



STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

Division of Facilities Construction and Management

DFCM

STANDARD LOW BID PROJECT INVITATIONAL

April 30, 2013

SOLAR ARRAY INSTALLATION GENEVA BUILDING

**MOUNTAINLAND APPLIED
TECHNOLOGY COLLEGE
OREM, UTAH**

DFCM Project Number: 13051260

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

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

INVITATION TO BID

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

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

SOLAR ARRAY INSTALLATION - GENEVA BUILDING
MOUNTAINLAND APPLIED TECHNOLOGY COLLEGE – OREM, UTAH
DFCM PROJECT NO: 13051260

Invited Contractors	Contact	email
Gardner Engineering	Chad Widdison	chad@gardner-energy.com
Intermountain Wind and Solar	Brandon Fedrico	Brandon@imwindandsolar.com
Synergy Power	Chad Hofheins	chad@synergypowerpv.com

Bids will be in accordance with the Contract Documents that will be available at 12:00 Noon on Tuesday, April 30, 2013 on the DFCM web page at <http://dfcm.utah.gov>. For questions regarding this project, please contact Brian Bales, DFCM, at 801-230-3129. No others are to be contacted regarding this project. Construction estimate for this project is \$86,468.

A **mandatory** pre-bid meeting will be held at 9:30 AM on Thursday, May 2, 2013 at MATC Geneva Building, 1410 West Business Park Drive, Orem Utah. All bidders wishing to bid on this project are required to attend this meeting.

Signed bids are to be submitted on the Bid Form contained in these documents and are to be e-mailed to marlaworkman@utah.gov by 3:00 PM on Tuesday, May 14, 2013. No bonds are required.

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

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

PROJECT DESCRIPTION

Build a solar array that will be in compliance with the Rocky Mountain Power Blue Sky Program and grant. The contractor will be responsible for all aspects of the design and installation. The installation will need to coordinate with the Geneva Building Phase 2 remodel expected to be underway by June 1, 2013.

No construction can take place prior to the issuance of approved permitted plans which will be provided and submitted to DFCM by the contractor. DFCM will be the plan review authority. The plans will need to comply with structural code requirements. In addition to inspections provided by DFCM, the contractor will be responsible for any permits and inspections required to complete the project.

NOTE: Ballasted systems are not allowed.

Please contact the State of Utah Building Official Enzo Calfa at <http://dfcm.utah.gov/>. Select the Building Official link under the DFCM tab. It is recommended that contractors utilize engineers and architects that are familiar with the State Building Official's electronic plan submission and review process.

Performance bonds are not required for the State's protection; therefore payment will be made as a single lump sum at the completion of the project only after acceptance by Rocky Mountain Power.

The contractor acknowledges they will comply with all requirements of the Rocky Mountain Grant.

The contractor agrees to fully fund the project until it is accepted by Rocky Mountain Power.

The contractor understands that project funding will become unavailable after December 31, 2013.

The contractor agrees to provide these specific items as required by RMP.

- The solar modules will be visible from street level.
- A 20' x 4' banner recognizing the Blue Sky Program will be hung so that passersby will notice both the remodel and the solar installation.
- The foyer of the MATC Geneva Building will be the location for the monitoring system display.



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

DFCM

PROJECT SCHEDULE

PROJECT NAME: SOLAR ARRAY INSTALLATION - GENEVA BUILDING
MOUNTAINLAND APPLIED TECHNOLOGY COLLEGE – OREM, UTAH
DFCM PROJECT NO. 13051260

Event	Day	Date	Time	Place
Bidding Documents Available	Tuesday	April 30, 2013	12:00 NOON	DFCM web site *
Mandatory Pre-bid Site Meeting	Thursday	May 2, 2013	9:30 AM	MATC Geneva Building 1410 West Business Park Drive Orem UT
Last Day to Submit Questions	Wednesday	May 8, 2013	12:00 NOON	Brian Bales – DFCM Email brbales@utah.gov
Addendum Deadline (exception for bid delays)	Friday	May 10, 2013	3:00 PM	DFCM web site *
Prime Contractors Turn In Bid	Tuesday	May 14, 2013	3:00 PM	Email marlaworkman@utah.gov
Sub-contractor List Due	Wednesday	May 15, 2013	3:00 PM	DFCM 4110 State Office Bldg SLC, UT E-Mail marlaworkman@utah.gov
Substantial Completion Date	Wednesday	October 16, 2013	3:00 PM	

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

**BID FORM****Email to marlaworkman@utah.gov**

NAME OF BIDDER _____ DATE _____

To the Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114

The undersigned, responsive to the "Invitation to Bid" and in accordance with the "Instructions to Bidders", in compliance with your invitation for bids for the **SOLAR ARRAY INSTALLATION GENEVA BUILDING – MOUNTAINLAND APPLIED TECHNOLOGY COLLEGE – OREM, UTAH – DFCM PROJECT NO. 13051260** and having examined the Contract Documents and the site of the proposed Work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of labor, hereby proposes to furnish all labor, materials and supplies as required for the Work in accordance with the Contract Documents as specified and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the Work required under the Contract Documents of which this bid is a part:

I/We acknowledge receipt of the following Addenda: _____

TOTAL WATTS: _____. Total watts provided based on solar panel nameplate rating. (The minimum total allowed is 20,160 as per the Blue Sky Grant).

BASE BID (NOT LESS THAN \$80,000 OR MORE THAN \$86,468):

_____ DOLLARS (\$_____)

(In case of discrepancy, written amount shall govern)

BASE BID COST/WATT (BASED ON PANEL NAMEPLATE RATING): \$_____/Watt**The project will be awarded to the contractor with the lowest base bid cost/watt.**

I/We guarantee that the Work will be Substantially Complete by **October 16, 2013**, should I/we be the successful bidder, and agree to pay liquidated damages in the amount of **\$100.00** per day for each day after expiration of the Contract Time as stated in Article 1 Paragraph G of the Limited Scope Construction Agreement. In the event that the project is not complete and accepted by Rocky Mountain Power by December 31, 2013, the Liquidated Damages shall be equal to the total value of the contractor's contract with DFCM and the contractor will receive \$0 compensation for their effort on the project.

This bid shall be good for 45 days after bid opening.

The undersigned Contractor's License Number for Utah is _____.

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within ten (10) days, unless a shorter time is specified in the Contract Documents.

Type of Organization:

(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

Respectfully submitted,

Name of Bidder

ADDRESS:

Authorized Signature

INSTRUCTIONS TO BIDDERS

1. **Contract Documents**

Contract Documents may be obtained as stated in the Invitation to Bid.

2. **Bids**

Before submitting a bid, each contractor shall carefully examine the Contract Documents, shall visit the site of the Work; shall fully inform themselves as to all existing conditions and limitations; and shall include in the bid the cost of all items required by the Contract Documents. If the bidder observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations or contain obvious erroneous or uncoordinated information, the bidder shall promptly notify the DFCM Representative and the necessary changes shall be accomplished by Addendum.

The bid shall be submitted on the Bid Form provided in the procurement documents and emailed to marlaworkman@utah.gov prior to the deadline for submission of bids.

3. **Contract**

The Limited Scope Construction Agreement will be in the form provided in this document. The Contract Time will be as indicated in the bid.

4. **Listing of Subcontractors**

Listing of Subcontractors shall be as summarized in the “Instructions and Subcontractor’s List Form”, which are included as part of these Contract Documents. The Subcontractors List shall be delivered to DFCM or e-mailed to marlaworkman@utah.gov within 24 hours of the bid submittal deadline. Requirements for listing additional subcontractors will be listed in the Contract Documents.

DFCM retains the right to audit or take other steps necessary to confirm compliance with requirements for the listing and changing of subcontractors. Any contractor who is found to not be in compliance with these requirements is subject to a debarment hearing and may be debarred from consideration for award of contracts for a period of up to three years.

5. **Interpretation of Drawings and Specifications**

If any person or entity contemplating submitting a bid is in doubt as to the meaning of any part of the drawings, specifications or other Contract Documents, such person shall submit to the DFCM Project Manager a request for an interpretation thereof. The person or entity submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by addenda posted on the DFCM web page at <http://dfcm.utah.gov>. Neither the DFCM nor A/E will be responsible for any other explanations or interpretations of the proposed documents. A/E shall be deemed to refer to the architect or engineer hired by DFCM as the A/E or Consultant for the Project.

6. Addenda

Addenda will be posted on DFCM's web site at <http://dfcm.utah.gov>. Contractors are responsible for obtaining information contained in each addendum from the web site. Addenda issued prior to the submittal deadline shall become part of the bidding process and must be acknowledged on the bid form. Failure to acknowledge addenda may result in disqualification from bidding.

7. Award of Contract

The Contract will be awarded as soon as possible to the lowest, responsive and responsible bidder, based on the lowest combination of base bid and acceptable prioritized alternates, provided the bid is reasonable, is in the interest of the State of Utah to accept and after applying the Utah Preference Laws in U.C.A. Title 63, Chapter 56. DFCM reserves the right to waive any technicalities or formalities in any bid or in the bidding. Alternates will be accepted on a prioritized basis with Alternate 1 being highest priority, Alternate 2 having second priority, etc.

8. DFCM Contractor Performance Rating

As a contractor completes each DFCM project, DFCM, the architect/engineer and the using agency will evaluate project performance based on the enclosed "DFCM Contractor Performance Rating" form. The ratings issued on this project will not affect this project but may affect the award on future projects.

9. Licensure

The Contractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

10. Permits

In concurrence with the requirements for permitting in the General Conditions, it is the responsibility of the Contractor to obtain the fugitive dust plan requirements from the Utah Division of Air Quality and the SWPPP requirements from the Utah Department of Environmental Quality and submit the completed forms and pay any permit fee that may be required for this specific project. Failure to obtain the required permit may result in work stoppage and/or fines from the regulating authority that will be the sole responsibility of the Contractor. Any delay to the project as a result of any such failure to obtain the permit or noncompliance with the permit shall not be eligible for any extension in the Contract Time.

11. Right to Reject Bids

DFCM reserves the right to reject any or all Bids.

12. Time is of the Essence

Time is of the essence in regard to all the requirements of the Contract Documents.

13. Withdrawal of Bids

Bids may be withdrawn on written request received from bidder prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

14. Product Approvals

Where reference is made to one or more proprietary products in the Contract Documents, but restrictive descriptive materials of one or more manufacturer(s) is referred to in the Contract Documents, the products of other manufacturers will be accepted, provided they equal or exceed the standards set forth in the drawings and specifications and are compatible with the intent and purpose of the design, subject to the written approval of the A/E. Such written approval must occur prior to the deadline established for the last scheduled addenda to be issued. The A/E's written approval will be in an issued addendum. If the descriptive material is not restrictive, the products of other manufacturers specified will be accepted without prior approval provided they are compatible with the intent and purpose of the design as determined by the A/E.

15. Financial Responsibility of Contractors, Subcontractors and Sub-subcontractors

Contractors shall respond promptly to any inquiry in writing by DFCM to any concern of financial responsibility of the contractor, subcontractor or sub-subcontractor.

16. Debarment

By submitting a bid, the Contractor certifies that neither it nor its principals, including project and site managers, have been, or are under consideration for, debarment or suspension, or any action that would exclude such from participation in a construction contract by any governmental department or agency. If the Contractor cannot certify this statement, attach to the bid a detailed written explanation which must be reviewed and approved by DFCM as part of the requirements for award of the Project.



Division of Facilities Construction and

INSTRUCTIONS AND SUBCONTRACTORS LIST FORM

The three low bidders, as well as all other bidders that desire to be considered, are required by law to submit to DFCM within 24 hours of bid opening a list of **ALL** first-tier subcontractors, including the subcontractor's name, bid amount and other information required by Building Board Rule and as stated in these Contract Documents, based on the following:

DOLLAR AMOUNTS FOR LISTING

PROJECTS UNDER \$500,000: ALL FIRST-TIER SUBS \$20,000 OR OVER MUST BE LISTED
PROJECTS \$500,000 OR MORE: ALL FIRST-TIER SUBS \$35,000 OR OVER MUST BE LISTED

- Any additional subcontractors identified in the bid documents shall also be listed.
- The DFCM Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law.
- List subcontractors for base bid as well as the impact on the list that the selection of any alternate may have.
- Bidder may not list more than one subcontractor to perform the same work.
- If there are no subcontractors for the job that are required to be reported by State law (either because there are no subcontractors that will be used on the project or because there are no first-tier subcontractors over the dollar amounts referred to above), then you do not need to submit a sublist. If you do not submit a sublist, it will be deemed to be a representation by you that there are no subcontractors on the job that are required to be reported under State law. At any time, DFCM reserves the right to inquire, for security purposes, as to the identification of the subcontractors at any tier that will be on the worksite.

LICENSURE:

The subcontractor's name, the type of work, the subcontractor's bid amount, and the subcontractor's license number as issued by DOPL, if such license is required under Utah Law, shall be listed. Bidder shall certify that all subcontractors, required to be licensed, are licensed as required by State law. A subcontractor includes a trade contractor or specialty contractor and does not include suppliers who provide only materials, equipment, or supplies to a contractor or subcontractor.

'SPECIAL EXCEPTION':

A bidder may list 'Special Exception' in place of a subcontractor when the bidder intends to obtain a subcontractor to perform the work at a later date because the bidder was unable to obtain a qualified or reasonable bid under the provisions of U.C.A. Section 63A-5-208(4). The bidder shall insert the term 'Special Exception' for that category of work, and shall provide documentation with the subcontractor list describing the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost and why the bidder was unable to obtain a qualified subcontractor bid. The Director must find that the bidder complied in good faith with State law requirements for any 'Special Exception' designation, in order for the bid to be considered. If awarded the contract, the Director shall supervise the bidder's efforts to obtain a qualified subcontractor bid. The amount of the awarded contract may not be adjusted to reflect the actual amount of the subcontractor's bid. Any listing of 'Special Exception' on the sublist form shall also include amount allocated for that work.

GROUND FOR DISQUALIFICATION:

The Director may not consider any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of State law. Director may withhold awarding the contract to a particular bidder if one or more of the proposed subcontractors are considered by the Director to be unqualified to do the Work or for

INSTRUCTIONS AND SUBCONTRACTORS LIST FORM
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such other reason in the best interest of the State of Utah. Notwithstanding any other provision in these instructions, if there is a good faith error on the sublist form, at the sole discretion of the Director, the Director may provide notice to the contractor and the contractor shall have 24 hours to submit the correction to the Director. If such correction is submitted timely, then the sublist requirements shall be considered met.

CHANGES OF SUBCONTRACTORS SPECIFICALLY IDENTIFIED ON SUBLIST FORM:

Subsequent to twenty-four hours after the bid opening, the contractor may change its listed subcontractors only after receiving written permission from the Director based on complying with all of the following criteria.

- (1) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but not is not limited to, the following reasons: the original subcontractor has failed to perform, or is not qualified or capable of performing, and/or the subcontractor has requested in writing to be released.
- (2) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors.
- (3) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping.
- (4) Any increase in the cost of the subject subcontractor work is borne by the contractor.
- (5) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.
- (6) The Director will give substantial weight to whether the subcontractor has consented in writing to being removed unless the Contractor establishes that the subcontractor is not qualified for the work.

EXAMPLE:

Example of a list where there are only four subcontractors:

TYPE OF WORK	SUBCONTRACTOR, “SELF” OR “SPECIAL EXCEPTION”	SUBCONTRACTOR BID AMOUNT	CONTRACTOR LICENSE #
ELECTRICAL	ABCD Electric Inc.	\$350,000.00	123456789000
LANDSCAPING	“Self” *	\$300,000.00	123456789000
CONCRETE (ALTERNATE #1)	XYZ Concrete Inc	\$298,000.00	987654321000
MECHANICAL	“Special Exception” (attach documentation)	Fixed at: \$350,000.00	(TO BE PROVIDED AFTER OBTAINING SUBCONTRACTOR)

* Bidders may list “self”, but it is not required.

**PURSUANT TO STATE LAW - SUBCONTRACTOR BID AMOUNTS CONTAINED IN THIS
SUBCONTRACTOR LIST SHALL NOT BE DISCLOSED UNTIL THE CONTRACT HAS BEEN AWARDED.**



Division of Facilities Construction and

SUBCONTRACTORS LIST

marlaworkman@utah.gov

PROJECT TITLE: _____

Caution: You must read and comply fully with instructions.

TYPE OF WORK	SUBCONTRACTOR, "SELF" OR "SPECIAL EXCEPTION"	SUBCONTRACTOR BID AMOUNT	CONT. LICENSE #

We certify that:

1. This list includes all subcontractors as required by the instructions, including those related to the base bid as well as any alternates.
2. We have listed "Self" or "Special Exception" in accordance with the instructions.
3. All subcontractors are appropriately licensed as required by State law.

FIRM: _____

DATE: _____

SIGNED BY: _____

NOTICE: FAILURE TO SUBMIT THIS FORM, PROPERLY COMPLETED AND SIGNED, AS REQUIRED IN THESE CONTRACT DOCUMENTS, SHALL BE GROUNDS FOR OWNER'S REFUSAL TO ENTER INTO A WRITTEN CONTRACT WITH BIDDER. ACTION MAY BE TAKEN AGAINST BIDDERS BID BOND AS DEEMED APPROPRIATE BY OWNER. ATTACH A SECOND PAGE IF NECESSARY.

DFCM Project No. _____
DFCM Contract No. _____

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

For:

This Contractor's Limited Scope Construction Agreement, made this ____th day of _____, 20__, by and between the Division of Facilities Construction and Management, hereinafter referred to as "DFCM", and _____, a licensed contracting firm/person with the State of Utah, whose address is _____, hereinafter referred to as "Contractor", agree to all of the following terms and conditions for Work to perform _____

_____ in _____, Utah for the consideration stated herein:

ARTICLE I. GENERAL REQUIREMENTS.

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

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

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

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

LIMITED SCOPE CONSTRUCTION AGREEMENT
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- D. Labor and Materials.** The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities, supplies, consumables and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- E. Notice to Proceed.** The Contractor shall not prematurely commence operations on the site or elsewhere prior to the issuance of a notice to proceed by the DFCM.
- F. Contract Time.** Time is of the essence. By executing this Agreement, Contractor confirms that the Contract Time is adequate to perform the Work. The Work shall be Substantially Complete as defined in this Agreement (except for minor punchlist items which do not impact State's immediate and lawful use) as _____. The Contractor shall provide a schedule indicating the final completion of the Work.
- G. Liquidated Damages.** Contractor agrees to pay liquidated damages in the amount of \$_____ per day commencing after expiration of the Contract Time until Substantial Completion. The provision for liquidated damages is: (a) to compensate the DFCM for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Contractor's Agreement; (c) is not a penalty; and (d) shall not prevent the DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.
- H. Permits, Surveys, and Taxes.** Contractor will obtain and pay for all permits and licenses, and also pay any applicable taxes.
- I. Applicable Codes, Laws, Rule and Regulations.** Contractor shall comply with all applicable codes, laws, rules and regulations to the Work, regardless of the enacting entity.
- J. Responsibility for Subcontractors/ Suppliers.** The Contractor is responsible for the guaranty and warranty of all Work, whether performed by it or by the Contractor, its Subcontractors or suppliers at any tier.

ARTICLE II. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

ARTICLE III. SAFETY REQUIREMENTS.

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

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

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

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

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

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

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

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

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

C. Evaluation of Proposal for Issuing Change Orders.

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

(2) DFCM Resolution of Sum and Time and Standards in the Absence of an Agreement. In the absence of an agreement, the DFCM shall make the adjustment based on an itemized accounting of customary and reasonable costs and savings supported by appropriate data.

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

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

(a) A markup of 15% shall be applied to the cost of each individual charge up to \$20,000 in cost, but in no case shall the markup be less than \$150;

(b) A markup of 10% shall be applied to the portion of the cost of each individual charge in excess of \$20,000;

(c) Subcontractors at any tier shall be entitled to markup their costs related to a Change Order with the same percentages as specified above, except that the minimum markup shall be \$50 for any individual change.

(3) Credits. The amount of credit to be allowed by the Contractor to the DFCM for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed to DFCM based upon corroboration by an appropriate source.

D. Construction Change Directives.

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

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

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

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

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

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

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

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

ARTICLE V. TESTS AND INSPECTIONS

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

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

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

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

ARTICLE VI. SUBSTANTIAL AND FINAL COMPLETION.

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

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

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

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

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

ARTICLE VII. GUARANTY PERIOD.

A. Guaranty and Correction After Substantial Completion. If within **one year** after the date of Substantial Completion of the Work, any of the Work is found to be not in accordance with the requirements of this Agreement, including failure to perform for its intended purpose, the Contractor shall correct it promptly after receipt of written notice from the DFCM to do so. This obligation of the Contractor shall be operative notwithstanding the acceptance of the Work under this Agreement, the final payment, partial or total occupancy and/or termination of the Agreement. The DFCM shall give notice of observed defects with reasonable promptness, however, failure to give such notice shall

not relieve the Contractor of its obligation to correct the Work at the cost that the Contractor would have incurred if the DFCM did so report with reasonable promptness. All corrected Work shall be subject to a one-year guaranty period the same in all respects as the original Work, except that such guaranty period shall commence from the time of Substantial Completion of the corrected Work. This guaranty period does not affect the DFCM's right to pursue any available remedies against Contractor.

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

ARTICLE VIII. ADDITIONAL WARRANTIES.

The following warranties shall apply:

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

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

ARTICLE IX. INDEMNIFICATION AND INSURANCE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X. SPECIAL PAYMENT PROVISIONS:

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

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

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

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

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

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

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

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

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

ARTICLE XI. TERMINATION.

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

B. Termination of Agreement by DFCM for Cause. Should Contractor make a general assignment for benefit of its creditors, fail to apply a sufficient and skilled workforce, or fail to comply with this Agreement, DFCM shall provide Contractor a written notice explaining the breach and Contractor shall have seven (7) calendar days to cure the breach. If the breach is not cured, DFCM

may terminate this Agreement. In event of such termination by DFCM for cause, Contractor shall be paid for work properly performed less 5% of the value of the Work unperformed as liquidated damages for such termination, which is not a penalty; is provided for herein because actual damages cannot be readily ascertained at the time of execution of this Contractor's Agreement; and is Contractor's sole remedy for such termination. If, after notice of termination for cause, it is determined that the cause was unjust, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience provisions.

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

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

ARTICLE XII. MISCELLANEOUS PROVISIONS.

A. Independent Contractor. Contractor's relationship to the State is that of an independent Contractor. No officer, director partner, agent or anyone associated with Contractor shall, by reason of this Agreement, become an employee of the State of Utah.

B. Review of Submittals. The State's or any A/E's review of the Contractor's submittals shall not relieve the Contractor of the obligations under this Agreement.

C. Successors and Assigns. The DFCM and Contractor respectively bind themselves and all associated with each and their successors and assigns to the obligations contained in this Agreement. The Contractor shall not assign the Agreement without the prior written consent of the DFCM, nor shall the Contractor assign any amount due or to become due as well as any rights under the Agreement, without prior written consent of the DFCM.

D. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail, return receipt requested, to the last business address known to the party giving notice. Fax notice is only allowed if it is confirmed by the party to receive the fax, that such has been received.

E. Rights, Remedies, Waiver. Duties and obligations imposed by this Agreement and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. Any waiver under this Agreement must be in writing. Any waiver does not waive the right to any future performance, even if similar.

F. Commencement of Statutory Limitation Period. Except as provided below, the statute of limitation shall commence to run upon issuance of final payment to the Contractor or the date of correction of any Work, whichever is later. No applicable statute of limitations shall be deemed to have commenced until such matter is discovered by DFCM when the Work is not in accordance with the Agreement, is not visible or apparent upon conducting a reasonable investigation at the time noted above, and which is not discovered by the DFCM until such date.

G. Not Discriminate, No Sexual Harassment. Pursuant to the laws of the State of Utah, the Contractor, Subcontractors, or anyone for whose act any of them may be liable, will take affirmative action to not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, ancestry or national origin. To the extent applicable, said persons will comply with all provisions of Executive Order No. 11246 dated September 24, 1965 and rules, regulations, orders, instructions, designations and other directives promulgated pursuant thereto. Contractor, Subcontractors, or anyone for whose act any of them may be liable, shall not act in any manner as would violate the laws, regulations and policies of the United States or the State of Utah prohibiting sexual harassment.

H. Construction of Words. Unless otherwise stated in the Scope of Work or Definitions of this Agreement, words, which have well-known technical or construction industry meanings, shall be construed as having such recognized meanings. Unless the context requires otherwise, all other technical words shall be construed in accordance with the meaning normally established by the particular, applicable profession or industry. All other words, unless the context requires otherwise, shall be construed with an ordinary, plain meaning.

I. No Third Party Rights. This Agreement creates rights and duties only as between DFCM and Contractor.

J. Preserve and Make Available Records. Contractor shall, from the date of final completion until the expiration of three years thereafter, preserve and make available to the DFCM at all reasonable times at the office of the Contractor, but without direct charge to the DFCM, all books, records, documents and other evidence bearing on the costs and expenses of the Contractor and/or payments under this Agreement.

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

L. Authority to Execute and Perform Agreement. Contractor and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

LIMITED SCOPE CONSTRUCTION AGREEMENT
PAGE NO. 15

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

CONTRACTOR: _____

Signature Date

Title: _____

State of _____)
County of _____) ss.

Please type/print name clearly

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

(SEAL)

Notary Public

My Commission Expires _____

APPROVED AS TO FORM:
ATTORNEY GENERAL
January 2, 2013
By: ALAN S. BACHMAN
Asst Attorney General

**DIVISION OF FACILITIES
CONSTRUCTION & MANAGEMENT**

*/S/ Lynn A. Hinrichs
Lynn A. Hinrichs Date
Assistant Director Construction Management

Approved for expenditure:

*/S/ Division of Finance
Division of Finance Date

Approved as to availability of funds:

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

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

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

PROJECT _____ PROJECT NO: _____

AGENCY/INSTITUTION _____

AREA ACCEPTED _____

The Work performed under the subject Contract has been reviewed on this date and found to be Substantially Completed as defined in the General Conditions; including that the construction is sufficiently completed in accordance with the Contract Documents, as modified by any change orders agreed to by the parties, so that the State of Utah can occupy the Project or specified area of the Project for the use for which it is intended.

The DFCM - (Owner) accepts the Project or specified area of the Project as Substantially Complete and will assume full possession of the Project or specified area of the Project at _____ (time) on _____ (date).

The DFCM accepts the Project for occupancy and agrees to assume full responsibility for maintenance and operation, including utilities and insurance, of the Project subject to the itemized responsibilities and/or exceptions noted below:

The Owner acknowledges receipt of the following closeout and transition materials:

☐ As-built Drawings ☐ O & M Manuals ☐ Warranty Documents ☐ Completion of Training Requirements

A list of items to be completed or corrected (Punch List) is attached hereto. The failure to include an item on it does not alter the responsibility of the Contractor to complete all the Work in accordance with the Contract Documents, including authorized changes thereof. The amount of _____ (Twice the value of the punch list work) shall be retained to assure the completion of the punch list work.

The Contractor shall complete or correct the Work on the list of (Punch List) items appended hereto within _____ calendar days from the above date of issuance of this Certificate. The amount withheld pending completion of the list of items noted and agreed to shall be: \$ _____. If the list of items is not completed within the time allotted the Owner has the right to be compensated for the delays and/or complete the work with the help of independent contractor at the expense of the retained project funds. If the retained project funds are insufficient to cover the delay/completion damages, the Owner shall be promptly reimbursed for the balance of the funds needed to compensate the Owner.

CONTRACTOR (include name of firm) by: _____
(Signature) DATE

A/E (include name of firm) by: _____
(Signature) DATE

USING INSTITUTION OR AGENCY by: _____
(Signature) DATE

DFCM (Owner) by: _____
(Signature) DATE



Division of Facilities Construction and Management

PAST PERFORMANCE RATING EVALUATION

Date _____

Evaluator _____

FVN# _____

Reference checked for _____
Name of Contractor or A/E

- ☐
- Corporation
-
- ☐
- Partnership
-
- ☐
- LLC
-
- ☐
- Individual or Sole Proprietorship
-
- ☐
- Other _____

Address _____

City _____

Zip _____

Phone _____

Fax _____

Firm Contact Name _____

Project referenced (*Name of Project, Agency, Location*) _____Project Completion Date (*MM/YYYY*) _____

Contract Amount \$ _____

Reference Contact (*Name/Title*) _____Reference Contact Phone (*000-000-0000*) _____What did the firm do for you? (*e.g. design work, construction service, cost auditing, studies, commissioning, other.*) _____

Rating Guideline

	QUALITY OF PRODUCT OR SERVICES	COST CONTROL	TIMELINESS OF PERFORMANCE	BUSINESS RELATIONS
5-Exceptional	Contractor/AE has demonstrated an exceptional performance level in any of the above four categories that justifies adding a point to the score. Contractor performance clearly exceeds the performance levels described as "Very Good"			
4-Very Good	Contractor/AE is in compliance with contract requirements and/or delivers quality product/service	Contractor/AE is effective in managing costs and submits current, accurate, and complete billings	Contractor/AE is effective in meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is effective
3-Satisfactory	Minor inefficiencies/errors have been identified	Contractor/AE is usually effective in managing cost	Contractor/AE is usually effective in meeting milestones and delivery schedules	Response to inquiries technical/service/administrative issues is somewhat effective
2-Marginal	Major problems have been encountered	Contractor/AE is having major difficulty managing cost effectively	Contractor/AE is having major difficulty meeting milestones and delivery schedule	Response to inquiries, technical/service/administrative issues is marginally effective
1-Unsatisfactory	Contractor/AE is not in compliance and is jeopardizing achievement of contract objectives	Contractor/AE is unable to manage costs effectively	Contractor/AE delays are jeopardizing performance of contract objectives	Response to inquiries, technical/service/administrative issues is not effective

Rate The Following	Rating 1-5 (5 = Highest)	Comments
Quality of Product or Service		
Cost Control		
Timeliness of Performance		
Business Relations		
OVERALL RATING		Signature of Rater: _____