting documentation and any analysis to support a Claim may be extended by the Director upon written request of the claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

7.8.6 CONTRACTOR REQUIRED TO CONTINUE PERFORMANCE. Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, Contractor shall proceed diligently with performance of the Contract and DFCM shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

7.8.7 AGREEMENT OF CLAIMANT ON METHOD AND PERSON(S) EVALUATING THE CLAIM. The Director shall first attempt to reach agreement with the claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purposes described in Rule R23-26-1. Unless agreed to by the Director and the claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:

7.8.7.1 A single expert and/or hearing officer qualified in the field that is the subject of the Claim;

7.8.7.2 An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;

7.8.7.3 An arbitration process which may be binding if agreed to by the parties to the Claim;

7.8.7.4 A mediator; or

7.8.7.5 Any other method that best accomplishes the purposes set forth in Rule R23-26-1.

7.8.8 THE EVALUATION PROCESS, TIMEFRAMES OF EVALUATOR(S), DIRECTOR'S DETERMINATION, ADMINISTRATIVE APPEAL TO THE EXECUTIVE DIRECTOR AND JUDICIAL REVIEW. The Claim shall be evaluated, the timeframe for specific events related to the person(s) evaluating the Claim, the Director's determination, any appeal to the Executive Director and any judicial review shall be subject to the provisions of Rule R23-26-5(8), R23-26-5(9), R23-26-6 and R23-26-8. A copy of these Administrative Rules is available at <https://rules.utah.gov>.

7.8.9 APPEAL PROCESS PREREQUISITE FOR FURTHER CONSIDERATION OR JUDICIAL REVIEW. The administrative appeal to the Executive Director is a prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be

considered that the Contractor, or another party brought into the process by DFCM, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.

7.8.10 PAYMENT OF CLAIM.

7.8.10.1 When a stand-alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with the payment provisions of the Contract Documents or judicial order.

7.8.10.2 When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the Work or services have not been completed, in which case the amount shall be paid in accordance with the payment provisions of the Contract Documents to the point that the Work is completed.

7.8.10.3 The final determination date is the earlier of the date upon which the claimant accepted the settlement in writing with an executed customary release document and waived its rights of appeal, or the expiration of the appeal period, with no appeal filed, or the determination made resulting from the final appeal.

7.8.10.4 Any final determination where DFCM is to pay additional monies to Contractor shall not be delayed by any appeal or request for judicial review by another party brought into the process by DFCM as being liable to DFCM.

7.8.10.5 Notwithstanding any other provision of the Contract Documents, payment of all or part of a Claim shall be subject to any set-off, claims, or counterclaims of DFCM.

7.8.10.6 Payment to Contractor for a Subcontractor issue (Claim) deemed filed by Contractor, shall be paid by Contractor to the Subcontractor in accordance with the subcontract between Contractor and the Subcontractor.

7.8.10.7 The execution of a customary release document by the claimant related to any payment may be required as a condition of making the payment. Unless expressly and specifically released in writing by DFCM, settlement of a Claim by DFCM shall not be deemed a waiver of Claims reserved under Section 8.8.3.

7.8.11 ALLOCATION OF COSTS OF CLAIM RESOLUTION PROCESS.

7.8.11.1 In order to file a Claim, a claimant must pay a Fifteen Hundred Dollar (\$1,500.00.) filing fee to DFCM. When the Claim is a pass-through from a Subcontractor in accordance with Section 7.7.5, the payment of the fee shall be made by the Subcontractor.

7.8.11.2 Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.

7.8.11.3 The costs of resolving the Claim that are subject to allocation include the claimant's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.

7.8.11.4 Each party shall be responsible for its own attorney fees.

7.8.12 ALTERNATIVE PROCEDURES. To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in this Section 7.8.

7.8.13 IMPACT ON FUTURE SELECTIONS.

7.8.13.1 The presentation of a good faith and non-frivolous issue or Claim shall not be considered by DFCM in DFCM's selection process for a future award of contract; and

7.8.13.2 The submission of a bad faith and frivolous issue or Claim, or the failure by a Contractor to facilitate resolution of a Claim, may be considered in DFCM's evaluation of performance.

7.8.14 REPORT TO BUILDING BOARD. DFCM may report on the Claim to the Utah State Building Board.

7.8.15 DFCM'S RIGHT TO HAVE ISSUES, DISPUTES OR CLAIMS CONSIDERED. As stated in Rule R23-26-1(6), Sections 7.7 and 7.8 do not limit the right of DFCM to have any of DFCM's issues, disputes or claims considered. DFCM reserves all rights to pursue DFCM's 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 the Contract Documents. If the Director appoints an expert or a panel to consider any such issue(s), dispute(s) or claim(s) of DFCM, Contractor shall cooperate with such expert or panel process.

ARTICLE 8. PAYMENTS AND COMPLETION.

8.1 SCHEDULE OF VALUES. With the first Application for Payment, Contractor shall submit to the A/E and DFCM a schedule of values allocated to all the various portions of the Work. The schedule of values shall be submitted on the form approved and provided by DFCM. The schedule of values must consist of a detailed and specific breakdown of values actually associated with the various items of Work and shall in no event be "frontloaded". The A/E shall make recommendations to DFCM regarding the schedule of values including any suggested modifications. When approved, including any approved modifications, by DFCM, it shall be the basis for future Contractor Applications for Payment. Contractor shall be entitled to reasonably reallocate values in the schedule of values with prior written notice to DFCM. Contractor shall not be entitled to payment until receipt and acceptance of the schedule of values.

8.2 APPLICATIONS FOR PAYMENT.

8.2.1 IN GENERAL. The following general requirements shall be met:

8.2.1.1 Contractor shall submit to the A/E an itemized Application for Payment for Work completed in accordance with the schedule of values and that reflects retainage as provided for in the Contractor's Agreement. The Application for Payment shall be on a form approved and provided by DFCM.

8.2.1.2 The Application for Payment shall be supported by such data substantiating Contractor's right to payment as DFCM or the A/E may require.

8.2.1.3 The Application for Payment may include requests for payment pursuant to approved Change Orders or Construction Change Directives.

8.2.1.4 The Application for Payment shall not include requests for payment for portions of the Work performed by a Subcontractor when Contractor does not intend to pay that Subcontractor because of a dispute or other reason.

8.2.1.5 In executing the Application for Payment, Contractor shall attest that Subcontractors involved with prior Applications for Payment have been paid, unless Contractor provides a detailed explanation why such

payment has not occurred. DFCM reserves the right to require Contractor to submit a Utah Conditional Waiver and Release Upon Progress Payment form from one or more Subcontractors.

8.2.2 PAYMENT FOR MATERIAL AND EQUIPMENT. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Work site for subsequent incorporation into the Work. If approved in advance by DFCM and A/E, payment may similarly be made for materials and equipment suitably stored off-site at a location agreed upon in writing. Payment for materials and equipment stored on or off-site shall be conditioned upon compliance by Contractor with procedures satisfactory to DFCM to establish DFCM's title to such materials and equipment or otherwise protect DFCM's interest, and shall include applicable insurance, storage, and transportation to the Work site for such materials and equipment stored off-site. DFCM may require copies of invoices or other suitable documentation.

8.2.3 WARRANTY OF TITLE. Contractor warrants that title to all Work covered by an Application for Payment shall pass to DFCM no later than the time for payment. Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from DFCM shall, to the best of Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, or other persons or entities making a claim by reason of having provided labor, materials, and/or equipment relating to the Work.

8.2.4 HOLDBACK BY DFCM. Notwithstanding anything to the contrary contained in the Contract Documents, DFCM may, as a result of the claims resolution process, withhold any payment to Contractor if and for so long as Contractor fails to perform any of its obligations under the Contract Documents or otherwise is in default under any of the Contract Documents.

8.3 CERTIFICATES FOR PAYMENT.

8.3.1 ISSUED BY A/E. The A/E shall within seven (7) days after receipt of Contractor's Application for Payment, either issue to DFCM a Certificate for Payment, with a copy to the Contractor, for such amount as the A/E determines due or notify Contractor and DFCM in writing of the A/E's reasons for withholding certification in whole or in part as provided in Section 8.4.1. If the A/E fails to act within said seven (7) day period, Contractor may file the Application for Payment directly with DFCM and DFCM shall thereafter have twenty-one (21) days from the date of DFCM's receipt to resolve the amount to be paid and to pay the undisputed amount. The accuracy of Contractor's Applications for Payment shall be Contractor's responsibility, not A/E's.

8.3.2 A/E'S REPRESENTATIONS. The A/E's issuance of a Certificate for Payment shall constitute a representation to DFCM that to the best of the A/E's knowledge, information and belief, based upon the A/E's observations at the site, the data comprising the Application for Payment, and what is reasonably inferable from the observations and data, that the Work has progressed to the point indicated in the Application for Payment and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the A/E. The issuance of a Certificate for Payment shall further constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the A/E has: (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by DFCM to substantiate Contractor's right to payment; (4) ascertained how or for what purpose Contractor used money previously paid on account of Contract Price; or (5) any duty to make such inquiries.

8.4 DECISIONS TO WITHHOLD CERTIFICATION.

8.4.1 WHEN WITHHELD. The A/E may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect DFCM, if in the A/E's judgment the representations to DFCM required in Section 8.3.2 cannot be made. If the A/E is unable to certify payment in the amount of the Application for Payment, the A/E shall notify Contractor and DFCM as provided in Section 8.3.1. If Contractor and the A/E cannot agree on a revised amount, the A/E shall promptly issue a Certificate for Payment for the amount to which the A/E makes such representations to DFCM. The A/E may also decide not to certify payment or, because of subsequently discovered evidence or observations, may nullify the whole or part of a Certificate for Payment previously issued, to such extent as may be necessary in the A/E's opinion to protect DFCM from loss because of:

8.4.1.1 Defective Work not remedied;

8.4.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims;

8.4.1.3 Failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

8.4.1.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

8.4.1.5 Damage to DFCM or another contractor;

8.4.1.6 Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance of the Contract Price would not be adequate to cover actual or liquidated damages for the anticipated delay; or

8.4.1.7 Failure to carry out the Work in accordance with the Contract Documents.

8.4.2 CERTIFICATION ISSUED WHEN REASONS FOR WITHHOLDING REMOVED. When the reasons stated in Section 8.4.1 for withholding certification are removed, certification shall be made for such related amounts.

8.4.3 CONTINUE WORK EVEN IF CONTRACTOR DISPUTES A/E'S DETERMINATION. If Contractor disputes any determination by the A/E or the result of the claims resolution process with regard to any Certification of Payment, Contractor nevertheless shall expeditiously continue to prosecute the Work.

8.4.4 DFCM NOT IN BREACH. DFCM shall not be deemed to be in breach of Contractor's Agreement by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided DFCM's action or such withholding is consistent with the results of the dispute resolution process.

8.5 PROGRESS PAYMENTS.

8.5.1 IN GENERAL, INTEREST OR LATE PAYMENTS.

8.5.1.1 Except as provided in Section 8.3.1, DFCM shall pay any undisputed amount within twenty-eight (28) days of the date that the Application for Payment was submitted to the A/E. In no event shall DFCM be required to pay any disputed amount.

8.5.1.2 Except as otherwise provided by law, if any payment is late based upon the provisions of the Contract Documents, Contractor shall be paid interest at the rate stated in Utah Code § 15-6-3.

8.5.2 CONTRACTOR AND SUBCONTRACTOR RESPONSIBILITY. Contractor shall promptly and no later than the date established in Utah Code § 15-6-5 pay each Subcontractor, upon receipt of payment from DFCM, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payment to its Sub-subcontractors in a similar manner.

8.5.3 INFORMATION FURNISHED BY A/E OR DFCM TO SUBCONTRACTOR. The A/E or DFCM shall, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by the A/E and DFCM on account of portions of the Work done by such Subcontractor.

8.5.4 DFCM AND A/E NOT LIABLE. Neither DFCM or A/E shall have an obligation to pay, monitor, or enforce the payment of money to a Subcontractor, except to the extent as may otherwise be required by law.

8.5.5 CERTIFICATE, PAYMENT OR USE NOT ACCEPTANCE OF DEFECTIVE WORK. A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Work by DFCM shall not constitute acceptance of Work that is not in accordance with the Contract Documents.

8.6 PAYMENT UPON SUBSTANTIAL COMPLETION. Upon Substantial Completion of the Work or designated portion thereof and upon application by Contractor and certification by the A/E, DFCM shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. To the extent allowed by law, DFCM may retain until final completion up to twice the fair market value of the Work that has not been completed in accordance with the Contract Documents, or, in the absence of applicable Contract Documents, generally accepted craft standards.

8.7 PARTIAL OCCUPANCY OR USE.

8.7.1 IN GENERAL. DFCM may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided DFCM and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of the warranties required by the Contract Documents. When Contractor considers a portion to be Substantially Complete, Contractor shall prepare and submit a list to the A/E as previously provided for herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. Contractor shall have continuing responsibility to protect the Work site and the Work during such partial occupancy or use and shall be responsible for damage except to the extent caused solely by DFCM during such partial occupancy or use. The stage of progress of the Work shall be determined by written agreement between DFCM and Contractor.

8.7.2 INSPECTION. Immediately prior to such partial occupancy or use, DFCM, Contractor and A/E shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

8.7.3 NOT CONSTITUTE ACCEPTANCE. Except to the extent it is agreed upon in writing by DFCM, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

8.7.4 INSURANCE. Partial occupancy or use shall not commence until the insurance company or companies providing property insurance under Section 10.2 have provided any required consent to such partial

occupancy or use by endorsement or otherwise. DFCM shall take reasonable steps to obtain any required consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

8.8 FINAL PAYMENT.

8.8.1 CERTIFICATE FOR PAYMENT. The A/E's final Certificate for Payment shall constitute a further representation that the conditions listed in Section 8.8.2 as precedent to Contractor's being entitled to final payment have been fulfilled.

8.8.2 CONDITIONS FOR FINAL PAYMENT. Neither final payment nor any remaining retained percentage shall become due until Contractor submits to the A/E the following to the extent required by DFCM:

8.8.2.1 An affidavit that payrolls, bills for material and equipment, and other indebtedness connected with the Work (less amounts withheld by DFCM) have been paid or otherwise satisfied;

8.8.2.2 A current or additional certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and shall not be canceled or allowed to expire until at least twenty-eight (28) days prior written notice, by certified mail, return receipt requested, has been given to DFCM;

8.8.2.3 A written statement that Contractor knows of no reason that the insurance shall not be renewable to cover the period required by the Contract Documents;

8.8.2.4 If requested by the surety in a timely manner or by DFCM, consent of surety, to final payment;

8.8.2.5 Receipt of Record Drawings, Specifications, Addenda, Change Orders and other Modifications maintained at the site; the warranties, instructions, operation and maintenance manuals, and training videos required to be furnished by the Contract Documents;

8.8.2.6 Other data establishing payment or satisfaction of obligations, such as a Utah Waiver and Release Upon Final Payment form from Contractor, Subcontractors and Sub-subcontractors, receipts, other releases and waivers of liens, claims, security interests, or encumbrances arising out of Contractor's Agreement, to the extent and in such form as may be designated by DFCM. If a Subcontractor or Sub-subcontractor refuses to furnish a release or waiver required by DFCM, DFCM may require consent of surety to the final payment. If liens, claims, security interests, or encumbrances remain unsatisfied after payments are made, Contractor shall refund to DFCM all money that DFCM may be compelled to pay in discharging such liens, claims, security interests or encumbrances including all costs and reasonable attorney fees; and

8.8.2.7 A written statement demonstrating how Contractor shall distribute interest earned on retention to Subcontractors as required by Utah Code § 13-8-5.

8.8.3 WAIVER OF CLAIMS: FINAL PAYMENT. The making of final payment shall constitute a waiver of Claims by DFCM, except those arising from:

8.8.3.1 Liens, Claims, security interests, or encumbrances arising out of the Contract Documents and unsettled;

8.8.3.2 Failure of the Work to comply with the requirements of the Contract Documents;

8.8.3.3 Terms of warranties required by the Contract Documents; or

8.8.3.4 Claims arising within the one-year period for correction of the Work and Claims to the extent not barred by Utah Code § 78B-2-225 and/or Utah Code § 78B-4-513.

8.8.4 DELAYS NOT CONTRACTOR'S FAULT. If, after Substantial Completion of the Work, Final Completion is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion, DFCM shall, upon application by Contractor and certification by the A/E, and without terminating Contractor's Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under terms and conditions governing final payment. Unless otherwise stated by DFCM in writing, the making of final payment shall constitute a waiver of claims by DFCM as provided in Section 8.8.3 for that portion of that Work fully completed and accepted by DFCM.

8.8.5 WAIVER BY ACCEPTING FINAL PAYMENT. Acceptance of final payment by Contractor or a Subcontractor 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.

ARTICLE 9. TESTS AND INSPECTIONS, SUBSTANTIAL AND FINAL COMPLETION, UNCOVERING, CORRECTION OF WORK AND GUARANTY PERIOD.

9.1 TESTS AND INSPECTIONS.

9.1.1 IN GENERAL. Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, rules, regulations, or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise specifically set forth in the Contract Documents or agreed to by DFCM in writing, DFCM shall contract for such tests, inspections, and approvals with an independent entity, or with the appropriate public authority, and 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 the Contract Documents or by any public authority, Contractor shall, at least two (2) working days prior to the time of the desired inspection, and following the procedures established by DFCM, request such inspection or approval to be performed. Contractor shall give the A/E timely notice of when and where tests and inspections are to be made so that the A/E may observe such procedures.

9.1.2 FAILURE OF AN INSPECTOR TO APPEAR. Work shall not proceed without any required inspection and the associated authorization by DFCM to proceed unless the following procedures and requirements have been met:

9.1.2.1 The inspection or approval was requested in a timely manner as provided in Section 9.1.1;

9.1.2.2 Contractor received written confirmation from the inspection entity that the inspection was scheduled;

9.1.2.3 Contractor has contacted or attempted to contact the inspector to confirm whether the inspector is able to perform the inspection as scheduled;

9.1.2.4 If the inspector informs Contractor that the inspector is unable to perform the inspection as scheduled or if Contractor is unable to contact the inspector, Contractor shall attempt to contact the A/E or DFCM for instruction; and

9.1.2.5 Contractor has documented the condition of the Work prior to being covered through photos or other means.

9.1.3 NONCONFORMING WORK. If procedures for testing, inspection, or approval under Section 9.1.1 reveal failure of portions of the Work to comply with the requirements established by the Contract

Documents, Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for DFCM's expenses, including the cost of retesting for verification of compliance if necessary, until DFCM accepts the Work in question as complying with the requirements of the Contract Documents.

9.1.4 CERTIFICATES. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by Contractor and promptly delivered to the A/E.

9.1.5 A/E OBSERVING. If the A/E is to observe tests, inspections, or approvals required by the Contract Documents, the A/E shall do so with reasonable promptness and, where practicable, at the normal place of testing.

9.1.6 PROMPTNESS. Tests, inspections, and arrangements for approvals conducted pursuant to the Contract Documents shall be made promptly to avoid delay in the Work.

9.2 UNCOVERING OF WORK.

9.2.1 UNCOVER UNINSPECTED WORK. Except as provided in Section 9.2.3, if a portion of the Work is covered prior to an inspector's approval to proceed, it must be uncovered for the inspector's inspection and be replaced at Contractor's expense without change in the Contract Price and/or Contract Time.

9.2.2 OBSERVATION PRIOR TO COVERING. Except as provided in Section 9.2.3, if DFCM or the A/E has requested in writing to observe conditions prior to any Work being covered or if such observation is required by the Contract Documents, and the Work is covered without such observation, Contractor shall be required to uncover and appropriately replace the Work at Contractor's expense without change in the Contract Price and/or Contract Time. If Contractor requests an inspection and DFCM or the A/E, including any inspector of each, does not appear, Contractor shall immediately notify DFCM of such failure to appear, but shall not cover the Work without such inspection.

9.2.3 WHEN AN INSPECTOR FAILS TO APPEAR OR A/E OR DFCM DID NOT MAKE PRIOR REQUEST. If Work is performed by Contractor without an inspection as provided in Section 9.1.2 or if a portion of the Work has been covered which the A/E or DFCM has not specifically requested to observe prior to its being covered or such observation is not required by the Contract Documents, the A/E or DFCM may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement, shall, by appropriate Change Order, be charged to DFCM. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs unless the condition was caused by DFCM or a separate contractor in which event DFCM shall be responsible for payment of such costs.

9.3 INSPECTIONS: SUBSTANTIAL AND FINAL.

9.3.1 SUBSTANTIAL COMPLETION INSPECTION. Prior to requesting a Substantial Completion inspection, Contractor shall prepare a comprehensive initial punch list, including unresolved items from prior inspections, for review by DFCM and the A/E to determine if the Work is ready for a Substantial Completion inspection. If DFCM and A/E determine that the initial punch list indicates that the Work is not Substantially Complete, the initial punch list shall be returned to Contractor with written comments. If DFCM and A/E determines that the initial punch list indicates that the Work may be Substantially Complete, the A/E shall promptly organize and perform a Substantial Completion inspection in the presence of DFCM and all appropriate authorities.

9.3.1.1 If the A/E reasonably determines that the initial punch list prepared by Contractor substantially understates the amount of the Work remaining to be completed and the Work is not Substantially Complete, the A/E shall report this promptly to DFCM, and upon concurrence of DFCM, Contractor shall be assessed the costs of the inspection and punch list review incurred by the A/E and DFCM.

9.3.1.2 When the Work or designated portion thereof is Substantially Complete, the A/E shall prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion; shall establish responsibilities of DFCM and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; and shall fix the time within which Contractor shall finish all items on the punch list accompanying the Certificate (“Punchlist Completion Date”). The Certificate of Substantial Completion shall require approval by DFCM. If there is a punch list, Contractor shall proceed promptly to complete and correct items on the punch list. Failure to include an item on the punch list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.

9.3.1.3 Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof except to the extent as provided otherwise in the Contract Documents or if such warranty is related to an item where the Work is not complete. Written warranties shall state the length of the warranty, which must comply with the Contract Documents.

9.3.1.4 The Certificate of Substantial Completion shall be submitted by the A/E to DFCM and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.3.1.5 Except to the extent DFCM otherwise approves in advance and in writing, Contractor shall submit the following documents in order to achieve Substantial Completion: written warranties, guarantees, operation and maintenance manuals, and all complete as-built drawings. Contractor shall also provide or obtain any required approvals for occupancy. Contractor shall be responsible for the guaranty of all Work, whether performed by it or by its Subcontractors and Sub-subcontractors at any tier.

9.3.2 FINAL COMPLETION INSPECTION. Prior to requesting a final inspection, Contractor shall verify all punch list items are corrected and completed. Once all punch list items are corrected and completed, Contractor shall notify DFCM and request a final inspection. DFCM shall notify the A/E and perform a final inspection. When all punch list items are completed, a final Application for Payment shall be provided by Contractor, certified by the A/E, and processed by DFCM.

9.3.3 PUNCHLIST COMPLETION. As compensation to DFCM for administrative costs incurred by DFCM as a result of delay in final project close-out, for each day subsequent to the Punchlist Completion Date that Contractor fails to complete the punch list and subject to Section 8.8.4, Contractor shall pay to DFCM five percent (5%) of the liquidated damages amount stated in the Contractor’s Agreement.

9.4 CORRECTION OF WORK AND GUARANTY PERIOD.

9.4.1 CONTRACTOR CORRECT THE WORK. Contractor shall correct Work rejected by the A/E, an inspector or DFCM, or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. Contractor shall bear the costs of correcting such rejected Work, including additional testing and inspections and compensation for the A/E's and inspector's services and expenses made necessary thereby.

9.4.2 GUARANTY AND CORRECTION AFTER SUBSTANTIAL COMPLETION. If within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.2.1 or by terms of an applicable special warranty or guaranty required by the Contract Documents, any of the Work is found not to be in accordance with the requirements of the Contract Documents, including failure to perform for its intended purpose, Contractor shall correct it promptly after receipt of written notice from DFCM to do so, unless DFCM has previously given Contractor a written acceptance of such condition. The period of one year shall be extended with respect to portions of the Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation of Contractor under this Section 9.4.2 shall be operative notwithstanding the acceptance of the Work under the Contract Documents, the issuance of a final certificate of payment, partial or total occupancy and/or termination of Contractor's Agreement. DFCM shall give notice of observed defects with reasonable promptness; however, failure to give such notice shall not relieve Contractor of its obligation to correct the Work. 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 DFCM's right to pursue any available remedies against Contractor, including, but not limited to, DFCM's right to pursue a cause of action for defective construction against Contractor within the time period established by Utah Code § 78B-2-225.

9.4.3 REMOVAL OF WORK.

9.4.3.1 Contractor shall promptly remove from the Work site all Work that DFCM and/or the A/E determines as being in nonconformance with the Contract Documents, whether incorporated or not.

9.4.3.2 Contractor shall promptly replace and re-execute any Work not in accordance with the Contract Documents without change in the Contract Price and/or Contract Time.

9.4.3.3 Contractor shall bear the expense of correcting destroyed or damaged construction, whether completed or partially completed, by DFCM or separate contractors destroyed or damaged by such removal or replacement.

9.4.3.4 If Contractor does not remove such rejected Work within a reasonable time, fixed by written notice, DFCM may have the Work removed and stored at the expense of Contractor.

9.4.3.5 If Contractor does not correct the nonconforming Work within a reasonable time, fixed by written notice, DFCM may correct it in accordance with Section 2.2.2 of these General Conditions.

9.4.4 NOT LIMIT OTHER OBLIGATIONS. Nothing contained in this Section 9.4 shall be construed to establish a period of limitation with respect to other obligations that Contractor may have under the Contract Documents. Establishment of the time period of one year as described in Section 9.4.2 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

9.5 ADDITIONAL WARRANTIES.

9.5.1 IN GENERAL. In addition to any other provisions of this Article 9, the following warranties shall apply:

9.5.1.1 Contractor warrants to DFCM that materials and equipment furnished under the Contract Documents shall be of good quality and new, except to the extent otherwise required or expressly permitted by the Contract Documents.

9.5.1.2 Contractor also warrants to DFCM that the Work shall be free from defects not inherent in the quality required or expressly permitted and that the Work shall conform with the requirements of the Contract Documents. Work not conforming to said requirements, including substitutions not implemented by Change Order, Construction Change Directive, or ASI as provided in Article 7, may be considered defective at DFCM's option.

9.5.2 EXCLUSION. Unless due to the negligent or intentional act or omission of Contractor or those under the Contractor's control, or as otherwise stated in the Contract Documents, Contractor's guaranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

9.5.3 FURNISH EVIDENCE ON REQUEST. If requested by the A/E or DFCM, Contractor shall furnish satisfactory evidence as to the type and quality of materials and equipment.

9.6 ACCEPTANCE OF NONCONFORMING WORK. If DFCM prefers to accept Work that is not in accordance with the requirements of the Contract Documents, DFCM may do so in writing instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate. Such adjustment shall be effectuated whether or not final payment has been made.

ARTICLE 10. INSURANCE AND BONDS.

10.1 CONTRACTOR'S LIABILITY INSURANCE.

10.1.1 IN GENERAL. The Contractor shall purchase and maintain in a company or companies lawfully authorized to do business in the State of Utah such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by a Sub-subcontractor or anyone directly employed by them, or by anyone for whose acts they may be liable:

10.1.1.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

10.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

10.1.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

10.1.1.4 Claims for damages insured by usual personal injury liability coverage;

10.1.1.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

10.1.1.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

10.1.1.7 Claims for bodily injury or property damage arising out of completed operations;

10.1.1.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 4.12; and

10.1.1.9 If the Contract Documents require the Contractor to provide and/or the Contractor provides professional services, claims for damages because of negligent errors or omissions in the performance of professional services.

10.1.2 COVERAGE. Without limiting Contractor's obligations or liabilities hereunder, the Contractor shall, at its sole expense, purchase and maintain the following insurance coverages required by Section 10.1.1 of these General Conditions from insurers authorized to do business in the state of Utah and rated "A-" or better with a financial size category of class VII or larger by the A.M. Best Company. The following insurance coverages required by Section 10.1.1 of these General Conditions shall be procured with the following terms and insurance limits unless otherwise agreed in writing by DFCM and the Contractor:

10.1.2.1 Commercial General Liability Insurance covering all liabilities for personal injury and property damage arising in connection with the Work, with limits of liability of Five Million Dollars (\$5,000,000.00) per each occurrence and in the aggregate.

10.1.2.2 Workers Compensation Insurance in compliance with all applicable laws of each jurisdiction in which the Work will be performed.

10.1.2.3 Employers Liability Insurance covering all liabilities for personal injuries of the Contractor's employees, with limits of liability of Five Million Dollars (\$5,000,000.00) for each occurrence and in the aggregate.

10.1.2.4 If the Contract Documents require the Contractor to provide and/or the Contractor provides professional services, Professional Liability Insurance with limits of liability of Two Million Dollars (\$2,000,000.00) for each claim and in the aggregate with a retroactive or effective date not later than the effective date of the Contractor's Agreement and with a deductible or self-insured retention of not greater than One Hundred Thousand Dollars (\$100,000.00) per claim.

10.1.2.5 Automobile Liability Insurance, including coverages of owned, non-owned and hired vehicles covering all liabilities for personal injury and property damage arising from the use of motor vehicles, with combined single limits of liability of Two Million Dollars (\$2,000,000.00) for each occurrence and in the aggregate.

10.1.2.6 If the Contractor is unable to obtain the insurance required by this Section 10.1, Contractor may carry excess liability insurance and/or umbrella insurance that, when combined with Contractor's primary coverage in a given category of insurance, brings the total coverage in such category to be not less than the amount required by this Section 10.1 for that category of insurance.

10.1.3 ENDORSEMENTS. The Contractor shall provide the following coverage endorsements for each category of insurance required by this Section 10.1, except in the case of Workers' Compensation Insurance, Employers' Liability Insurance and Professional Liability Insurance:

10.1.3.1 An endorsement including DFCM as an additional insured;

10.1.3.2 An endorsement including a cross liability clause, noting that each of the parties comprising the insured shall be considered as a separate entity, the insurance applies as if a separate policy has been issued to each party, and no “insured-versus-insured” exclusion exists in the policy.

10.1.3.3 An endorsement waiving all expressed or implied rights of subrogation against DFCM and the State of Utah.

10.1.4 TERMS. Except as otherwise expressly provided in Section 10.1.2, the insurance of the Contractor required to be maintained pursuant to this Section 10.1 shall be on the following terms:

10.1.4.1 All insurance shall begin no later than the effective date of the Contractor’s Agreement and shall continue until the final completion of the Work and for a period of two (2) years following the final completion of the Work, provided, however, if the Contractor’s Agreement is terminated prior to the final completion of the Work, such insurance shall continue for a period of two (2) years following the termination of the Contractor’s Agreement.

10.1.4.2 Before performing any of the Work and after each time the policies are renewed or varied, the Contractor shall provide to DFCM certificates of insurance and endorsements consistent with this Section 10.1.4 and Sections 10.1.1, 10.1.2 and 10.1.3 of these General Conditions. If required by DFCM the Contractor shall deliver copies of the insurance policies providing the insurance coverages required by this Section 10.1, and all endorsements thereto.

10.1.4.3 All insurance shall not be varied to the detriment of DFCM, cancelled or allowed to lapse until thirty (30) days’ prior written notice has been given to DFCM.

10.1.5 FAILURE TO PROVIDE. Should the Contractor at any time neglect or refuse to provide the insurance required by this Section 10.1, or should such insurance be canceled, DFCM shall have the right, but not the obligation, to procure the same at the cost and expense of the Contractor, and the cost thereof may be deducted by DFCM from any monies then due or thereafter to become due to the Contractor. If DFCM or the other Indemnified Parties are damaged by the failure of the Contractor to purchase or maintain insurance as required by this Section 10.1, the Contractor shall bear all reasonable costs, expenses and damages incurred by DFCM and/or the other Indemnified Parties arising from such failure to purchase or maintain the insurance required by this Section 10.1.

10.1.6 CERTIFICATES. The acceptance of delivery of any Certificates of Insurance or copies of insurance policies required to be purchased and maintained pursuant to the Contract Documents does not constitute approval or agreement by the recipient that the insurance requirements have been met or that those Certificates of Insurance or insurance policies comply with the Contract Documents.

10.1.7 NO LIMITATION. The Contractor shall procure such insurance coverages and such insurance limits for its insurance coverages that the Contractor, in its sole discretion, after consultation with its insurance and risk advisors, determines to be sufficient for Contractor’s purposes given the risks of the project. This Section 10.1 sets forth DFCM’s minimum insurance requirements; the Contractor may procure additional or broader insurance coverages or greater insurance limits than required by Section 10.1 at Contractor’s expense. Nothing in Section 10.1 or elsewhere in the Contract Documents is intended to limit the Contractor’s liability to DFCM or the Indemnified Parties to liabilities covered by the insurance coverages required by Section 10.1 or to the minimum insurance limits required of such insurance coverages by Section 10.1.

10.2 “BUILDER’S RISK” INSURANCE.

10.2.1 IN GENERAL. Provided that the Contractor’s Agreement is for new buildings, structures, or construction projects, or for the alteration or repair of, or addition to existing buildings, structures, or improvements (an “Eligible Project”), DFCM shall maintain Builder’s Risk Insurance to protect the interest of the Contractor, Subcontractors, or Sub-subcontractors subject to all of the terms, conditions, limitations, exclusions, waivers and/or endorsements stated in the State of Utah Property Insurance Form available on DFCM’s website, dfcm.utah.gov. Builder’s Risk Insurance coverage will cover the full value of an Eligible Project on a replacement cost basis. Builder’s Risk Insurance coverage will commence on the date a Notice to Proceed is issued by DFCM for an Eligible Project and terminate upon Substantial Completion of the Eligible Project.

10.2.2 DEDUCTIBLE. To the extent that the Builder’s Risk Insurance provides for a deductible (including, without limitation, a specific loss deductible, cumulative loss deductible and/or sub-deductible), Contractor’s share of any such deductible shall be limited to \$5,000.00.

10.2.3 DUTIES IN THE EVENT OF LOSS. In the event of a covered Builder’s Risk Insurance loss on an Eligible Project, it will be the obligation of the Utah Division of Risk Management and/or the State of Utah’s property insurance carrier’s loss adjuster to inspect damages, determine the responsible parties and pursue insurance recovery as promptly as practicable so that Eligible Project damage can be repaired or replaced. Contractor shall fully cooperate with the Utah Division of Risk Management and/or the State of Utah’s insurance carrier’s loss adjuster in providing requested information with reasonable promptness. If Contractor does not cooperate as required by this Section, Contractor shall be responsible for payment of all or a portion of the Builder’s Risk Insurance loss pertaining to the unsubstantiated portion of the loss.

10.2.4 WAIVER OF SUBROGATION. DFCM and Contractor waive all rights against: (1) each other and the other Indemnified Parties and any of their subcontractors, sub-subcontractors, agents and employees, each of the other; and (2) the A/E, A/E’s consultants, separate contractors described in Section 2.2, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by Builder’s Risk Insurance obtained pursuant to Section 10.2.1 and maintained during the course of construction, but only to the extent of the actual recovery of insurance proceeds by the injured party, except such rights as they have to proceeds of such insurance held by DFCM as fiduciary. DFCM or Contractor, as appropriate, shall require of the A/E, A/E’s consultants, separate contractors described in Section 2.2, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The waiver of rights under this Section 10.2.4 shall not include: (1) subject to Section 10.2.2, the right to recover amounts deducted or excluded from the insurance proceeds in the form of deductibles paid by the injured party; and (2) claims arising out of design errors or omissions.

10.2.5 SPECIAL HAZARDS. If the Contractor’s Agreement is for an Eligible Project, but Contractor desires insurance coverage for risks other than those covered by the Builder’s Risk Insurance, the Contractor may obtain such insurance, however, the cost thereof shall be borne by the Contractor and shall not be included in the Contract Price.

10.2.6 NON-ELIGIBLE PROJECTS. If the Contractor’s Agreement is not for an Eligible Project, Contractor shall bear the risk of damage and/or loss to Contractor’s materials, equipment and other property, until acceptance of the Work by DFCM in writing, and no protection from damage and/or loss of the Work (including, without limitation, so called “builders risk”, “course of construction”, “inland marine” and/or

similar property insurance) will be provided by DFCM for the protection of Contractor. Contractor may obtain insurance to cover such risks, however, the cost thereof shall be borne by the Contractor and shall not be included in the Contract Price. Section 10.2.4 shall not apply to Non-Eligible Projects.

10.3 PERFORMANCE BOND AND PAYMENT BOND. The Contractor shall furnish a Performance and Payment Bond naming the Contractor as Principal and DFCM and DFCM's designees as Obligees written on AIA Document A312 (2010) Performance Bond and Labor and Material Payment Bond forms in a penal sum of not less than the Contract Price for the Work as the Contract Price may be modified by Change Order (the "Bonds"). The cost of the Bonds, without mark-up, may be included in the Contract Price. The Contractor shall deliver the Bonds to DFCM at least three (3) days before the commencement of any Work at the Work site. Delivery of the Bonds may be accomplished *via* email. The Bonds shall be procured from a surety authorized to do business in the State of Utah and rated A- or better by the A.M. Best Company at the time of issuance of the Bonds and holding Certificates of Authority as an acceptable surety on federal bonds as listed by the United States Department of Treasury (Circular 570, as amended) in its most recent list at the time of issuance of the Bonds. The penal sum of the Bonds shall be within the maximum specified for such surety in Circular 570, as amended. The attorney-in-fact who executes the Bonds on behalf of the surety shall affix to the Bonds a certified and current copy of his or her power of attorney. If the surety on any of the Bonds furnished by the Contractor is declared a bankrupt or becomes insolvent or its rights to do business are terminated in the State of Utah or it ceases to meet the requirements of this Section 10.3, the Contractor shall within ten (10) calendar days thereafter substitute another bond and surety, both of which must be acceptable to DFCM. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

11.1 A/E'S RESPONSIBILITIES. These General Conditions are not intended to provide an exhaustive or complete list of the A/E's responsibilities. A separate agreement between DFCM and the A/E incorporates these General Conditions by reference and includes additional design and contract administration responsibilities.

11.2 SUCCESSORS AND ASSIGNS. DFCM and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign Contractor's Agreement without the prior written consent of DFCM, nor shall Contractor assign any amount due or to become due or any of Contractor's rights under the Contract Documents, without prior written consent of DFCM.

11.3 WRITTEN NOTICE.

11.3.1 PERSONAL DELIVERY AND REGISTERED OR CERTIFIED MAIL. 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.

11.3.2 E-MAIL. Notwithstanding any other provision of these General Conditions, written notice shall also be deemed to have been duly served by verified use of an e-mail system by using the known and operative e-mail address of the intended recipient. Service by use of the e-mail system is encouraged when timely notice shall benefit DFCM, the A/E, or Contractor. Notice shall be considered complete and verified upon the sending and confirmation of delivery using the e-mail system, if on the same day notice is also sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice, confirming the e-mail delivery.

11.4 RIGHTS AND REMEDIES.

11.4.1 NOT LIMIT. Duties and obligations imposed by the Contract Documents 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.

11.4.2 NO WAIVER. Except as expressly provided elsewhere in the Contract Documents, no action or failure to act by DFCM, the A/E, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval or acquiescence in a breach thereunder, except as any of the above may be specifically agreed to in writing. In no case shall Contractor or any Subcontractors be entitled to rely upon any waiver of any of these General Conditions, unless agreed to in writing by DFCM.

11.5 NO DISCRIMINATION, NO SEXUAL HARASSMENT. Pursuant to the laws of the United States and the State of Utah, Contractor, Subcontractors, or anyone for whose act any of them may be liable, shall 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 shall 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.

11.6 APPLICABLE LAWS AND ENFORCEMENT. The Contract Documents shall be governed by and construed in accordance with the laws of the State of Utah, excluding any choice of law provisions that would otherwise require application of laws of any other jurisdiction.

11.7 INTERPRETATION. In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an”, but the fact that a modification or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

11.8 VENUE. In case of any dispute that may arise under the Contract Documents, the place of venue shall be in the County of Salt Lake, State of Utah, unless otherwise agreed to by all of the parties in writing.

11.9 SEVERABILITY. The invalidity of any provision or part of a provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of the Contract Documents.

11.10 CONSTRUCTION OF WORDS. Unless otherwise stated in the Contract Documents, 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.

11.11 NO THIRD-PARTY RIGHTS. These General Conditions create rights and duties only as between DFCM and Contractor, and DFCM and A/E. Nothing contained herein shall be deemed as creating third party beneficiary contract rights or other actionable rights or duties as between Contractor and A/E, or as between DFCM, Contractor, or A/E on the one hand, and any other person or entity.

ARTICLE 12. TERMINATION OR SUSPENSION OF THE CONTRACT.

12.1 TERMINATION BY CONTRACTOR FOR CAUSE.

12.1.1 IN GENERAL. If the Work is stopped for a period of sixty (60) days through no act or fault of the Contractor or a Subcontractor, or their agents or employees or any other persons performing portions of the Work under contract with any of the above, the Contractor may terminate the Contractor's Agreement in accordance with Section 12.1.2 for any of the following reasons:

12.1.1.1 Because DFCM has persistently failed to fulfill material obligations of DFCM under the Contract Documents with respect to matters important to the progress of the Work;

12.1.1.2 Issuance of an order of a court or other public authority having jurisdiction which necessitates such termination, except that where the Contractor has standing, the Contractor must cooperate in efforts to stay and/or appeal such order;

12.1.1.3 An act of government, such as a declaration of national emergency, making material unavailable; or

12.1.1.4 Unavoidable casualties or other similar causes.

12.1.2 NOTICE. If one of the reasons for termination in Section 12.1.1 exists, the Contractor may, upon fourteen (14) additional days' written notice to DFCM and A/E, and such condition giving cause for termination still not cured, terminate Contractor's Agreement and recover from DFCM payment for Work properly executed as of the date of termination, including profit and overhead on Work properly completed as of the date of termination, on a percentage completion basis, along with Contractor's reasonable demobilization expenses incurred within seven (7) days of termination, but Contractor shall in no event be entitled to recover consequential damages as a result of such termination or profit and/or overhead on the Work not executed.

12.2 TERMINATION BY DFCM FOR CAUSE.

12.2.1 IN GENERAL. DFCM may terminate the Contractor's Agreement if Contractor fails to cure any of the following within a period of seven (7) days (or longer if DFCM so approves in writing) after receipt of notice from DFCM specifying the breach or failure:

12.2.1.1 Contractor refuses or fails to supply enough properly skilled workers or proper materials;

12.2.1.2 Contractor fails to make payment to Subcontractors for materials, equipment, or labor;

12.2.1.3 Contractor disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;

12.2.1.4 Contractor fails to perform the Work such that the Work will be Substantially Completed within the Contract Time or Contractor fails to make progress with the Work as required by the Contract Documents;

12.2.1.5 Contractor fails to perform the Work in accordance with the Contract Documents or is otherwise in breach of a material provision of the Contract Documents;

12.2.1.6 As permissible by law for a reason to terminate, Contractor is adjudged bankrupt;

12.2.1.7 As permissible by law for a reason to terminate, Contractor should make a general assignment for the benefit of creditors;

12.2.1.8 As permissible by law for a reason to terminate, Contractor should have a receiver appointed on account of Contractor's insolvency; or

12.2.1.9 Contractor fails to follow safety requirements and precautions either as expressly provided in the Contract Documents or as consistent with the customary practices in the industry.

12.2.2 DFCM'S RIGHT TO CARRY OUT THE WORK UPON TERMINATION FOR CAUSE. If Contractor fails to remedy the breach or failure within seven (7) days or other mutually agreed period after notice from DFCM, DFCM may, without prejudice to other remedies available to DFCM and in addition to enforcement of any other of DFCM's rights, terminate the Contractor's Agreement, take possession of the Work site and all materials, finish the Work by whatever reasonable method DFCM may deem expedient, and charge Contractor, or file a claim against Contractor's bankruptcy estate, for any additional costs incurred by DFCM to complete the Work. Contractor shall not be entitled to receive any further payment until the Work is completed, nor shall Contractor be relieved from its obligations and liabilities assumed under the Contractor's Agreement. If DFCM's costs exceed the amount of any payment(s) owed by DFCM to Contractor subject to offset by DFCM, DFCM may bill Contractor for the difference, which Contractor shall pay within twenty-eight (28) days of receipt of DFCM's invoice.

12.2.3 ITEMS REQUIRED TO BE TRANSFERRED OR DELIVERED. DFCM may require Contractor to transfer title and deliver to DFCM, in the manner and to the extent directed by DFCM:

12.2.3.1 Any completed portion of the Work; and

12.2.3.2 Any partially completed portion of the Work and any parts, tools, dies, jigs, fixtures, drawings, information, and contract rights as Contractor has specifically produced or specifically acquired for the performance of such part of the Work as has been terminated; and Contractor shall, upon direction of DFCM, protect and preserve property in the possession of Contractor in which DFCM has an interest.

12.2.4 PAYMENT. When DFCM terminates Contractor's Agreement for one or more of the reasons stated in Section 12.2.1, DFCM may withhold payment and/or pursue all available remedies.

12.2.5 DFCM PROTECTION IF LIENABLE. When the Work is lienable, DFCM may withhold from amounts otherwise due Contractor for such Work such amount as DFCM determines to be necessary to protect the State against loss because of liens.

12.2.6 CREDITS AND DEFICITS. If the unpaid balance of the Contract Price exceeds the full cost of finishing the Work, including compensation for the A/E's services and expenses made necessary thereby, such excess shall be paid to Contractor. If such cost exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to DFCM and this obligation for payment shall survive the termination of Contractor's Agreement.

12.2.7 IF CONTRACTOR FOUND NOT IN DEFAULT OR EXCUSABLE. If, after notice of termination of Contractor's Agreement under the provisions of Section 12.2, it is determined for any reason that Contractor was not in default under the provisions of Section 12.2, or that the default was excusable under the provisions of Section 12.2, 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 of Section 12.3.

12.2.8 RIGHTS AND REMEDIES NOT EXCLUSIVE. The rights and remedies of DFCM provided in this Section 12.2 shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract Documents.

12.2.9 TIME PERIOD FOR CLAIMS. Any PRE by Contractor for adjustment under this Section 12.2 must be asserted by Contractor, in writing, within twenty-one (21) days from the date of termination; provided that DFCM may, in its sole discretion, receive and act upon any such PRE asserted at any time prior to final payment under Contractor's Agreement.

12.3 TERMINATION FOR CONVENIENCE OF DFCM.

12.3.1 IN GENERAL. The performance of Work under Contractor's Agreement may be terminated by DFCM in accordance with this Section 12.3 in whole or in part, or from time to time, whenever DFCM shall determine that such termination is in the best interest of DFCM or any person or entity for whom DFCM is acting under Contractor's Agreement. Any such termination shall be effectuated by delivery to Contractor of a notice of termination specifying the extent to which performance of Work is terminated and the date upon which such termination becomes effective.

12.3.2 CONTRACTOR OBLIGATIONS. After receipt of a notice of termination, and except as otherwise directed by DFCM in writing, the Contractor shall:

12.3.2.1 Stop Work under Contractor's Agreement on the date and to the extent specified in the notice of termination;

12.3.2.2 Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work that is not terminated;

12.3.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Work terminated by the notice of termination;

12.3.2.4 Assign to DFCM in the manner, at the times, and to the extent directed by DFCM, all of the right, title, and interest of Contractor under the orders and subcontracts so terminated, in which case DFCM shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

12.3.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DFCM, which approval or ratification shall be final for all the purposes of this Section 12.3;

12.3.2.6 Transfer title and deliver to DFCM in the manner, at the times, and to the extent, if any, directed by DFCM:

12.3.2.6.1 The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of the Work terminated by the notice of termination; and

12.3.2.6.2 The completed or partially completed drawings, information, and other property which, if Contractor's Agreement had been completed, would have been required to be furnished to DFCM;

12.3.2.7 Use best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by DFCM, any property of the types referred to in Section 12.3.2.6; provided, however, that Contractor:

12.3.2.7.1 Shall not be required to extend credit to any purchaser; and

12.3.2.7.2 Shall dispose of any such property under the conditions prescribed by and at a price or prices approved by DFCM; and provided further that the proceeds of any such transfer of or disposition shall be applied in reduction of any payments to be made by DFCM to Contractor under Contractor's Agreement or shall otherwise be credited against the Contract Price or paid in such other manner as DFCM may direct;

12.3.2.8 Complete performance of such part of the Work as shall not have been terminated by the notice of termination; and

12.3.2.9 Take such action as may be necessary, or as DFCM may direct, for the protection and preservation of the property related to Contractor's Agreement which is in the possession of Contractor in which the State of Utah has or may acquire an interest.

12.3.3 TERMINATION CLAIM. After receipt of a notice of termination, Contractor may submit to DFCM a PRE, in the form and with certification prescribed by DFCM. Such PRE shall be submitted promptly but in no event not later than twenty-one (21) days from the effective date of termination.

12.3.4 AGREED UPON PAYMENT. Subject to the provisions of Section 12.3.3 above, Contractor and DFCM may agree upon the amount to be paid to Contractor by reason of the total or partial termination of Work pursuant to this Section 12.3.

12.3.5 PAYMENT NOT AGREED UPON. In the event Contractor and DFCM fail to agree as provided in Section 12.3.4 upon the whole amount to be paid to Contractor by reason of the termination of Work pursuant to this Section 12.3, DFCM shall pay to the Contractor the amounts determined by DFCM as follows, but without duplication of any amounts agreed upon in accordance with Section 12.3.4:

12.3.5.1 With respect to all Work performed prior to effective date of termination, the total (without duplication of any items) of:

12.3.5.1.1 The cost of such Work including undisputed Claim amounts;

12.3.5.1.2 The cost of terminating, settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in Section 12.3.2.5, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Subcontractors prior to the effective date of termination under Contractor's Agreement, which amounts shall be included in the cost on account of which payment is made under Section 12.3.5.1.1;

12.3.5.1.3 An amount, as overhead and profit on Section 12.3.5.1.1 above, determined by DFCM to be fair and reasonable;

12.3.5.1.4 The reasonable cost of the preservation and protection of property incurred pursuant to Section 12.3.2.9; and any other reasonable cost incidental to termination of Work, including expenses incidental to the determination of the amount due to Contractor as the result of the termination of Work.

12.3.5.1.5 The total amount to be paid to Contractor under Section 12.3.5.1 above shall not exceed the Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Except for normal spoilage, and except to the extent that DFCM shall have otherwise expressly assumed the risk of loss in writing, there shall be excluded from the amounts payable to Contractor under Section 12.3.5.1 above, the fair value of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to DFCM, or to a buyer pursuant to Section 12.3.2.7.

12.3.6 DEDUCTIONS. In arriving at the amount due Contractor under this Section 12.3, there shall be deducted:

12.3.6.1 All unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of Contractor's Agreement;

12.3.6.2 Any Claim which DFCM and/or the State of Utah may have against Contractor in connection with Contractor's Agreement; and

12.3.6.3 The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by Contractor or sold, pursuant to the provisions of this Section 12.3, and not otherwise recovered by or credited to DFCM.

12.3.7 PARTIAL TERMINATION. If the termination is partial, Contractor may file with DFCM a PRE for the amounts specified in Contractor's Agreement relating to the continued portion of Contractor's Agreement and such equitable adjustment as may be agreed upon shall be made in such amounts. Any PRE under this Section 12.3.7 must be filed within twenty-one (21) days from the effective date of the partial termination.

12.3.8 PARTIAL PAYMENTS. DFCM may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by Contractor in connection with the terminated portion of Contractor's Agreement whenever, in the opinion of DFCM, the aggregate of such payments shall be within the amount to which Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 12.3, such excess shall be payable by Contractor to DFCM upon demand, together with interest at a rate stated in Utah Code § 15-1-1, for the period until the date such excess is repaid to DFCM; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until fourteen (14) days after the date of such retention or disposition, or such later date as determined by DFCM by reason of the circumstances.

12.3.9 PRESERVE AND MAKE AVAILABLE RECORDS. Unless otherwise provided for in Contractor's Agreement, or by applicable law, Contractor shall, from the effective date of termination until the expiration of three years after final settlement under Contractor's Agreement, preserve and make available to DFCM at all reasonable times at the office of Contractor, but without charge to DFCM, all books, records, documents, and other evidence bearing on the costs and expenses of Contractor under Contractor's Agreement and relating to the Work terminated hereunder, or, to the extent approved by DFCM, photographs, or other authentic reproductions thereof.

12.3.10 SUSPENSION, DELAY OR INTERRUPTION OF WORK BY DFCM FOR CONVENIENCE. DFCM may in writing and without cause, order Contractor to suspend, delay, or interrupt the Work, in whole or in part, for such period of time as DFCM may determine to be appropriate for the convenience of DFCM.

12.4 DFCM'S RIGHT TO STOP THE WORK. If Contractor fails to correct Work or fails to carry out Work as required by the Contract Documents or fails to comply with all required and customary safety precautions; DFCM, in writing, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of DFCM to stop the Work shall not give rise to a duty on the part of DFCM to exercise this right for the benefit of Contractor or any other person or entity.

Attachment C – Pricing Catalog

Please download and save before expiration date:5/15/2022

Contact the Gordian Group Mark Bagley at 801-372-3120 or m.bagley@gordian.com for the pricing catalog after this date.

FILES WILL NOT BE ACCESSIBLE AFTER THIS DATE

Area 1

Distribution: <https://fortive.box.com/s/5wwunsdqf46ir9dcrx892nf4is5b1t5i>

Area 2

Distribution: <https://fortive.box.com/s/485yfcsykvclfx4ywh9ytr7e1sxnwtto>

Area 3

Distribution: <https://fortive.box.com/s/h96bzutw5h27l5x3ps73ng6cdok3bd8d>

Area 4

Distribution: <https://fortive.box.com/s/rd5rqvuz1nkeicqvv07r8pe6nj47f56e>

Area 5

Distribution: <https://fortive.box.com/s/1kmsif87udcsabmwn1xcxaei6k9u8ijb>

Area 6

Distribution: <https://fortive.box.com/s/rbk5s0ddhfgb0ifcp5thlnuu49mqj1d0>

Technical Specifications

Distribution: <https://fortive.box.com/s/8gmgujx2ela31vpqf5os9shl4jbzaxiy>



The State of Utah

Division of Purchasing & General Services

JOB ORDER CONTRACTING

Scope of Work

Section 1: Overview

- A. This is a Contract to provide the eligible entities ("hereinafter call AGENCY") with the goods and/or services described in the Contract Documents.
- B. Individual Contractors or alliances between two or more Contractors are allowed in this process to form a team. However, one Contractor or firm MUST be declared as the lead firm representing the team. If the team is a successful Contractor through this contract

process, the State will only enter into contracts with the lead Contractor or firm. The lead Contractor or firm must be licensed by the State of Utah and comply with and require all of its subcontractors to comply with the license laws and any other requirements as required by the State of Utah. The awarded contractor is responsible to ensure compliance of all requirements of the contract and resulting contract requirements by any and all subcontractors and any other alliances formed to carry out the scope of work and requirements of this contract.

- C. This is an indefinite quantity contract under which the Contractor will perform an ongoing series of individual Projects at different locations as requested on an as needed basis. For each Project the AGENCY will prepare a Detailed Scope of Work in conjunction with the Contractor. The Contractor will price the Detailed Scope of Work utilizing the Construction Task Catalog® (CTC) with preset unit prices. The price of the Work will be determined by multiplying the units of measure for each work task times the preset unit price times an Adjustment Factor. If the price is approved by the AGENCY, the AGENCY may issue a Lump Sum Purchase Order for completion of the Detailed Scope of Work, or for projects over 45 days, Agencies may have a payment schedule based on completion percentage as spelled out in the purchase order.
- D. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, the Job Order Price and other Job Order specific requirements. The Job Order Price is determined by multiplying the preset unit prices by the appropriate quantities and by the appropriate Adjustment Factor. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work. A separate Job Order will be issued for each project. Extra work, credits, and deletions will be processed in Supplemental Job Orders.
- E. This Contract may be used to perform any Work on facilities or properties under the jurisdiction of the AGENCY including, but not limited to, interior and exterior building renovations and repairs, site work, electrical, plumbing, HVAC, concrete, masonry, maintenance of bridges, roofing replacement and/or repairs, and streetscape repairs, demolition, asbestos abatement. The performance time, timeline, or other project completion plans for each Job Order issued under this contract will be determined by the Agency and the Contractor and will be stated in the Purchase Order.
- F. Contractors shall have the capability and capacity to quickly respond to service requirements for the entire region for which they have been awarded. Contractors shall not be permitted to refuse work or refuse to provide services to any of the qualifying agencies in the geographic area of award.
- G. Any Job Order with a purchase order in place but not fully completed prior to the expiration of the contract will be completed with all the provisions of the Contract still in force.
- H. Project Value Limits: AGENCIES may use this Contract in compliance with their own policies, ordinances, laws, or other limitations. As a general rule, at the time of the contract publication, the following project value limits are believed to be current limitations. These project value limits may change at any time and must be reviewed prior to Job Order contract to ensure that agencies are meeting all requirements and limitations imposed by their governing law, policies, or other ordinances. The total project cap for any JOC project is \$1,000,000, or as designated below.

AGENCY	MAXIMUM PROJECT VALUE
State Agencies and Institutions of Higher Education	\$100,000 or DFCM Delegation limit with MOU
Institutions of Higher Education with DFCM Delegation Greater Than \$100,000	DFCM Delegation limit with MOU

UDOT	\$350,000
DFCM Managed Projects	\$2,500,000
Cities, Counties and School Districts	As Determined by Their Procurement Regulations or Ordinances

Section 2: General Conditions

The DFCM General Conditions and Supplemental General Conditions apply to this contract and are included as an attachment and will be included in the Contract Documents. This section contains clarifications to the DFCM General Conditions as applicable to this Contract.

NOTE: The **supplemental general conditions** relate to health insurance, construction agreements drug and alcohol testing, and illegal immigration. These supplemental general conditions can be found at the DFCM website.

- A. **DFCM Article 1.1 - Basic Definitions – Contract Documents:** The Contract Documents will consist of the following:
- (1) A Contract Modification
 - (2) Attachments to the Contractor's Agreement resulting from information contained in awarded contractors offer.
 - (3) A particular Contract Addendum. Subsequent Addenda shall govern over all prior Addenda.
 - (4) The Contract Agreement
 - (5) The Job Order
 - (6) JOC General Conditions Clarifications, Definitions and Ordering Procedures
 - (7) DFCM General Conditions
 - (8) The Construction Task Catalog
 - (9) The Technical Specifications
 - (10) Instructions to Bidders
 - (11) In case of a conflict or ambiguity within the same level of hierarchy of described documents, AGENCY reserves the right to select the most stringent requirement unless the preponderance of the Contract indicates the less stringent requirement.
- B. **DFCM Article 1.1 – Basic Definitions - Contract Sum:** There is no minimum or maximum Contract Sum. The Job Order Price will be determined for individual Job Orders in accordance to the Procedure for Ordering Work below.
- C. **DFCM Article 1.1 – Basic Definitions – Contract Time:** The Contract Time is for a base period of twelve (12) months with four (4) additional twelve (12) month option periods. The Job Order time will be determined for each individual Job Order.
- D. **DFCM Article 3.1 – A/E's Administration of the Contract:** The Contract will be administered by State Purchasing and individual Job Orders will be administered by the AGENCY. It will be each AGENCY'S responsibility to define the Detail Scope of Work for a Job Order. If the AGENCY determines that architectural and engineering services are required to adequately describe the Detail Scope of Work that AGENCY will contract for such services either through external contracts or through the ezIQC contract.
- E. **DFCM Article 4.1.1 - Review of Contract Documents and Field Conditions by Contractor and Article 4.1.2 – Field Conditions:** When notified by the Agency of a Project, the Contractor shall participate in a Joint Scope Meeting with the AGENCY to walk the project site and finalize

the Project's Detailed Scope of Work. The Contractor and the AGENCY shall agree on the Detailed Scope of Work.

- F. **DFCM Article 4.5.1 - Permits and Fees:** If the Contractor is required to secure and pay for plan review fee, the building permit or other permits, licenses and inspections necessary for the proper execution and completion of a Job Order. The direct cost of such fees or permits, if any, paid to any public authority, shall be reimbursed to the Contractor without mark-up in the Price Proposal.
- G. **DFCM Article 4.7.1 (1) - Completion within the Contract Time:** Contract time means the time established for the completion of individual Job Orders. Schedule means the schedule for individual Job Orders.
- H. **DFCM Article 4.7.2 – Schedule Preparation:** Schedule means the approved schedule for an individual Job Order
 - (1) The level of detail and maintenance of the progress schedule will depend on the complexity and duration of the Job Order. It is expected that the duration of most of the Job Orders will be less than four months and not be complex and therefore a bar chart schedule is adequate. The AGENCY shall specify in the Job Order if the schedule shall be a "Bar Chart Schedule" or a "Critical Path Schedule (CPM)."
 - (2) The Contractor will prepare and submit with the Price Proposal for the AGENCY's information an estimated progress schedule. The scheduled completion date or duration will be so indicated in the Job Order. The schedule will be updated and submitted at the pre-construction meeting. The schedule will show the order in which the Contractor proposes to carry on the work, the date on which it will start the major features (including procurement of materials, plant and equipment) and the contemplated dates for completing same. The schedule shall be of suitable scale to indicate approximately the percentage of work scheduled for completion at any time. The Contractor shall submit with its progress payment a schedule to include the actual progress; a listing and explanation of any occurrences which will effect a major deviation in the progress schedule; and, a revised, updated, schedule. If the Contractor fails to submit the information required by this Article, the AGENCY shall have the right to withhold payments due the Contractor until such time as the information is submitted.
- I. **DFCM Article 4.7.16 - Liquidated Damages:** The AGENCY shall determine for each Job Order if liquidated damages will apply and the amount.
- J. **DFCM Article 7.1– Modifications: In General:** The AGENCY may, without invalidating the Job Order, order changes to a Project's Detailed Scope of Work. Change Orders are executed by the issuance of a Supplemental Job Order as determined by Article 5.2 – Procedure for Ordering Work, herein.
- K. **DFCM Article 7.1.4 Adjusting Unit Prices:** Unit prices established in the Construction Task Catalog are fixed for the duration of the Contract.
- L. **DFCM Article 8 – Payments and Completion:**
 - (1) The AGENCY will make one payment for all Job Orders that have a Job Order Completion Time of 30 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the AGENCY may make partial, monthly payments based on a percentage of the work completed.
 - (2) Before submitting an Application for Payment (Final or Partial) the Contractor shall reach an agreement with the Project Manager concerning the percentage complete

of the Detailed Scope of Work and the dollar value for which the Application for Payment may be submitted.

- (3) The AGENCY does not intend to hold Retainage from payment applications up to Substantial Completion of the project. However, if during the course of the Job Order the Contractor fails to perform in accordance with the Job Order, Supplemental Job Orders and/or Contract Documents the AGENCY may retain moneys on progress payments at five percent (5%) of the approved application for payment amount. Payment at Substantial Completion and Final Payment is as detailed in DFCM General Conditions Article 8.6 and 8.8.
- M. **DFCM Article 10.1 – Liability Insurance:** Before an AGENCY will issue a Purchase Order to the Contractor, the Contractor shall deliver certificates of insurance evidencing the required insurance, the AGENCY shall be named as an Additional Insured as its interest may appear on the appropriate coverage in sections A, B, C - Employers' Liability and D. in the section reserved for comments on the ACORD Form insurance certificate.
- N. **DFCM Article 10.3: Performance Bond and Payment Bond:** For each Job Order the AGENCY shall determine the types and amount, if any, of bonds to be secured by the Contractor prior to the commencement of the Job Order. The Contractor shall submit and maintain in full force and effect as required by law and the Contract Documents, on forms provided by the AGENCY, the bonds required. Said bonds shall be from surety companies which are authorized to do business in the State of Utah, listed in the U. S. Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies, and acting within the limitation listed therein. Other forms of security (i.e. letters of credit, cashier's check, etc.) are not acceptable forms of security.

Section 3: Job Order Contracting Definitions

- A. **ADJUSTMENT FACTOR.** "Adjustment Factor" is the Contractor's competitively bid price adjustment to the unit prices as published in the Construction Task Catalog®, Book 4. Adjustment Factors are expressed as an increase or decrease from the published prices.
- B. **CONSTRUCTION TASK CATALOG®, or "CTC".** "Construction Task Catalog®, Book 4" or "CTC" is a comprehensive listing of construction and construction related work tasks including a unit of measurement and fixed unit pricing.
- C. **DETAILED SCOPE OF WORK.** "Detailed Scope of Work" means the documented description of services, agreed to by both the Contractor and the AGENCY, to be provided to the Contractor in connection with a Project. The level of documentation of the Detailed Scope of Work will depend on the complexity of the Project and may include: detailed drawings and project specifications prepared by an A/E on behalf of an AGENCY, approved by AGENCY and, when required by law, stamped and sealed as required by law; for some Job Orders there will be no drawings prepared by an A/E, in which case the AGENCY will deliver to Contractor a Detailed Scope of Work that may reference drawings, any special conditions that might apply to the Project and/or include a written description of the work.
- D. **JOB ORDER.** "Job Order" means the documents to include but not limited to: Purchase Order, Detailed Scope of Work, Approved Price Proposal, List of Subcontractors and Project Schedule and any special conditions that might apply to the Project such as bonding requirements, wage rates, special insurance requirements and access and security issues.
- E. **JOB ORDER COMPLETION DATE.** 'Job Order Completion Date' is the date on which the Contractor must achieve Substantial Completion. The Job Order Completion Date will be determined based on the time for completion of the Work stated in the Job Order adjusted by any Supplemental Job Orders that extend or reduce the time for completion of the Work.

- F. **JOB ORDER COMPLETION TIME.** "Job Order Completion Time" is the duration for which the Contractor must achieve Substantial Completion on a Job Order. The Job Order Completion Time will be stated in the Job Order and adjusted by any Supplemental Job Orders that extend or reduce the time for completion of the Work. The Job Order Completion Time will be the number of calendar days from the day the Job Order is issued or date of the Notice to Proceed whichever is the latter until Substantial Completion.
- G. **JOB ORDER PRICE.** "Job Order Price" means the approved amount of the Price Proposal.
- H. **JOB ORDER PRICE PROPOSAL.** "Job Order Price Proposal (aka Price Proposal)" means the document prepared by the Contractor in response to the AGENCY'S Request for Proposal requesting that a price proposal be prepared utilizing the CTC. The price quoted for the work represents a fixed lump sum price for the Detailed Scope of Work. Documentation such as drawings, material cut sheets, preliminary construction schedules and back-up for Non Pre-priced work shall accompany the Price Proposal.
- I. **JOINT SCOPE MEETING.** "Joint Scope Meeting" means the on-site meeting between the Contractor and the AGENCY and such third parties as deemed appropriate by the AGENCY for the purposes of discussing and further defining the Detailed Scope of Work.
- J. **NON PRE-PRICED WORK.** "Non Pre-Priced Work" means those work tasks that are not included in the CTC but are within the general scope and intent of this Contract.
- K. **NORMAL WORKING HOURS.** "Normal Working Hours" means an eight-hour period between the hours of 6:00 AM to 6:00 PM. except for Saturdays, Sundays, and the legal holidays observed by the AGENCIES.
- L. **OTHER THAN NORMAL WORKING HOURS.** "Other than Normal Working Hours" means Work done between the hours of 6:00 PM to 6:00 AM., weekdays and any times during Saturday, Sunday, and the legal holidays observed by the AGENCIES.
- M. **PURCHASE ORDER.** "Purchase Order" means the document issued by the AGENCY authorizing the Job Order.
- N. **REQUEST FOR PROPOSAL.** 'Request for Proposal (RFP)' means the formal request by the AGENCY for the Contractor to prepare a Price Proposal and other documentation as specified in the RFP. Upon completion of the Joint Scope Meeting and the Detailed Scope of Work, the AGENCY will issue a RFP which requires that the Contractor prepare a Price Proposal for the Work under consideration by the date so noted on the RFP.
- O. **SUPPLEMENTAL JOB ORDER.** "Supplemental Job Order" means an order signed by the AGENCY which modifies the Project's Detailed Scope of Work, the Job Order Completion Date, the Job Order Price and or the Job Order Substantial Completion Date.
- P. **UNIT PRICE.** "Unit Price" as used herein, refers to the price published in the CTC for a specific construction or construction related work task. The Unit Prices are fixed for the duration of the Contract. Each Unit Price is comprised of the labor, equipment and material costs to accomplish that specific task.


Section 4: Ordering Procedures

The following clarifications and modifications apply to the General, Supplemental and Special Conditions:

Whenever the term "Contract" is used to describe the Work associated with an individual project, the term "Contract" shall be replaced with "Job Order".

Whenever the term "Contract Time" is used to describe the duration associated with an individual project, the term "Contract Time" shall be replaced with "Job Order Completion Time".

Whenever the term "Contract Sum or Price" is used to describe the value associated with an individual project, the term "Contract Sum or Price" shall be replaced with "Job Order Price".



The Job Order Price shall set forth the fixed price, lump sum amount for which the Contractor is paid to complete the Detailed Scope of Work. Unless specifically stated for a Job Order, estimated quantities, lists of materials and bid prices shall not apply, the descriptions as related to costs and payment shall not apply, and the payment sections within the individual sections shall not apply.

All references to “Bid Items” shall be interpreted to mean Work tasks necessary to complete the Detailed Scope of Work.

All references to “change order work”, “extra work”, “force account work”, and any other descriptions to changes to the Detailed Scope of Work shall be interpreted to mean work described in a Detailed Scope of Work of a Supplemental Job Order.

The Construction Task Catalog® shall govern the work included in the Unit Price of a Pre-Priced Task.

A. CONTRACTOR SERVICES.

General: The Contractor shall provide all pricing, management, incidental sketches, shop drawings, samples, permits, bonds, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete the Job Order. The Contractor shall provide quality assurance as specified in strict accordance with the Contract Documents. The Contractor shall also be responsible for site safety as well as site preparation and cleanup during and after construction. The AGENCY makes no commitment as to the award of individual Job Orders. All costs associated with the above scope of work and the preparation of Price Proposals shall be the responsibility of the Contractor. The assignment of work for multiple awarded contracts by region will be at the discretion of the Agency based on contractor’s work capacity, qualifications and expertise of the contractor, total project cost, or other factors as determined by the Agency.

Design Professional Services – Fees Less Than \$10,000: If the estimated fees for design professional services are \$10,000 or less, as part of the Job Order, the AGENCY may request that the Contractor retain professional design professional services in order to identify the Scope of Work and project design. The Contractor shall provide to the AGENCY, in the Contractor’s scope of work, a breakout of the design professional services and fees. The Contractor shall be compensated for the design professional services fees through the Reimbursable Fee work task in the Construction Task Catalog®. The quantity for the Reimbursable Fee work task shall be equal to the amount of the design professional’s fee.

The Contractor shall submit the name of the design professional firm within 7 days of receiving the AGENCY’s request that the contractor include design professional services. Prior to preparing a design, the Contractor shall submit to the AGENCY a copy of the design professional’s invoice as the back-up for payment of design professional services. The cost for managing the design professional firm is considered to be incidental. Therefore, the Contractor shall apply a 1.0000 to the Reimbursable Fee work task rather than applying the Contractor’s competitively bid Adjustment Factor. The design shall conform to the AGENCY’S Design Standards.

Design Professional Services – Fees Over \$10,000: If the estimated fees for Design Professional Services exceed \$10,000, the AGENCY shall obtain Design Professional Services in accordance with Administrative Rule R33-5-105 (Small Purchases Threshold for Design Professional Services) or Utah Procurement Code 63G-6a, Part 15. If agreed to by the Contractor, the Agency may request that the Contractor assist the Agency in evaluating the qualifications of design professionals for the project being considered.

Standards: All Work shall conform to and comply with any applicable standards, including those specified in the following documents, regardless of whether an individual Job Order makes reference thereto, except that, if the Job Order specifies a standard which is inconsistent, the standard used in the Job Order shall control:

Job Order Contract Technical Specifications

The Technical Specifications are numbered and organized in the Construction Specification Institute's (CSI) 2016 master format.

The intent of these specifications is to furnish concise industry and commercial standards for construction, maintenance or repair of AGENCY facilities.

The Utah Department of Highways, Standard Specifications, latest version.

Wherever a material, article or piece of equipment is identified on the Detailed Scope of Work or in the Technical Specifications by reference to manufacturer's or vendor's name, trade names, catalog numbers, or the like, it is so identified for the purpose of establishing a standard, and any materials, article, or piece of equipment of other manufacture's or vendors which will perform adequately within the duties imposed by the general design will be considered provided the material, article, or piece of equipment so proposed is, in the opinion of the AGENCY, of equal substance, appearance, and function, and that all technical data for the proposed substitution is submitted to the AGENCY for approval in accordance with the requirements of the Contract Documents.

Bid Bond and Performance and Payment Bond: The AGENCY may require the Contractor to furnish bonds for individual Job Orders in a form acceptable to the AGENCY covering the faithful performance of a Job Order and payment of all obligations arising thereunder. The executed bonds, together with the bonding agent's power of attorney, shall be furnished to the AGENCY. The Contractor shall be compensated for the actual cost of the bonds up to 2% of the Job Order Price through the Reimbursable Fee work task in the Construction Task Catalog®. The Contractor shall apply a 1.0000 to the Reimbursable Fee work task rather than applying the Contractor's competitively bid Adjustment Factor.

Permits: The Contractor shall secure and pay for all necessary permits, licenses and inspections necessary for the proper execution and completion of the Work. The Contractor shall be compensated for the actual cost of the permits through the Reimbursable Fee work task in the Construction Task Catalog®. The Contractor shall apply a 1.0000 to the Reimbursable Fee work task rather than applying the Contractor's competitively bid Adjustment Factor. State agencies and Higher Ed refer to Attachment H DFCM Checklist for Agencies.

B. EMERGENCY JOB ORDERS.

In the event that an "immediate emergency response" is necessary, the AGENCY may elect to use an alternative procedure for emergency Job Orders as long as the alternative procedure is not substantially more burdensome to the Contractor than the procedure for ordering work as described in this section.

An emergency Job Order is defined by the need for immediate procurement of construction services to resolve any safety issues, prevent or mitigate the loss or impairment of life, health, property or essential service. The AGENCY may require the Contractor to begin Work immediately for an emergency Job Order.

C. COMPUTER EQUIPMENT.

The Contractor is required to have its own computer system which is to have the minimum capabilities as described below. The JOC software program provided to the Contractor for generation of the Contractor's Price Proposal shall be run on the Contractor's computer. Note: It is essential that the Contractor have dedicated industry accepted high speed internet connection for all computers from which Price Proposals will be prepared. The Contractor's Computer will have a minimum 1 GHz processor. Each of the Contractor's project managers shall have individual email accounts.

D. FURNISHED SOFTWARE.

The software will be provided to the Contractor for use as a tool to assist with expedient preparation of Price Proposals in response to the AGENCY's needs. This software will contain an electronic version (copy) of the CTC which the Contractor will use to prepare and submit Price Proposals. The software may also be used to prepare and submit subcontractor information.

E. SOFTWARE LICENSING.

The Contractor will be provided access to a Job Order Contracting information management system licensed to the State of Utah, Division of Purchasing and General Services by The Gordian Group, Inc. ("Gordian"). The system includes Gordian's proprietary software, such as eGordian®, a Job Order Contracting management tool that expedites the ordering and execution of work. The Contractor shall use the JOC Software (eGordian®) to prepare and submit Price Proposals, subcontractor lists, and other requirements as determined by the State of Utah, Division of Purchasing and General Services. The system also contains an electronic version of the Construction Task Catalog® which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by the Owner Use, in whole or in part, of Gordian JOC proprietary software such as eGordian®, the Construction Task Catalog®, or any other Proprietary Information provided under the JOC System License specified below for any purpose other than to order and execute work under this Contract is prohibited, unless otherwise stated in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following Job Order Contracting System License:

F. JOB ORDER CONTRACTING SYSTEM LICENSE.

Gordian, through its agreement with the State of Utah, Division of Purchasing and General Services, grants to Contractor, and Contractor hereby accepts from Gordian for the term of this Contract, a non-exclusive right, privilege, and license to utilize Gordian's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing Contractor's responsibilities to the AGENCIES under this Contract. The Contractor hereby agrees that Gordian's Proprietary Information shall include, but is not limited to, the eGordian® software and documentation, the Construction Task Catalog®, Training Manuals, additional training materials, and other proprietary materials provided to the Contractor by the State of Utah Division of Purchasing and General Services or Gordian. In the event that this Contract expires or terminates as provided herein, this Job Order Contracting System License shall terminate and the Contractor shall return all Proprietary Information in its possession to Gordian.

The Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of Gordian. The Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and shall at all times maintain complete confidentiality with regard to the Proprietary Information provided to the Contractor, subject to federal, state, and local laws related to public records disclosure.

In the event of a conflict in terms and conditions between this Job Order Contracting System License and any other terms and conditions of this Contract or any purchase order or similar purchasing document issued under this Contract, this Job Order Contracting System License shall take precedence.

G. PROCEDURE FOR ORDERING WORK.

NOTIFICATION OF SCOPE MEETING.

The AGENCY will notify the Contractor if and when the AGENCY desires construction work to be performed under the terms of the Contract. The AGENCY may verbally notify the Contractor of the place and time of the Joint Scope Meeting which typically will be scheduled to occur no less than 24 hours after the notification of the Joint Scope Meeting. At such time that the notification is given, the

AGENCY may provide existing drawings, work descriptions or other information that may be beneficial to the Contractor.

JOINT SCOPE MEETING.

The Contractor's personnel responsible for preparing the Price Proposal and Job Order Proposal Package will visit the proposed Work site in the company of the AGENCY and participate in a Joint Scope Meeting. The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

- the project number and title
- the general scope of the work;
- alternatives for performing the work and value engineering;
- access to the site and protocol for admission;
- hours of operation;
- staging area;
- requirements for bonding, catalog cuts, technical data, samples and shop drawings;
- requirements for professional services, sketches, drawings, and specifications;
- construction duration;
- if liquidated damages will apply and the amount;
- the presence of hazardous materials;
- date on which the Price Proposal is due

DETAILED SCOPE OF WORK.

After the joint scoping of the Work site, the Contractor and the AGENCY's Representative will agree on a Detailed Scope of Work. The Detailed Scope of Work, unless modified by the AGENCY, will be the basis on which the Contractor will develop its Price Proposal and the basis on which the AGENCY will evaluate the Contractor's Price Proposal. Upon completion of the joint scoping process, the AGENCY will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the AGENCY will issue a Request for Proposal that will require the Contractor to prepare a Price Proposal. The Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

ISSUANCE OF THE REQUEST FOR PROPOSAL.

After the Scope of Work has been finalized, the AGENCY may issue a Request for Proposal (RFP) to the Contractor. The RFP requires that the Contractor prepare a Price Proposal for the Work under consideration and will include the Detailed Scope of Work. It is the Contractor's responsibility to select the appropriate tasks from the CTC, to apply the appropriate adjustment factor to the individual work tasks and to submit the Price Proposal by the due date indicated on the RFP.

PREPARATION OF THE PRICE PROPOSAL.

The Contractor will prepare the Price Proposal in accordance with the following:

Pre-Priced Work Requirements: Pre-priced Work requirements will identify the type and number of Work units required from the CTC to perform the Scope of Work. The Unit Price set forth in the CTC shall serve as the base price for the purpose of this provision. If the Scope of Work calls for AGENCY furnished material to be installed by the Contractor, the Contractor shall, using PROGEN®, remove the material component of a given work task. All items in a Price Proposal, where feasible, shall carry a user note, entered in PROGEN® by the Contractor, as to the intended use of the task as it relates to the Scope of Work. Dividing the Price Proposal into categories may also be required by the AGENCY to further clarify the Work, for the purpose of reducing the Scope of Work expeditiously.

or for the purpose of establishing a Schedule of Values for payment. Dividing the Price Proposal into categories shall not alleviate the Contractor of providing quantity discounts on a per project basis.

Incidental Work: Even if not specifically stated in the Scope of Work, a Job Order includes all construction services as necessary to perform the Work covered by the Scope of Work. For example: A statement of Work may be "Install Pipe Underdrains." It is the Contractor's responsibility to detail and price the work tasks required to accomplish the Scope of Work such as the excavation and proper disposal of unsuitable material, the installation of the pipe, the fabric envelope, fittings, cleanouts, bedding aggregate and porous granular backfill. It is the responsibility of the Contractor, in preparation of its Price Proposal, to select the proper items from the CTC related the Scope of Work, even if items required for the completion of the Work are not specifically identified in the Scope of Work. Extra payment requested by the Contractor based on the contention that the Job Order or Scope of Work failed to itemize work tasks which are considered required of common construction practices will not be permitted.

Non Pre-Priced Work Requirements: It may be necessary to include in the Contractor's Price Proposal work tasks that are not included in the CTC. These tasks are considered Non Pre-Priced work tasks and the following applies:

Non Pre-Priced Work shall be separately identified in the Price Proposal.

If the Contractor will perform the work with its own forces, it shall submit a breakdown of the cost of labor equipment and material/equipment installed.

The number of hours for each labor classification up through the foreman level and hourly rates for each classification shall be shown.

Equipment costs (other than small tools) will be determined according to the "CONTRACTORS' EQUIPMENT OWNERSHIP EXPENSE" of the Associated General Contractors of America shall be used.

The Contractor shall submit three independent quotes for all material/equipment to be installed.

If the Work is to be subcontracted, the Contractor must submit three independent bids from subcontractors. If three quotes or bids cannot be obtained, the Contractor will provide reason in writing for the AGENCY's review and approval.

At the discretion of State Purchasing, Non Pre-Priced tasks as well as other tasks may be added to the CTC during the course of the Contract. Upon mutual agreement between State Purchasing and the Contractor, unit prices will be established based on actual quotes from material suppliers and installers and fixed as a permanent Pre-priced task in the CTC.

Pricing Non Pre-Priced Items: The final price submitted for Non Pre-Priced Work items shall be according to the following formula. Each Non Pre-Priced item must be supported with the necessary back-up documents including the calculation below.

For Work Performed with the Contractor's Own Forces:

A = Direct Labor Cost (Up through the foreman level and Fringe Benefits plus payroll taxes and insurance)

B = Direct Material Costs (supported by three supplier quotes)

C = Direct Equipment Costs

Total Cost of Non Pre-Priced Task = (A+B+C) x NPP Adjustment Factor

For Work Performed by subcontractors:

D = Subcontractor Costs (supported by three subcontractor quotes)

Total Cost of Non Pre-Priced Task = D x NPP Adjustment Factor

If three subcontractor quotes is not possible, the Owner may, at its discretion, approve less than three subcontractor quotes with the submission of a letter of justification.

Additional information submitted in support of a Non Pre-Priced work task may include, but not limited to, the following:

Complete specifications and technical data, support Drawings, calculation work sheet, quality control, and inspection requirements.

Unlike the Normal Working Hours Adjustment Factor and the Other than Normal Working Hours Adjustment Factor, the Non Pre-Priced Adjustment Factor will not be adjusted on annual basis. **The Contractor's Non Pre-Priced Adjustment Factor will remain constant for the duration of the Contract.**

The AGENCY reserves the right to select the subcontractor/supplier quote that is to be used on the particular Job Order for which the quote is submitted. The Contractor is not allowed to use a different quote from a different subcontractor/supplier without first obtaining approval by the AGENCY.

After a Non Pre-Priced Task is used on three (3) separate Job Orders, the unit price for such task will be established, following approval by State Purchasing, and fixed as a permanent Pre-Priced Task that will no longer require price justification.

The AGENCY's determination as to whether an element of the Detailed Scope of Work is a Pre-priced task or a Non Pre-priced task shall be final, binding and conclusive as to the Contractor.

Contractor's Price Proposal: The Contractor's Price Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the Work units proposed are reasonable for the tasks to be performed. Documentation to be submitted with the Price Proposal shall include, but not be limited to:

Design Drawings

Calculations, specifications, and other technical data as required,

Catalog cuts,

Back-up for any Non Pre-Priced items,

Preliminary Construction Progress Schedule, and

Clarifications to the Scope of Work.

Time for Submittal: The Contractor's Price Proposal shall be submitted by the date indicated on the Request for Proposal. The time allowed for preparation of the Contractor's Price Proposal will depend on the complexity and urgency of the Job Order but should less than ten (10) days. On complex Job Orders, such as extensive HVAC systems, Job Orders requiring significant study and research, and approvals, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Price Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described in 13.1.4 the Contractor may be directed to begin work immediately with the paperwork to follow.

Work shall be performed during normal working hours unless the Agency requests work to be performed during premium working hours.

If the Contractor requires clarifications or additional information regarding the scope of work in order to prepare the Price Proposal, the request must be submitted so that the submittal of the Price Proposal is not delayed, because there will be no extensions granted.

REVIEW AND APPROVAL OF THE PRICE PROPOSAL AND SUBMITTALS AND PURCHASE ORDER.

The AGENCY will evaluate the Contractor's Price Proposal by comparing the nature and number of work tasks used in the Price Proposal to the agreed upon Scope of Work. The AGENCY will determine the reasonableness of approach and will evaluate the work tasks used and respective quantities. Furthermore, the AGENCY may compare the Contractor's Price Proposal to the AGENCY's cost estimate for the Scope of Work. The AGENCY reserves the right to reject the Contractor's Price Proposal based on unjustifiable quantities and/or work items, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The AGENCY also reserves the right to not award a Job Order if that is determined to be in the best interests of the AGENCY.

If the AGENCY finds the Contractor's Price Proposal unacceptable, the AGENCY may request the Contractor to re-submit its Price Proposal or cancel the Job Order. The Contractor is expected to submit Price Proposals correct the first time. After the AGENCY has reviewed the Price Proposal and an agreement has been reached between the AGENCY and the Contractor as to the nature of the revisions, if any, the Contractor is not allowed to make any changes to the revised Price Proposal other than the agreed upon changes. If the Contractor is required to re-submit the Price Proposal, the revised Price Proposal is due no later than forty-eight (48) hours after the changes have been agreed upon.

The means and methods of construction shall be such as the Contractor may choose; subject however, to the AGENCY's right to reject means and methods proposed by the Contractor that:

Will constitute or create a hazard to the work, or to persons or property; or

Will not produce finished Work in accordance with the terms of the Contract; or

Unnecessarily increases the price of the Job Order when alternative means and methods are available.

By submitting a signed Price Proposal to the AGENCY, the Contractor is agreeing to accomplish the Work outlined in the Detailed Scope of Work. It is the Contractor's responsibility to include the necessary scope items in the Price Proposal prior to delivering it to the AGENCY. Once accepted by the AGENCY, the Job Order becomes a firm fixed price, lump sum contract and the Job Order Price is fixed. If in the Detailed Scope of Work, specific work task quantities are listed and if the final quantity of those work tasks is different in the completed Work, a Supplemental Job Order will be issued, either an increase or decrease in the Job Order Price. Inspection of the Contractor's Work shall be against the Technical Specifications, Drawings, and the Detailed Scope of Work, not the Price Proposal.

When and if a Price Proposal is approved by the AGENCY, the AGENCY will notify the Contractor upon which time the Contractor shall submit within seven (7) working days the following information.

Signed Price Proposal as agreed to,

Final drawings, calculations, specifications,

Final catalog cuts,

Final back-up for any non pre-priced items,

Subcontractor list on approved form,

Accepted construction schedule,

Special insurance, if required,

For Special equipment, a copy of the warranty document (if any),

Any other documentation required for the Job Order as indicated on the RFP

The AGENCY will evaluate the entire price proposal and required documentation. If the submittal is acceptable the AGENCY may issue a Purchase Order or appropriate documentation signifying that the Job Order has been approved. The Purchase Order will state the Lump Sum amount, the Project Completion Time or Date, and other information as appropriate. Issuance of the Purchase Order will

be considered the start of the Project Completion Time, unless so stated in the Purchase Order after which a Notice to Proceed will be issued prior to the start of Work.

Additional Terms and Conditions: Additional terms and conditions to a Purchase Order may be proposed by an AGENCY procuring Work off this Contract. Acceptance of these additional terms and conditions is OPTIONAL to all parties. Additional terms and conditions can include specific policy requirements and standard business practices of the issuing AGENCY.

All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, and the guarantee period may continue, after such period has expired. All terms and conditions of the Contract apply to each Job Order.

H. CHANGES IN THE DETAILED SCOPE OF WORK

The AGENCY, without invalidating the Purchase Order or this Contract, may order changes in the Detailed Scope of Work consisting of additions, deletions or other revisions. Such changes shall be embodied in a Supplemental Purchase Order developed in accordance with the Procedure for Developing all Proposals and Purchase Orders. A Supplemental Purchase Order may alter the Project Completion Time. All such changes in the Detailed Scope of Work shall only be authorized by Supplemental Purchase Order.

I. ANNUAL UPDATE OF THE CONSTRUCTION TASK CATALOG

(1) The Construction Task Catalog® issued with the bid will be in effect for the first year of the Contract.

(2) On the anniversary of the Contract, a new Construction Task Catalog® will be furnished. The new Construction Task Catalog® will be effective for the twelve (12) month period after the anniversary of the effective date of the Contract. The Construction Task Catalogs® that accompany each anniversary shall only apply to Job Orders issued after the effective date of that specific renewal option and shall have no impact on Job Orders issued prior to the effective date of that specific renewal option.

(3) The Adjustment Factors submitted with the Proposal shall be used for the full term of the Contract, plus any Option Terms. On the annual anniversary of the Contract, the Owner shall issue the Contractor a new Construction Task Catalog®. The Contractor will be issued the new Construction Task Catalog® for review prior to accepting new Work. The Contractor shall use the Construction Task Catalog® in effect on the date that the Job Order is issued. However, the Contractor cannot delay the issuance of a Job Order to take advantage of a scheduled update of the Construction Task Catalog®. In that event, the Contractor shall use the Construction Task Catalog® that would have been in effect without the delay.

MATERIAL PRICE SPIKE UPWARD OR DOWNWARD ADJUSTMENT

A major spike is defined as a spike in a specific material cost of more than 50% above what the cost of that material was at the time of contract award, or at the time of an annual price adjustment based on the CCI, whichever is most current.

In the event a major spike occurs in a specific material cost, the Contractor may submit a request for a price modification on a work task or individual job order request. In order to initiate such a request, the contractor shall:

1. Identify the specific material that has experienced a major spike as defined above.
2. Identify work task(s) or job order requests that require the material experiencing a major spike.
3. Demonstrate, through documentation, that the spike exists by submitting a minimum of three (3) quotes on supplier letterhead to show that the current price meets the major spike definition above.

The Agency, after review of the request, may elect to adjust the price of the task order or job order request by considering it a non pre-priced item. The adjustment will be for the difference between the material cost at the time of award or annual price adjustment, multiplied by the quantity stated in the task order or job order request. The adjustment will not include any other

mark-up, and the NPP adjustment factor will not apply. When adequately justified, the Contractor's request shall not be unreasonably denied.

The Agency at its option may also determine that a drastic decrease in a material cost warrants the same non pre-priced adjustment downward in the price of the task order or job order request.

J. COOPERATIVE PURCHASING.

This is an indefinite quantity Contract for the supplies or services specified, and effective for the period stated in the Contract Documents. This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) ("AGENCIES") with the goods and/or services described in the Contract Documents. Participation under this Contract by political subdivisions will be voluntarily determined by the AGENCIES. The Contractor agrees to supply the AGENCIES based upon the same terms, conditions and prices.

AGENCIES within the State of Utah may purchase construction services from the Contractor utilizing this Contract through a cooperative purchasing arrangement as provided in authority set forth in 63G-6a, Utah Code Annotated, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes. The Contractor acknowledges that Gordian will administer this Contract for AGENCIES through its EZIQC® system and its subsidiary EZIQC, LLC, and that the State of Utah has no obligation to administer Work performed for other entities.

The Contractor shall inform Gordian of requests for Work by AGENCIES by entering new project information into the EZIQC®, web site at <http://www.eziqc.com>. The Contractor shall not collect information from AGENCIES on Contractor provided forms or web sites other than at <http://www.eziqc.com>. The Contractor may input new project information on the EZIQC® web site on behalf of AGENCIES.

K. FEES.

ADMINISTRATIVE AND LICENSE FEES.

(1) The Contractor agrees to pay a license fee ("License Fee") to Gordian in the form of a check equal to six and 1 quarter percent (6.25%) of the Job Order price. The Contractor must take the License Fee into account when submitting the bid Adjustment Factors. There will be no revision of the Adjustment Factors after the bid is submitted.

(2) The Contractor shall remit the amount of the License Fee for each Job Order within five (5) days of receipt of payment from the AGENCY. Checks are to be made payable to EZIQC, LLC and mailed to:

EZIQC, LLC
Attention: A/R Department
30 Patewood Drive, Suite 350
Greenville, South Carolina 29615

(3) The Contractor agrees to provide an administrative fee to the State in the form of a Check or EFT payment quarterly. The Adjustment Factors submitted by the Contractor have been adjusted in this Contract to include this percentage. The fee will be payable to the "State of Utah Division of Purchasing" for an amount equal to **.4% (or .004)** of the net Job Order prices, including job order amendments, (less any returns, credits, or adjustments) under this Contract for the period. Payment(s) shall be made in accordance with the following schedule. **The Adjustment Factors submitted by the Contractor on the Cost Schedule shall incorporate the Administrative Fee.**

<u>Period End</u>	<u>Fee Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address salesreports@utah.gov.

(4) Failure to remit Administrative and License fees in a timely manner or remit fees inconsistent with the Contract's requirements may:

result in the State exercising any recourse available under the Contract including a third party audit of all contract activity. Should an audit be required by the State, the Contractor shall reimburse the State for all costs associated with the audit up to \$5,000, and

shall be considered a material breach of this Contract, and at the State of Utah's sole discretion, may be deemed grounds for termination of this Contract.

(5) The Contractor shall provide copies records regarding the use of this Contract, including but not limited to purchase orders, invoices, payments received from AGENCIES, and payments made to EZIQC, LLC, should such records be requested by The State of Utah or Gordian. If discrepancies exist between work under this Contract and Fees paid to EZIQC, LLC or the State of Utah, the State of Utah or Gordian will provide written notification to the Contractor of discrepancies and allow the Contractor thirty (30) days from the date of notification to resolve the discrepancy. In the event the Contractor does not resolve the discrepancy to the satisfaction of the State of Utah or Gordian, notwithstanding any other remedies available to the State of Utah by law or Contract, the State of

Utah and Gordian reserve the right to engage a third party to conduct an independent audit of the Contractor's records, and Contractor shall reimburse the appropriate party for the cost and expense related to such audit.

L. MARKETING.

The State of Utah selected its Job Order Contracting system based on their research of what provides the AGENCIES with the best value and most cost effective results. The Contractor is encouraged to be proactive about selling and marketing this Contract to AGENCIES. The Contractor may promote the State of Utah JOC program.

The Contractor authorizes the State of Utah and Gordian the use of the Contractor's name, trademarks, and Contractor provided materials in the presentation and promotion of the availability and use of the Contract by AGENCIES.

The Contractor must adhere to the following when preparing marketing materials, and in the use of proprietary materials, such as trademarks, service marks, etc.:

The Contractor shall include the State of Utah Department of Administration logo and website address on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.

The Contractor shall include the EZIQC® logo, website address, and phone number on all marketing materials and web sites that mention this Contract or have anything to do with this Contract.

All uses of the trademarks and service marks belonging to the State of Utah, The Gordian Group, Inc. and EZIQC, LLC shall include the registered trademark symbol (®) at all times.

The Contractor shall direct AGENCIES to enter project information on the EZIQC web site and shall not direct AGENCIES to provide information on Contractor provided forms or websites. The Contractor may input project information on the EZIQC web site on behalf of AGENCIES.

Under no circumstance may copy or branding images of the State of Utah, Gordian or EZIQC, LLC be altered in any way without the express written approval of the State of Utah or Gordian, as applicable.

All marketing materials shall be coordinated and approved by the State of Utah Division of Purchasing and General Services and The Gordian Group, Inc.



ezIQC® Contract Areas

County Area

Beaver	3
Box Elder	1
Cache	1
Carbon	4
Daggett	4
Davis	2
Duchesne	4
Emery	5
Garfield	5
Grand	5
Iron	3
Juab	3
Kane	5
Millard	3
Morgan	1
Piute	5
Rich 1	
Salt Lake	2
San Juan	5
Sanpete	5
Sevier	5
Summit	2
Tooele	6
Uintah	4
Utah	2
Wasatch	2
Washington	3
Wayne	5
Weber	1

KL22-90 JOB ORDER CONTRACTING COST SCHEDULE

FIRM NAME	Northern Construction LLC
FIRM STREET ADDRESS	2882 Commerce Way
CITY, STATE, ZIP	Ogden, Utah 84401
CONTACT PERSON	Shane Mollenhauer
CONTACT PHONE	801-627-2746
CONTACT EMAIL	shane@northernconstruction.us

INSTRUCTIONS:

Offerors are required to complete the grey shaded fields of this cost schedule for the Regions for which they are competing. Offerors shall not make any changes or modifications to the format of this document in order for us to make a fair comparison of cost by all offerors.

Offerors may respond to one or any of the Regions as delineated in Attachment F Region Map. Offerors responding to a region must provide all services described in this solicitation and the resulting contract for the entire region.

The adjustment factor shall include all direct and indirect costs described in the Scope of Work and Requirements of this solicitation document, including but not limited to, the Gordian licensing fee and the State of Utah administrative fee.

The Contractor shall perform any and all work required as described in this solicitation and the resulting contract that is necessary and incidental to completing the work called for in each Job Order Contract issued under this contract using the Construction Task Catalog (CTC) and all documents incorporated herein with the following adjustment factors per Region. Adjustment factor to be four (4) decimal places.

Normal Working Hours are 6:00 am to 6:00 pm.

Refer to Cost Schedule Instructions and Award Methodology for further information.

Description - Category	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6
Normal Working Hours Adjustment Factor	1.3000	1.3000				1.3203
Other than Normal Working Hours Adjustment Factor	1.3091	1.3091				1.3293
Normal Working Hours Davis Bacon Wages Adjustment Factor	1.3226	1.3226				1.3414
Other than Normal Working Hours Davis Bacon Wages Adjustment Factor	1.3242	1.3242				1.3438
Non Pre-Priced Adjustment Factor	1.2001	1.2001				1.2042

TOTAL ADJUSTMENT FACTOR:

1.2921

1.2921

1.3188



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Department of Government Operations Division of Purchasing and General Services

JENNEY REES
Executive Director

D. WINDY APHAYRATH
Division Director

Attachment H: DFCM Checklist for Agency Delegated Projects

Each State Agency is required to comply with State Statute as it pertains to the construction or alteration of State owned and State Managed Facilities. Permits and inspections are required for additions, alterations, building remodeling, building construction and systems modification projects. The State Legislature has adopted the State Construction Codes, currently effective. (LINK)

The following list has been developed to assist State Agencies with this process

1. Required Plan Documents
 - Floor Plans and Details for interior remodels
 - Site Plans and Details for exterior upgrades
 - Plumbing, Mechanical and Electrical Plans and Details for building systems or site systems replacements and upgrades
2. Required Code Analysis Document
 - Type of Construction
 - Occupancy Classification/Use group
 - Sprinklers, Yes or No
 - Bathroom Fixture Count
 - Visit dfcm.utah.gov, click on the “building official” tab to review the code analysis form
3. Required Plan Documents are to be stamped by a licensed Architect or Engineer
 - With the Approval of the DFCM director, minor improvements projects may be professionally prepared but not stamped by a licensed design professional.
 - Visit dopl.utah.gov, click on “programs” tab to review Uniform Building Code
4. Required Inspections are to proceed after plan documents are reviewed and approved by the Code Official, prior to commencing work, prior to covering

work.

Construction projects, improvements, alterations, repairs and replacements are to be inspected by a DFCM State Approved Code Inspector.

Visit dfcm.utah.gov, click on the “building official” tab to review listings of State approved code consultants