**STATE OF UTAH - DEPARTMENT OF GOVERNMENT OPERATIONS**

**Division of Facilities Construction and Management**



**DFCM**

**CONSTRUCTION MANAGER / GENERAL CONTRACTOR AGREEMENT**

This Construction Manager / General Contractor Agreement (“Agreement”) is made and entered into on Click to enter a date, by and between DFCM and the following Construction Manager / General Contractor (“Contractor”):

Contractor Legal Name

Contractor Business Address

City – State – Zip Code

**For the following Project:**

Project Name

Agency

Project Location

**ARTICLE 1. PROJECT SPECIFIC TERMS.**

* 1. **FIXED CONTRACT PRICE LIMIT.** The Fixed Contract Price Limit is Dollars and cents in text form (**$**Numerical dollar value).

**1.2 CONTRACTOR’S PRECONSTRUCTION PHASE SERVICES FEE**. The Contractor’s Preconstruction Phase Services Fee is a fixed price of: Dollars and cents in text form (**$**Numerical dollar value).

**1.3 ADJUSTED FIXED CONTRACT PRICE LIMIT**. The Adjusted Fixed Contract Price Limit is the Fixed Contract Price Limit less the Contractor’s Preconstruction Phase Services Fee, which is: Dollars and cents in text form (**$**Numerical dollar value).

**1.4 CONTRACTOR’S CONSTRUCTION PHASE SERVICES FEE.** The Contractor’s Construction Phase Services Fee is: Percentage in text form **percent** (Numerical percentage**%**) of the Adjusted Fixed Contract Price Limit.

**1.5 CONTRACTOR’S CONSTRUCTION SUPERVISION COMPENSATION.** The Contractor’s Construction Supervision Compensation is: Percentage in text form **percent** (Numerical percentage**%**) of the Adjusted Fixed Contract Price Limit.

**1.6 CONTRACTOR’S GENERAL CONDITIONS COMPENSATION.** The Contractor’s General Conditions Compensation is: Percentage in text form **percent** (Numerical percentage**%**) of the Adjusted Fixed Contract Price Limit.

**1.7** **CONTRACTOR’S DIRECT SELF-PERFORMED WORK MARK-UP.** The Contractor’s Direct Self-Performed Work Mark-up is: Percentage in text form **percent** (Numerical percentage**%**) of the Direct Cost(s) of the Work. (Not to exceed seven percent (7%)).

**1.8 TARGET PROJECT SUBSTANTIAL COMPLETION DATE**. The Target Project Substantial Completion Date for the entire Work is: Click to enter a date.

**1.9 LIQUIDATED DAMAGES**. Liquidated Damages are: Dollars and cents in text form (**$**Numerical dollar value).

**ARTICLE 2. GENERAL PROVISIONS.**

**2.1 DEFINITIONS.** The definitions in the General Conditions are incorporated in this Agreement. In addition to the definitions in the General Conditions, the following definitions apply to this Agreement.

**ADDITIONAL GENERAL CONDITIONS COST(S)**. “Additional General Conditions Cost(s)” are set forth in Section 4.2.4.

**ADJUSTED FIXED CONTRACT PRICE LIMIT.** The “Adjusted Fixed Contract Price Limit” means the sum set forth in Section 1.3.

**ALLOWANCE**. An “Allowance”, as that term is used in this Agreement, in Section 7.1.7 of the General Conditions and in the other Contract Documents, means a defined scope of the Work and agreed estimated cost for which

DFCM bears the risk that actual cost will exceed the estimated cost. Notwithstanding anything in Section 7.1.7 of the General Conditions or other Contract Documents to the contrary, an Allowance shall not include any Overhead Cost(s) included in Contractor’s Construction Phase Services Fee, any Supervision Cost(s) included in Contractor’s Construction Supervision Compensation, Contractor’s General Condition’s Compensation, and/or Construction Contingency. An Allowance for a scope of Work included within Additional General Conditions Cost(s) or which contemplates that Contractor will incur Additional General Conditions Cost(s) shall include the Additional General Conditions Cost(s) to the Contractor attributable to the Allowance. An Allowance for a scope of Work included within the Direct Cost(s) of the Work or which contemplates that Contractor will incur a Direct Cost(s) of the Work shall include the Direct Cost(s) of the Work attributable to the Allowance and shall include Contractor’s Direct Self-Performed Work Mark-up attributable to the Allowance. An Allowance for a scope of Work included in a Bid Package Cost(s) shall be calculated on the cost of the scope of Work included in the applicable subcontract. An Allowance which contemplates that Contractor will incur a cost included in Contractor’s Reimbursable Cost(s) shall include Contractor’s Reimbursable Cost(s) attributable to the Allowance.

**BID PACKAGE**. “Bid Package” means the Drawings, Specifications and other bidding documents distributed to potential Subcontractor bidders for the scope of the Work described in the applicable Bid Package.

**BID PACKAGE COST(S)**. “Bid Package Cost(s)” is defined in Section 3.1.9.2.4.1.

**BUDGET**. A “Budget”, as that term is used in this Agreement and in the other Contract Documents, means a defined scope of the Work and agreed estimated cost for which the Contractor bears the risk that actual cost will exceed the estimated cost. A Budget shall not include any Overhead Cost(s) included in Contractor’s Construction Phase Services Fee, any Supervision Cost(s) included in Contractor’s Construction Supervision Compensation, Contractor’s General Condition’s Compensation, and/or Construction Contingency. A Budget for a scope of Work included within Additional General Conditions Cost(s) or which contemplates that Contractor will incur Additional General Conditions Cost(s) shall include the Additional General Conditions Cost(s) to the Contractor attributable to the scope of Work. A Budget for a scope of Work included within the Direct Cost(s) of the Work or which contemplates that Contractor will incur a Direct Cost(s) of the Work shall include the Direct Cost(s) of the Work attributable to the scope of Work and shall include Contractor’s Direct Self-Performed Work Mark-up attributable to the Direct Cost(s) of the Work. A Budget for a scope of Work included in a Bid Package Cost(s) shall be calculated on the cost of the scope of Work included in the applicable subcontract. A Budget which contemplates that Contractor will incur a cost included in Contractor’s Reimbursable Cost(s) shall include associated Contractor’s Reimbursable Cost(s).

**CONTRACT PRICE.** The “Contract Price” is defined in the General Conditions and, additionally, for purposes of this Agreement, means: (1) the Contractor’s Construction Phase Services Fee; (2) the Contractor’s Construction Supervision Compensation; (3) the Contractor’s General Conditions Compensation; (4) the Contractor’s Additional General Conditions Cost(s), if any; (5) the Bid Package Cost(s); (6) the Contractor’s Direct Self-Performed Work Compensation, if any; (7) the Contractor’s Reimbursable Cost(s); and (8) DFCM authorized expenditures of the Construction Contingency, if any.

**CONSTRUCTION CONTINGENCY.** The “Construction Contingency” is two percent (2%) of the Adjusted Fixed Contract Price Limit.

**CONTRACTOR’S CONSTRUCTION PHASE SERVICES FEE.** “Contractor’s Construction Phase Services Fee” means the sum calculated pursuant to Section 1.4.

**CONTRACTOR’S CONSTRUCTION SUPERVISION COMPENSATION.** “Contractor’s Construction Supervision Compensation”means the sum calculated pursuant to Section 1.5.

**CONTRACTOR’S DIRECT SELF-PERFORMED WORK COMPENSATION**. “Contractor’s Direct Self-Performed Work Compensation” means the Direct Cost(s) of the Work plus Contractor’s Direct Self-Performed Work Mark-up.

**CONTRACTOR’S DIRECT SELF-PERFORMED WORK MARK-UP**. “Contractor’s Direct Self-Performed Work Mark-Up” means the sum calculated pursuant to Section 1.7. “Contractor’s Direct Self-Performed Work Mark-Up” is inclusive of Contractor’s profit, Overhead Cost(s), Supervision Cost(s) (except as provided in Sections 4.2.6.2.1.2 and 4.2.6.2.1.3), General Conditions Cost(s) and contingencies arising out of, related to and/or connected with Direct Cost(s) of the Work.

**CONTRACTOR’S PRECONSTRUCTION PHASE SERVICES FEE.** “Contractor’s Preconstruction Phase Services Fee” means the sum set forth in Section 1.2.

**CONTRACTOR’S REIMBURSEABLE COST(S).** “Contractor’s Reimbursable Cost(s)” are set forth in Section 4.2.7.

**DELEGATED DESIGN**. “Delegated Design” is defined in Section 3.1.7.1.

**DESIGN ASSIST SUBCONTRACTOR(S)**. “Design Assist Subcontractor(s)” is defined in Section 3.1.7.2.

**DIRECT COST(S) OF THE WORK**. “Direct Cost(s) of the Work” are set forth in Section 4.2.6.2.1. Notwithstanding anything in Section 4.2.6.2.1 or elsewhere in the Contract Documents to the contrary, “Direct Cost(s) of the Work” excludes Contractor’s profit, Overhead Cost(s), Supervision Cost(s) (except as provided in Sections 4.2.6.2.1.2 and 4.2.6.2.1.3), General Conditions Cost(s) and contingencies arising out of, related to and/or connected with Direct Cost(s) of the Work.

**DIRECT SELF-PERFORMED WORK**. “Direct Self-Performed Work” is defined in Section 3.2.3.2.

**FIXED CONTRACT PRICE LIMIT.** The “Fixed Contract Price Limit” means the sum set forth in Section 1.1.

**GENERAL CONDITIONS.** The “General Conditions” means the DFCM General Conditions effective August 03, 2020, as modified by this Agreement.

**GENERAL CONDITIONS COST(S)**. “General Conditions Cost(s)” are defined in Sections 4.2.3.1 – 4.2.3.34.

**GUARANTEED MAXIMUM CONTRACT PRICE.** The “Guaranteed Maximum Contract Price” means the Guaranteed Maximum Contract Price established pursuant to Section 3.1.8. The Guaranteed Maximum Contract Price may sometimes be abbreviated in the Contract Documents as the “Guaranteed Maximum Price”, “GMCP” and/or “GMP”.

**GUARANTEED MAXIMUM CONTRACT PRICE CHANGE ORDER.** The “Guaranteed Maximum Contract Price Change Order” is defined in Section 3.1.8.

**GUARANTEED MAXIMUM CONTRACT PRICE PROPOSAL.** The “Guaranteed Maximum Contract Price Proposal” is defined in Section 3.1.8.

**GUARANTEED MAXIMUM DESIGN ASSIST SUBCONTRACT PRICE**. The “Guaranteed Maximum Design Assist Subcontract Price” is defined in Section 3.1.7.3.

**OVERHEAD COST(S).** “Overhead Cost(s)” are defined in Sections 4.2.1.1 – 4.2.1.10.

**PROGRAMMING.** “Programming” is defined in Utah Code § 63A-5b-502.

**SUPERVISION COST(S)**. “Supervision Cost(s)” are defined in Sections 4.2.2.1 – 4.2.2.6.

**SUPERVISORY EMPLOYEES**. “Supervisory Employees” are defined in Section 4.2.2.

**TARGET PROJECT SUBSTANTIAL COMPLETION DATE.** The “Target Project Substantial Completion Date” means the date set forth in Section 1.8.

**2.2 BASIC PRINCIPLES.** The Contractor will furnish all services, labor, materials and equipment to perform all of the Work to construct the Project for a Contract Price that is within the Adjusted Fixed Contract Price Limit and Guaranteed Maximum Contract Price, as such Adjusted Fixed Contract Price Limit and/or Guaranteed Maximum Contract Price may be adjusted pursuant to the Contract Documents, and the Contractor will substantially complete all of the Work within the Contract Time, as the Contract Time may be adjusted pursuant to the Contract Documents.

**2.2.1** In the performance of the Work under this Agreement, the Contractor acknowledges that time is critical for Project delivery and that portions of the Work are anticipated to have their design completed as separate Bid Packages and be under construction before other portions of the Work are fully designed. The Contractor also acknowledges that this accelerated approach to construction utilizing the services of an architect / engineer and construction manager / general contractor is known in the construction industry as “fast track construction” and requires maximum cooperation between the Contractor, the A/E and DFCM. The Contractor recognizes that the services to be rendered by the Contractor and the inter-relationships and coordinative aspects thereof are in the developmental stage and not fully defined. The Contractor has reviewed the agreement between the A/E and DFCM for the Project and understands the terms thereof as expressing a workable concept. In furtherance thereof, in the event there appears to be a duplication, overlap or conflict of the responsibilities of and/or duties between the A/E and the Contractor or an absence of designation, the issue shall be submitted to DFCM for determination. The Contractor shall abide by the decision of DFCM unless DFCM’s decision is arbitrary, capricious or an abuse of discretion.

**2.2.2** TheContractor understands the relationship of trust and confidence established between the Contractor and DFCM and accepts those responsibilities as described in this Agreement. The Contractor agrees to furnish competent service and sound judgment and to cooperate with the A/E in furthering the interests of DFCM. The Contractor agrees to furnish efficient business administration and superintendence and to endeavor to use the Contractor’s best efforts to complete the Work in an expeditious and economical manner consistent with the interests of DFCM.

**2.2.3** TheContractor, DFCM and the A/E shall work during design through to Final Completion as a team. The Contractor shall provide leadership to the team on all matters relating to construction.

**2.2.4** TheContractor agrees to comply with DFCM’s quality and performance requirements as set forth in the Contract Documents.

**2.2.5** The Contractor acknowledges and agrees that the strength of the Contractor’s team to be assigned by the Contractor to the Project as set forth in the Contractor’s Proposal (individually a “Team Member”) and the individual résumés of each Team Member constituted a material inducement for DFCM to select Contractor for the Project. Contractor shall not, without DFCM’s prior written permission, voluntarily replace a Team Member. If a Team Member must be replaced due to the Team Member terminating employment, the Contractor justifiably terminating the Team Member, death or disability of the Team Member, retirement of the Team Member or other like cause, the Contractor shall replace the Team Member with an employee of the Contractor of comparable experience, reasonably acceptable to DFCM. Contractor shall provide a résumé and/or other evidence of experience and qualifications to DFCM for all proposed replacement Team Members.

**2.2.6** TheContractor represents to DFCM that by executing this Agreement, the Contractor has been fully informed and has thoroughly reviewed: (1) the goals of DFCM for the Project; (2) the work effort of the A/E performed to date and Instruments of Service produced to date for the Project; and (3) the Contractor has been informed of DFCM’s time as well as fiscal constraints and contingencies applicable to the Fixed Contract Price Limit and Adjusted Fixed Contract Price Limit and all of the services, labor, material and equipment to be provided by the Contractor pursuant to the Contract Documents. Based upon this review and analysis and recognizing that the contract for design services is between DFCM and the A/E, the Contractor nonetheless represents to DFCM that the Contractor shall provide all of the services, labor, material and equipment to perform all of the Work to construct the Project for a Contract Price that is within the Adjusted Fixed Contract Price Limit and Guaranteed Maximum Contract Price (as such Adjusted Fixed Contract Price Limit and Guaranteed Maximum Contract Price may be adjusted pursuant to the Contract Documents) and the Contractor will substantially complete all of the Work within the Contract Time (as such Contract Time may be adjusted pursuant to the Contract Documents).

**2.2.7** In accordance with Utah Code § 63G-27-201, unless this Agreement is for a total value of less than $100,000 or Contractor has fewer than 10 full time employees or this Agreement is otherwise exempt under Utah Code § 63G-27-201: (1) the Contractor certifies that the Contractor is not currently engaged in a boycott of the State of Israel or an economic boycott as that term is defined in Utah Code § 63G-27-102; (2) the Contractor agrees not to engage in a boycott of the State of Israel during the duration of this Agreement; (3) the Contractor shall notify DFCM if the Contractor begins engaging in an economic boycott; and (4) Contractor acknowledges and agrees that the Contractor’s notice under clause (3) of this Section 2.2.7 may be grounds for termination of this Agreement by DFCM for cause.

**ARTICLE 3. CONTRACTOR’S SERVICES.**

**3.1 PRECONSTRUCTION PHASE.** The initial Work of the Contractor shall consist of the Contractor’s services in connection with the Preconstruction Phase. The Preconstruction Phase of the Contractor’s services shall be parallel to and concurrent with the Programming (if the Contractor is retained prior to the completion of Programming), schematic design, design development and construction document phases of the A/E’s services.

**3.1.1 PRECONSTRUCTION PHASE SERVICES**. The Contractor shall provide services described as “Preconstruction Phase Services” in Section 3.1 of this Agreement and elsewhere in the Contract Documents. The Contractor agrees that if the Contractor provided any services in connection with the Project prior to the effective date of this Agreement, the terms of this Agreement shall apply to all services provided by the Contractor in connection with the Project, whether provided by the Contractor prior or subsequent to the effective date of this Agreement, provided DFCM shall have no obligation to compensate the Contractor for services provided prior to the effective date of this Agreement except as otherwise may be expressly and specifically provided in a separate written agreement between DFCM and the Contractor, if any.

**3.1.2 A/E SELECTION, CONSULTANT SELECTION AND PROGRAMMING.**

**3.1.2.1** If the A/E has not been selected by DFCM at the date of execution of this Agreement by the Contractor and DFCM, if requested by DFCM, the Contractor shall assist DFCM in the selection of the A/E.

**3.1.2.2** If the civil, structural, mechanical, plumbing, electrical and/or other subconsultants have not been selected at the date of execution of this Agreement by the Contractor and DFCM, if requested by DFCM, the Contractor shall make recommendations as to the selection of such subconsultants.

**3.1.2.3** To the extent, if any, that Programing has not been completed as of the date of execution of this Agreement by the Contractor and DFCM, if requested by DFCM, the Contractor shall assist DFCM and the A/E with Programming.

**3.1.3 CONSULTATION.**

**3.1.3.1** The Contractor shall schedule and conduct meetings with DFCM and the A/E to discuss such matters as procedures, progress, coordination and scheduling of the Work. The Contractor shall advise DFCM and the A/E on proposed site use and improvements, selection of materials and building systems and equipment. The Contractor shall also provide recommendations consistent with the Project requirements to DFCM and the A/E on: (1) constructability; (2) availability of materials and labor; (3) time requirements for procurement, installation and construction; and (4) factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**3.1.3.2** The Contractor shall conduct design review throughout the design phase and shall participate in Project design review sessions at the close of the schematic design phase, the design development phase, and as construction documents are finalized for each Bid Package. The Project design review sessions shall be attended by the A/E and representatives of DFCM. The purposes of Contractor’s ongoing design review and the Project design review sessions are: (1) to assure consistency with the design intent; (2) to ensure complete, coordinated, constructible and cost-effective designs for all trades; (3) to eliminate areas of conflict, overlapping trade jurisdictions, and overlap in the Work to be performed by the various Subcontractors; (4) to facilitate the bidding and awarding of subcontracts, (5) to endeavor to identify (in Contractor’s capacity as a contractor and not as a licensed design professional) instances where the design documents may not be code compliant; (6) to endeavor to confirm compliance with the State of Utah High Performance Building Standards, as reflected in the design; (7) to endeavor to confirm that all Work has been included and described in sufficient detail to assure complete and accurate pricing of Work; (8) to minimize the need for Change Orders; and (9) to allow for phased construction. The Contractor shall recommend alternative solutions whenever design details affect construction feasibility, schedules or costs.

**3.1.3.3** The Contractor shall provide monthly reports to DFCM, no later than the fifth (5th) day of the month, summarizing the Contractor’s activities under this Section 3.1.3 for the previous month.

**3.1.4 PRELIMINARY SCHEDULING.**

**3.1.4.1** Upon execution of this Agreement, the Contractor shall prepare a preliminary project schedule for DFCM’s and the A/E’s review and DFCM’s acceptance. The Contractor shall obtain the A/E’s approval for the portion of the preliminary project schedule relating to the performance of the A/E’s services. The preliminary project schedule shall coordinate and integrate the Contractor’s services, the A/E’s services, the services of other DFCM consultants, if any, and DFCM’s responsibilities and identify items that could affect the Project’s timely completion. The preliminary project schedule shall include the following: (1) submission of the Guaranteed Maximum Contract Price Proposal; (2) issuance and award of Bid Packages; (3) times of commencement and completion required of each Subcontractor; (4) ordering and delivery of products, including those that must be ordered well in advance of construction; and (5) the occupancy requirements of DFCM. The preliminary project schedule shall generally comply with the requirements of Sections 4.6.4 and 4.6.5 of the General Conditions.

**3.1.4.2** The Contractor shall prepare, for DFCM’s and the A/E’s review and DFCM’s acceptance, a preliminary procurement schedule for items that must be ordered well in advance of construction. The Contractor shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If DFCM and Contractor agree that DFCM will procure any items prior to the execution of the Guaranteed Maximum Contract Price Change Order, DFCM shall procure the items on terms and conditions acceptable to the Contractor. Upon the execution of the Guaranteed Maximum Contract Price Change Order, DFCM shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

**3.1.4.3** The Contractor shall provide recommendations regarding accelerated or fast-track scheduling, procurement or phased construction. The Contractor shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

**3.1.5 COST ESTIMATES**. The A/E, by the terms of its agreement with DFCM, is obligated to provide reasonable cooperation to the Contractor in the development of estimates of the Contract Price. Conversely, the Contractor, by the terms of this Agreement, is obligated to provide reasonable cooperation to the A/E in the development of estimates of the Contract Price. Additionally, both the A/E and the Contractor are obligated to reconcile their respective estimates of the Contract Price at the completion of each design phase of the Work in a timely manner so as not to delay the Project.

**3.1.5.1** As the A/E progresses with the preparation of the schematic design documents, design development documents and construction documents, the Contractor shall provide continuous estimating, reflecting all design iterations and changes in real time, of increasing detail and refinement and allowing for the further development of the design until such time as DFCM and the Contractor agree on a Guaranteed Maximum Contract Price for the Work and execute a Guaranteed Maximum Contract Price Change Order. Such estimates shall be provided at intervals to be specified by DFCM for DFCM’s and the A/E’s review.

**3.1.5.2** Estimates shall be independently prepared but in coordination with the A/E, shall be based on quantitative takeoffs, area, volume or similar conceptual estimating techniques, shall reflect unit prices, if any, that are researched and justifiable, and shall be supported in sufficient depth and organization to be used in preparing budgets based on Construction Specifications Institute (CSI) Divisions and anticipated Bid Packages and shall comply with any additional requirements stated in the Contract Documents. The specific cost coding structure, estimating guidelines, assumptions, and contents of the cost estimates shall be mutually resolved between the Contractor and the A/E prior to development of the first estimate to assure that estimates developed by the Contractor and the A/E can be compared and reconciled.

**3.1.5.3** Unless otherwise agreed in writing by Contractor and DFCM, when preparing any estimates of the Contract Price such estimates shall include, without duplication, the items listed in Sections 3.1.5.3.1 – 3.1.5.3.12.

**3.1.5.3.1** Contractor’s Construction Phase Services Fee.

**3.1.5.3.2** A line-item estimate of all Construction Supervision Cost(s) included in Contractor’s Construction Supervision Compensation.

**3.1.5.3.3** A line-item estimate of all General Conditions Cost(s) included in Contractor’s General Conditions Compensation.

**3.1.5.3.4** A line-item estimate of all Additional General Conditions Costs(s), if any.

**3.1.5.3.5** A line-item estimate of all subcontract and other costs included in all Bid Package Cost(s) together with documentation for such costs if obtained from a source other than Contractor.

**3.1.5.3.6** A line-item estimate of the Direct Cost(s) of the Work, together with Contractor’s Direct Self-Performed Work Mark-Up, if any.

**3.1.5.3.7** A line-item estimate of all costs included in Contractor’s Reimbursable Cost(s).

**3.1.5.3.8** A line-item estimate of all items designated as Allowances, if any.

**3.1.5.3.9** A line-item estimate of all items included within Budgets, if any.

**3.1.5.3.10** A line-item estimate of any alternates.

**3.1.5.3.11** A line-item estimate of any unit prices.

**3.1.5.3.12** The Construction Contingency.

**3.1.5.4** Estimates of the Contract Price shall not include: (1) Contractor’s Preconstruction Phase Services Fee; (2) the compensation of the A/E, the A/E’s mechanical, electrical, plumbing, structural, civil, and/or any other consultants and subconsultants; or (3) the costs of land, right-of-way, debt service or other costs which are the responsibility of DFCM.

**3.1.5.5** During the preparation of cost estimates, the Contractor shall notify DFCM if it appears that the estimate of the Contract Price will exceed the Adjusted Fixed Contract Price Limit, satisfactorily demonstrate the accuracy of Contractor’s estimate in such detail as shall be reasonably required by DFCM and make reasonable recommendations for corrective action consistent with the Adjusted Fixed Contract Price Limit.

**3.1.5.6** Prior to the execution of the Guaranteed Maximum Contract Price Change Order,DFCM shall reasonably cooperate with the Contractor to keep the Contract Price within the Adjusted Fixed Contract Price Limit, including, but not limited to, cooperating with the Contractor’s value engineering services under Section 3.1.6, the giving of appropriate and reasonable consideration to all reasonable recommendations of the Contractor and approving, in DFCM’s sole discretion, redesign, deductive alternates or reductions in Work.

**3.1.5.7** If DFCM, the A/E or Contractor suggest alternative materials and systems, the Contractor shall provide cost evaluations of those alternative materials and systems.

**3.1.5.8** Subsequent to execution of a Guaranteed Maximum Contract Price Change Order, the Contractor shall continually monitor the Contractor’s cost estimates to assure that the Contract Price remains within the Guaranteed Maximum Contract Price and Adjusted Fixed Contract Price Limit.

**3.1.6 VALUE ENGINEERING.**

**3.1.6.1** The Contractor shall provide value engineering services throughout the Preconstruction Phase to identify cost effective changes in DFCM’s requirements that will result in reducing the Contract Price without

impairing essential functions or characteristics of the Project. The objective of value engineering is to achieve optimum value for each construction dollar spent either by increasing the quantity or quality of Work without increase in construction dollars spent or by reducing the construction dollars spent without decreasing the quantity or quality of Work, or a combination of both, and to keep the Contract Price within the fiscal constraints set forth in the Contract Documents while keeping the Contract Time within the time constraints set forth in the Contract Documents. In cooperation with DFCM and the A/E, the Contractor shall perform the services listed in Sections 3.1.6.1.1 – 3.1.6.1.5.

**3.1.6.1.1** The Contractor shall investigate, evaluate and make recommendations as to alternative designs, systems and/or materials.

**3.1.6.1.2** The Contractor shall provide cost estimates of the alternatives to be evaluated. Cost estimates shall include industry standard operating and maintenance costs when appropriate to evaluate life-cycle costs of the alternatives. Cost estimates shall take into consideration all cost impacts related to alternatives including, but not limited to, construction costs.

**3.1.6.1.3** The Contractor shall evaluate the alternatives on the basis of costs, time schedules, availability of labor, materials and equipment and construction feasibility.

**3.1.6.1.4** The Contractor shall lead a value engineering workshop at the end of the schematic design phase and design development phase, bringing multidiscipline expertise to evaluate alternative designs, systems and materials.

**3.1.6.1.5** With the assistance of the A/E, the Contractor shall prepare written reports at the end of the schematic design phase and design development phase summarizing the value engineering activities accomplished and any recommendations developed within each phase.

**3.1.6.2** DFCM shall participate in the investigation and evaluation of alternatives in the value engineering process and shall approve value engineering alternatives accepted by DFCM in each design phase, if any.

**3.1.7 DESIGN ASSIST.**

**3.1.7.1** The Contractorshall evaluate and make recommendationsto DFCM regarding delegated design / deferred submittal (“Delegated Design”) proposals and shall cooperate with the A/E and DFCM in effectuating any decisions made by DFCM with respect to such proposals consistent with DFCM’s current Deferred Submittal Process Policy.

**3.1.7.2** Notwithstanding anything in Section 3.1.9 or elsewhere in this Agreement or the other Contract Documents to the contrary, it is contemplated that the Contractor may, subject to the prior written authorization of DFCM, subcontract at or prior to the schematic design phase or design development stage with a DFCM approved structural steel subcontractor, mechanical and plumbing subcontractor, electrical subcontractor and/or other subcontractors (“Design Assist Subcontractor(s)”) for the purpose of early engagement, involvement and assistance of the Design Assist Subcontractor(s) in the design process of the A/E and the A/E’s consultants and/or to provide Delegated Design services.

**3.1.7.3** The Contractor’s subcontract with a Design Assist Subcontractor shall require the Design Assist Subcontractor to propose a “Guaranteed Maximum Design Assist Subcontract Price” to be incorporated in the Contractor’s Guaranteed Maximum Contract Price Proposal that does not, either by itself or in conjunction with other costs, cause the Contractor’s Guaranteed Maximum Contract Price Proposal to exceed the Adjusted Fixed Contract Price Limit.

**3.1.7.4** Provided a Design Assist Subcontractor proposes a Guaranteed Maximum Design Assist Subcontract Price that does not, either by itself or in conjunction with other costs, cause the Contractor’s Guaranteed Maximum Contract Price Proposal to exceed the Adjusted Fixed Contract Price Limit, the Design Assist Subcontractor’s subcontract shall be incorporated in the Work at the time of execution of the Guaranteed Maximum Contract Price

Change Order pursuant to Section 3.1.8.5, allocated to the appropriate Bid Package pursuant to Section 3.1.9.2.4 and the Guaranteed Maximum Design Assist Subcontract Price shall be converted to a Bid Package Cost(s) pursuant to Section 3.1.9.2.4.1.

**3.1.7.5** If a Design Assist Subcontractor does not propose a Guaranteed Maximum Design Assist Subcontract Price that does not, either by itself or in conjunction with other costs, cause the Contractor’s Guaranteed Maximum Contract Price Proposal to exceed the Adjusted Fixed Contract Price Limit, the Contractor may terminate the Design Assist Subcontract and the replacement Subcontractor shall be selected pursuant to Section 3.1.9. DFCM shall have no obligation to compensate either Contractor or a Design Assist Subcontractor for design assist services in the event of a termination of a Design Assist Subcontract pursuant to this Section 3.1.7.5. If the Design Assist Subcontractor has performed Delegated Design services, any associated Instruments of Service shall be the property of DFCM in the event of such termination, and the Contractor’s subcontract with a Design Assist Subcontractor shall so provide.

**3.1.7.6** Where the requirement of retention of a Design Assist Subcontractorisstated in the Request for Proposals for the Project, the compensation to be paid to the Design Assist Subcontractor for design assist services in the Preconstruction Phase is included in Contractor’s Preconstruction Phase Services Fee. Where DFCM establishes the requirement of retention of a Design Assist Subcontractor subsequent to the issuance of the Request for Proposals for the Project, compensation to be paid to the Design Assist Subcontractor for design assist services in the Preconstruction Phase shall be included in the Bid Package Cost(s) for that Design Assist Subcontractor.

**3.1.8** **GUARANTEED MAXIMUM CONTRACT PRICE AND CONTRACT TIME.**

**3.1.8.1** Within twenty-one (21) calendar days following the delivery to the Contractor of the construction documents, in consultation with DFCM and the A/E, the Contractor shall prepare and deliver to DFCM a Guaranteed Maximum Contract Price Proposal for DFCM’s review and acceptance (unless a different time for delivery of Contractor’s Guaranteed Maximum Contract Price Proposal is agreed to in writing by DFCM and Contractor). The Guaranteed Maximum Contract Price in the Contractor’s Guaranteed Maximum Contract Price Proposal shall be the sum of the Contractor’s estimate of: (1) the Contractor’s Construction Phase Services Fee; (2) the Contractor’s Construction Supervision Compensation; (3) the Contractor’s General Conditions Compensation; (4) the Additional General Conditions Cost(s), if any; (5) the Bid Package Cost(s); (6) the Contractor’s Direct Self-Performed Work Compensation, if any; (7) the Contractor’s Reimbursable Cost(s); and (8) the Construction Contingency.

**3.1.8.2** TheContractor shall include with the Contractor’s Guaranteed Maximum Contract Price Proposal a written statement of its basis, which shall include all of the items set forth in Sections 3.1.8.2.1 – 3.1.8.2.16.

**3.1.8.2.1** A list of the Drawings and Specifications, including all Addenda thereto, used by the Contractor in the preparation of the Contractor’s Guaranteed Maximum Contract Price Proposal.

**3.1.8.2.2** Contractor’s Construction Phase Services Fee.

**3.1.8.2.3** A line-item breakdown of all Construction Supervision Cost(s) included in the Contractor’s Construction Supervision Compensation.

**3.1.8.2.4** A line-item breakdown of all General Conditions Cost(s) included in the Contractor’s General Conditions Compensation.

**3.1.8.2.5** A line-item breakdown of all Additional General Conditions Cost(s), if any.

**3.1.8.2.6** A line-item breakdown of all subcontracts and other costs included in all Bid Package Cost(s).

**3.1.8.2.7** A line-item breakdown of all Direct Costs(s) of the Work included in the Contractor’s Direct Self-Performed Work Compensation, if any and Contractor’s Direct Self-Performed Work Mark-Up.

**3.1.8.2.8** A line-item breakdown of all costs included in the Contractor’s Reimbursable Cost(s).

**3.1.8.2.9** The Construction Contingency.

**3.1.8.2.10** A list of Allowances, if any, and a statement of their basis.

**3.1.8.2.11** A list of Budgets, if any, and a statement of their basis.

**3.1.8.2.12** A list of alternates, if any, and a statement of their additive or deductive impact on the Guaranteed Maximum Contract Price.

**3.1.8.2.13** A list of the clarifications and assumptions made by the Contractor in the preparation of the Contractor’s Guaranteed Maximum Contract Price Proposal (which shall be limited to clarifications and assumptions as to the scope of Work described in the Drawings and Specifications – proposed terms which purport to modify the terms

of this Agreement and/or the General Conditions are prohibited and void unless incorporated in the Contract Documents as an authorized Amendment pursuant to the General Conditions).

**3.1.8.2.14** A statement of the proposed Guaranteed Maximum Contract Price, which shall not exceed the Adjusted Fixed Contract Price Limit.

**3.1.8.2.15** The date of Substantial Completion of the entire Work upon which the Guaranteed Maximum Contract Price is based, which shall not be later than the Target Project Substantial Completion Date.

**3.1.8.2.16** The date DFCM must accept the Contractor’s Guaranteed Maximum Contract Price Proposal, which shall be at least twenty-one (21) calendar days after the date on which the Contractor submits the Contractor’s Guaranteed Maximum Contract Price Proposal to DFCM.

**3.1.8.3** At least fourteen (14) calendar days prior to the date established for DFCM’s acceptance of the Contractor’s Guaranteed Maximum Contract Price Proposal pursuant to Section 3.1.8.2.16,theContractor shall meet with DFCM and the A/E to review the Contractor’s Guaranteed Maximum Contract Price Proposal. In the event that DFCM and/or the A/E discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall, within seven (7) calendar days of such notification, make appropriate adjustments to the Contractor’s Guaranteed Maximum Contract Price Proposal, its basis, or both, and resubmit the Contractor’s Guaranteed Maximum Contract Price Proposal, as revised, to DFCM and the A/E, in which event DFCM and the A/E shall be given the longer of the period under Section 3.1.8.2.16 or seven (7) calendar days from delivery of the revised Contractor’s Guaranteed Maximum Contract Price Proposal to review and for DFCM to accept the revised Contractor’s Guaranteed Maximum Contract Price Proposal.

**3.1.8.4** If DFCM notifies the Contractor in writing that DFCM has accepted the Contractor’s Guaranteed Maximum Contract Price Proposal before the date specified in the Contractor’s Guaranteed Maximum Contract Price Proposal pursuant to Section 3.1.8.2.16, as such date may be extended pursuant to Section 3.1.8.3, the Contractor’s Guaranteed Maximum Contract Price Proposal shall be deemed effective without further acceptance from the Contractor. Following acceptance of Contractor’s Guaranteed Maximum Contract Price Proposal by DFCM, DFCM and the Contractor shall execute a Guaranteed Maximum Contract Price Change Order, a copy of

which DFCM shall provide to the A/E. The Guaranteed Maximum Contract Price Change Order shall incorporate the Contractor’s Guaranteed Maximum Contract Price Proposal, as accepted by DFCM, as a Contract Document.

**3.1.8.5** Upon acceptance of the Contractor’s Guaranteed Maximum Contract Price Proposal by DFCM and execution of a Guaranteed Maximum Contract Price Change Order by Contractor and DFCM, the Contractor shall

be obligated to fully complete the Project for a Contract Price not to exceed the Guaranteed Maximum Contract Price and to achieve Substantial Completion of the entire Work on or before the date for the Substantial Completion of the entire Work specified in the Contractor’s Guaranteed Maximum Contract Price Proposal and in the Guaranteed Maximum Contract Price Change Order, subject only to adjustment as provided in the Contract Documents. Notwithstanding anything in this Agreement or other Contract Documents to the contrary, it is understood and agreed that, once the Contractor’s Guaranteed Maximum Contract Price Proposal is accepted by DFCM and a Guaranteed Maximum Contract Price Change Order is executed by the Contractor and DFCM, the Guaranteed Maximum Contract Price in the Contractor’s Guaranteed Maximum Contract Price Proposal and in the Guaranteed Maximum Contract Price Change Order, subject to adjustments for changes in the Work as provided in the Contract Documents, shall constitute the maximum amount and upper limit payable to the Contractor by DFCM. To the extent that any elements of the Contract Price or any other costs or amounts, or any combination of them, exceed the Guaranteed Maximum Contract Price, such costs will be borne by the Contractor and the Contractor shall be entitled to receive no compensation under the Contract Documents in excess of the Guaranteed Maximum Contract Price, as adjusted for changes in the Work as provided in the Contract Documents. To the extent, if any, that the Guaranteed Maximum Contract Price exceeds the Contract Price, the difference shall be the property of DFCM.

**3.1.8.6** Upon execution of a Guaranteed Maximum Contract Price Change Order by DFCM and Contractor, DFCM shall authorize the A/E to finalize the construction documents, which construction documents shall, subject to Section 3.1.8.2.13, incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed

Maximum Contract Price Change Order. DFCM shall promptly furnish the construction documents to the Contractor. Within fourteen (14) calendar days of the submission of the construction documents to the Contractor, the Contractor shall notify DFCM and the A/E in writing of any inconsistencies between the Guaranteed Maximum Contract Price Change Order and the construction documents, in which event Contractor, DFCM and A/E shall endeavor in good faith to resolve any such identified inconsistencies between the Guaranteed Maximum Contract Price Change Order and the construction documents. Any errors and/or omissions resulting from, arising out of and/or connected with, in whole or in part, Contractor’s failure to identify in writing any inconsistencies between the Guaranteed Maximum Contract Price Change Order and the construction documents as required by this Section 3.1.8.6 shall be managed in accordance with Section 3.1.10. The construction documents, altered as by Modifications authorized under the Contract Documents, shall govern the performance of the Work.

**3.1.8.7** Unless DFCM accepts the Contractor’s Guaranteed Maximum Contract Price Proposal in writing within the time period established pursuant to Section 3.1.8.2.16, or within the time for acceptance of Contractor’s revised Guaranteed Maximum Contract Price Proposal under Section 3.1.8.3 and so notifies the Contractor, the Contractor’s Guaranteed Maximum Contract Price Proposal shall be deemed rejected and shall not be effective without written acceptance by the Contractor and DFCM. DFCM may reject the Contractor’s Guaranteed Maximum Contract Price Proposal for any reason or for no reason, in DFCM’s sole discretion.

**3.1.8.8** Inthe event that the Contractor’s Guaranteed Maximum Contract Price Proposal exceeds the Adjusted Fixed Contract Price Limit: (1) DFCM and the Contractor may negotiate to attempt to reduce the amount of the Contractor’s Guaranteed Maximum Contract Price Proposal; or (2) DFCM may, but shall not be obligated to, direct the A/E to re-design the Project as necessary to cause a reduction in the Contractor’s Guaranteed Maximum Contract Price Proposal. If the Contractor is unable, after good faith efforts, to propose a Guaranteed Maximum Contract Price that does not exceed the Adjusted Fixed Contract Price Limit, DFCM, in consultation with the Contractor and for a period of thirty (30) days after such notice, shall attempt to decide whether: (1) to reduce the quality and/or quantity of the Project; (2) to increase the amount of the Adjusted Fixed Contract Price Limit; or (3) a combination of such changes. DFCM’s decision to approve any such changes shall be in DFCM’s sole and absolute discretion. If within such thirty (30) day period DFCM and the Contractor agree to a Contractor’s Guaranteed Maximum

Contract Price Proposal that: (1) does not exceed the Adjusted Fixed Contract Price Limit (as such Adjusted Fixed Contract Price Limit may be modified by DFCM); (2) contains the items described in Section 3.1.8.2 that are approved by DFCM; and (3) provides for the Contract Time for the Substantial Completion of the entire Work not later than the Target Project Substantial Completion Date (as such Target Project Substantial Completion Date may be modified by DFCM), then DFCM and the Contractor shall sign a Guaranteed Maximum Contract Price Change Order. In the event that DFCM and the Contractor cannot agree to a Contractor’s Guaranteed Maximum Contract

Price Proposal that does not exceed the Adjusted Fixed Contract Price Limit, and/or that contains the items described in in Section 3.1.8.2 that are acceptable to DFCM within such thirty (30) day period, then DFCM may terminate this Agreement by written notice to the Contractor.

**3.1.8.9.** At any time prior to the execution of a Guaranteed Maximum Contract Price Change Order by DFCM and the Contractor, this Agreement may be terminated by DFCM for the convenience of DFCM, in which event the Contractor agrees to waive any and all claims for damages, including, but not limited to, lost profits, and to waive any and all claims for restitution and in the event of such termination the Contractor’s sole remedy shall be: (1) payment of Contractor’s Preconstruction Phase Services Fee for services properly completed on a percentage of completion basis; and (2) if the Contractor has performed any Construction Phase Services pursuant to Section 3.2.1.2, payment of the portion of the Contract Price, on a percentage of completion basis, directly applicable to such Construction Phase Services. Subsequent to the execution of a Guaranteed Maximum Contract Price Change Order by DFCM and the Contractor, this Agreement may be terminated only as provide in Article 12 of the General Conditions.

**3.1.9 BIDDING; BID PACKAGE MANAGEMENT AND AWARD**.

**3.1.9.1 BIDDING.**

**3.1.9.1.1** The Contractor shall seek to develop Subcontractor interest in the Project and shall assist DFCM and the A/E in preparing a pre-qualification procedure and in developing pre-qualification criteria for Subcontractors,

including suppliers who are to furnish materials or equipment fabricated to a special design, from whom competitive bids will be requested for each portion of the Work. Unless it is not feasible, and subject to Section 3.1.7, DFCM, the Contractor and the A/E shall select, based upon the pre-qualification criteria, not less than three (3) qualified Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, for each portion of the Work from whom competitive bids will be requested. DFCM may designate specific persons or entities from whom the Contractor shall obtain bids, provided however, that Contractor shall not be required to contract with any Subcontractor to whom the Contractor reasonably objects.

**3.1.9.1.2** The Contractor shall prepare necessary bidding information and bidding forms; establish bidding schedules; publicly advertise for bids; and conduct pre-bid conferences to familiarize bidders with the bidding documents and management techniques and with any special systems, materials, or methods. If the Contractor becomes aware prior to any bid date that less than three (3) pre-qualified Subcontractors intend to bid any portion of any Bid Package, the Contractor shall promptly so notify DFCM and the A/E.

**3.1.9.1.3** The Contractor shall receive and open bids when advertised, prepare a bid analysis, conduct pre-award conferences, and notify DFCM and the A/E concerning which bids shall be accepted. DFCM and the A/E shall be notified in advance of the time and place of all bid openings and may elect to attend such openings with their representatives. A proposal to accept other than a low bid shall be justified in writing by the Contractor and subject to prior written approval by DFCM.

**3.1.9.1.4** When entering into a subcontract that was not specifically included in the Contractor’s Guaranteed Maximum Contract Price Proposal, the Contractor shall procure the Subcontractor by using a Standard Procurement Process, as that term is defined in Utah Code § 63G-6a-103, or an exception to the requirement to use a standard procurement process, described in Title 63G, Chapter 6a, Part 8 of the Utah Procurement Code, in the same manner as if the subcontract work was procured directly by DFCM.

**3.1.9.2 BID PACKAGE MANAGEMENT AND AWARD.**

**3.1.9.2.1** The Contractor shall advise and work with DFCM and the A/E as to the determination as to the items of Work to be included in each Bid Package and as to the number of separate Bid Packages.

**3.1.9.2.2** Subsequent to the execution of a Guaranteed Maximum Contract Price Change Order, in the event the Contractor, for any reason within the Contractor’s control, requests more than the number of Bid Packages identified in the Guaranteed Maximum Contract Price Change Order, DFCM may make arrangement with the A/E for the additional Bid Packages desired and shall directly compensate the A/E for all fees and cost associated therewith. The Contractor shall reimburse DFCM for all of the A/E’s fees and costs associated therewith and an appropriate Change Order shall be issued deducting the same from the payments then or thereafter due to the Contractor. If those payments are not sufficient to cover such amount, the Contractor shall pay the difference to DFCM.

**3.1.9.2.3** If bids received in response to any Bid Package are such that the award of such Bid Package may result in the Contract Price exceeding the Guaranteed Maximum Contract Price, the Contractor shall immediately notify DFCM and the A/E in writing. In such event, if requested by DFCM, the Contractor shall provide additional value engineering services to endeavor to conform such Bid Package to the Guaranteed Maximum Contract Price and rebid such Bid Package with bidding documents incorporating any agreed value engineering solutions. Contractor shall not be entitled to any increase in the Guaranteed Maximum Contract Price in connection with such value engineering services. If the necessity of such value engineering services is attributable to the failure of Contractor to properly perform Preconstruction Phase Services, any A/E fees and/or costs associated with incorporating value engineering services in the Bid Package shall be the responsibility of the Contractor, but only to the extent that A/E fees and/or costs arise directly from Contractor’s failure to properly perform Preconstruction Phase Services, and the Contractor shall not be entitled to an extension of the Contract Time for any delay associated with the performance of such value engineering services and rebidding of the Bid Package, but only to the extent that delay arises directly from Contractor’s failure to properly perform Preconstruction Phase Services. If the necessity of such value engineering services is not attributable to the failure of the Contractor to properly perform Preconstruction Phase Services, any A/E fees and/or costs associated with incorporating value engineering services in the Bid Package shall be the responsibility of DFCM and the Contractor shall be entitled to an extension of the Contract Time commensurate with the delay associated with the performance of such value engineering services and rebidding of the Bid Package.

**3.1.9.2.4** As the Bid Packages are awarded and prices are established for the Work to be performed within each respective Bid Package, the Contractor and DFCM contemplate that the Work to be performed by the Contractor shall be adjusted by Change Order to place the Work contained within the various Bid Packages within the Work to be performed by the Contractor with corresponding appropriate adjustments made to the Guaranteed Maximum Contract Price and Contract Time.

**3.1.9.2.4.1** Subsequent to execution of a Change Order incorporating an awarded Bid Package into the Work to be performed by the Contractor, all elements of the Contract Price attributable to such Bid Package shall be deemed subsumed in and not to exceed the “Total this Change Order” amount on DFCM’s Change Order form as an agreed fixed amount for the portion of the Contract Price attributable to the Work of the Bid Package (“Bid Package Cost(s)”), but subject to adjustment for changes in the Work of the Bid Package as provided in the Contract Documents. The interim milestone completion date for the Work of the Bid Package (which shall be within the Contract Time, as the Contract Time may be modified pursuant to the Contract Documents) shall similarly be established by the Change Order incorporating the awarded Bid Package into the Work to be performed by the Contractor.

**3.1.9.2.4.2** After the award of all Bid Packages, to the extent, if any, that the total cost of all Bid Package Cost(s) exceeds the total sum allocated to all Bid Packages in the Contractor’s Guaranteed Maximum Contract Price Proposal, as accepted by DFCM pursuant to a Guaranteed Maximum Contract Price Change Order, to the extent that such excess amount would cause the Contract Price to exceed the Guaranteed Maximum Contract Price, such excess amount shall be paid by the Contractor, without reimbursement by DFCM.

**3.1.10 MODIFICATIONS IN CONSTRUCTION PHASE FOR DEFECTIVE PRECONSTRUCTION PHASE SERVICES.** During the Construction Phase, for any cause resulting from, arising out of and/or connected with, in whole or in part, Contractor’s failure to properly perform Contractor’s Preconstruction Phase Services, including, without limitation, for errors and/or omissions in the construction documents, in addition to, and not in lieu of, all other remedies available to DFCM under this Agreement or otherwise, pursuant to Utah Code § 63G-6a-1210, DFCM reserves the right to deny Contractor compensation for any element of the Contract Price associated with and/or connected to such cause, provided that: (1) it is recognized that Contractor’s Preconstruction Phase Services will be performed in Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise provided in the Contract Documents; and (2) in the case of an error and/or omission in the construction documents which the Contractor can demonstrate resulted in the cost of an item being omitted from the Contract Price, DFCM shall compensate Contractor for the actual direct cost to Contractor of providing the omitted item (excluding profit and Overhead Cost(s), Supervision Cost(s), General Condition(s) Cost(s) and/or Contractor’s Direct Self-Performed Work Mark-Up attributable to the omitted item). DFCM further reserves the right to deny Contractor any extension of the Contract Time for any delay resulting from, arising out of and/or connected with, in whole or in part, Contractor’s failure to properly perform Contractor’s Preconstruction Phase Services in Contractor’s capacity as a contractor, and not as a licensed design professional, unless otherwise provided in the Contract Documents, including, without limitation, for errors and/or omissions in the construction documents.

**3.2 CONSTRUCTION PHASE SERVICES**. The Contractor shall provide the Contractor’s Construction Phase Services as provided in the Contract Documents.

**3.2.1** **COMMENCEMENT AND COMPLETION.**

**3.2.1.1** The Contractor shall commence the Contractor’s Construction Phase Services on the date specified in a Notice to Proceed or as otherwise agreed to with DFCM and Substantially Complete the Work by the date established for Substantial Completion of the Work by the Guaranteed Maximum Contract Price Change Order, as the Contract Time may be modified by Change Order or Construction Change Directive.

**3.2.1.2** DFCM and the Contractor may agree, in writing and in consultation with the A/E, for the Construction Phase to commence prior to completion of the Preconstruction Phase, including, but not limited to, for the first construction Work on the Project to be performed pursuant to an early Bid Package, in which case, both phases will proceed concurrently.

**3.2.2 LIQUIDATED DAMAGES FOR DELAY.** Pursuant to Utah Code § 63G-6a-1210, the Contractor shall pay DFCM liquidated damages in the amount set forth in Section 1.9 for each day that the Contractor fails to

Substantially Complete the Work after the date established for Substantial Completion as provided in Section 4.6.14 of the General Conditions.

**3.2.3 SELF-PERFORMED WORK.**

**3.2.3.1 PERFORMANCE BY CONTRACTOR AS SUBCONTRACTOR.** The Contractor may not identify the Contractor as a prequalified Subcontractor under Section 3.1.9.1.1 unless: (1) the Contractor is currently licensed to perform the portion of the Work for which the Contractor identifies the Contractor as a prequalified Subcontractor; and (2) the Contractor intends to perform the Work of a prequalified Subcontractor; or the Contractor intends to obtain a Subcontractor at a later date to perform the Work because the Contractor is unable to obtain a

bid from a qualified Subcontractor or from a qualified Subcontractor at a cost that the Contractor considers to be reasonable. If the Contractor intends to perform the Work of a Subcontractor, DFCM may, by written request, require that the Contractor provide DFCM with information indicating the Contractor’s: (1) previous experience in the type of Work to be performed; and (2) qualifications for performing the Work. The Contractor shall respond in writing within five business days after receiving DFCM’s written request under the previous sentence. If the information the Contractor submits causes DFCM to reasonably believe that the Contractor’s performance of the portion of the Work is likely to result in a substandard finished product, DFCM shall require the Contractor to use a Subcontractor for the portion of the Work in question and obtain the Subcontractor bid under the supervision of DFCM.

**3.2.3.2 DIRECT PERFORMANCE BY CONTRACTOR.** The Contractor may propose in writing that the Contractor perform portions of the Work directly and not as a Subcontractor with Contractor’s own forces and equipment (“Direct Self-Performed Work”). Any such written proposal shall describe the benefits to DFCM to be achieved through such Direct Self-Performed Work and shall identify any potential detriments to DFCM that may arise from such Direct Self-Performed Work. The decision whether or not to permit Direct Self-Performed Work shall be in the sole discretion of DFCM.

**ARTICLE 4. COMPENSATION.**

**4.1 COMPENSATION FOR PRECONSTRUCTION PHASE SERVICES.**

**4.1.1** For the Contractor’s Preconstruction Phase Services, DFCM shall pay the Contractor the Contractor’s Preconstruction Phase Services Fee.

**4.1.2** In the event that Contractor and DFCM agree in writing for Contractor to provide Preconstruction Phase Services in addition to the Preconstruction Phase Services required by this Agreement and to a corresponding increase in Contractor’s Preconstruction Phase Services Fee, the Adjusted Fixed Limit of Construction Cost shall be calculated based on the Contractor’s Preconstruction Phase Services Fee as modified, unless otherwise agreed to in writing by DFCM and Contractor.

**4.2 COMPENSATION FOR CONSTRUCTION PHASE SERVICES.** For the Contractor’s Construction Phase Services, DFCM will pay the Contractor the Contract Price as provided in Sections 4.2.1 – 4.2.8.

**4.2.1 CONTRACTOR’S CONSTRUCTION PHASE SERVICES FEE.** Contractor’s Construction Phase Services Fee is inclusive of Contractor’s profit and overhead, and includes, without limitation, the items listed in Sections 4.2.1.1 – 4.2.1.10 (“Overhead Cost(s)”).

**4.2.1.1** Wages, salaries, benefits and all other costs and expenses of Contractor’s home office and/or branch office personnel, including, without limitation, corporate executives, project executives, administrative assistants, secretaries, mail room personnel, runners, IT personnel, coordinators, financial clerks, financial analysts, receptionists, accountants, estimators and plan checkers.

**4.2.1.2** Data processing, computer hardware and software and other home office / branch office equipment costs.

**4.2.1.3** Office supplies for the Contractor’s home and/or branch offices.

**4.2.1.4** Legal, accounting and other professional business services fees and associated costs.

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**4.2.1.5** Contractor’s banking costs, financing costs, capital costs and interest payments.

**4.2.1.6** Real estate related costs.

**4.2.1.7** Taxes, except as specifically and expressly included in Contractor’s Reimbursable Cost(s).

**4.2.1.8** Insurance premiums and costs, except as specifically and expressly included in Contractor’s Reimbursable Cost(s) or as permitted pursuant to Section 4.2.8.5.

**4.2.1.9** Costs arising out of, related to or connected with the negligence of the Contractor, Subcontractors, Sub-subcontractors or anyone for whom they may be liable, except to the extent incurred in responding to an emergency pursuant to Section 6.1.10 of the General Conditions for which compensation from the Construction Contingency is permitted under Section 4.2.8.2.

**4.2.1.10** Any cost not specifically and expressly included in Contractor’s Construction Supervision Compensation, Contractor’s General Conditions Compensation, Contractor’s Additional General Conditions Cost(s), Bid Package Cost(s), Contractor’s Direct Self-Performed Work Compensation and/or Reimbursable Costs(s) and which does not qualify for Construction Contingency.

**4.2.1.11** Contractor’s Construction Phase Services Fee is also inclusive of Contractor’s profit on Additional General Conditions Cost(s), if any, and includes all Overhead Cost(s) listed in Sections 4.2.1.1 – 4.2.1.9 arising out of, connected with and/or related to Contractor’s Additional General Conditions Cost(s), if any.

**4.2.2 CONTRACTOR’S CONSTRUCTION SUPERVISION COMPENSATION.** Contractor’s “Supervisory Employees”include, without limitation: project directors, project managers, assistant project managers, superintendents, assistant superintendents, schedulers, project engineers, foremen, field inspectors, safety officers, managers and coordinators, commissioning agents and QA/QC personnel. Contractor’s Construction

Supervision Compensation includes, without limitation, the items listed in Sections 4.2.2.1 – 4.2.2.6 (“Supervision Costs”).

**4.2.2.1** Wages, salaries and/or benefits of the Contractor’s Supervisory Employees whether stationed on or off the Project site.

**4.2.2.2** Costs paid or incurred by the Contractor arising out of, connected with and/or related to wages and/or salaries for Supervisory Employees, including, without limitation, employment taxes, insurance, medical, dental, vision and health benefits, sick leave, holidays, vacations and pensions and incentives and/or bonuses.

**4.2.2.3** Costs arising out of, connected with and/or related to vehicles for Contractor’s Supervisory Employees, including, without limitation, fuel costs, lubrication costs, maintenance costs, insurance costs and parking.

**4.2.2.4** Costs arising out of, connected with and/or related to Supervisory Employee cell phones, computer tablets and computer notebooks.

**4.2.2.5** The expenses of the Contractor’s Supervisory Employees incurred while traveling in discharge of duties connected with the Work, and expenses incurred for relocation and temporary living allowances of the Contractor’s Supervisory Employees required for the Work.

**4.2.2.6** Training, certification, licensing and similar costs for Contractor’s Supervisory Employees.

**4.2.2.7** Contractor’s Construction Supervision Compensation is also inclusive of Supervision Costs listed in Sections 4.2.2.1 – 4.2.2.6 arising out of, connected with and/or related to Contractor’s Additional General Conditions Cost(s), if any.

**4.2.3** **CONTRACTOR’S GENERAL CONDITIONS COMPENSATION.** Except as provided in Section 4.2.4, Contractor’s General Conditions Compensation is inclusive of all of Contractor’s general conditions.

**4.2.3.1 ITEMS INCLUDED.** Contractor’s General Conditions Compensation includes, without limitation, the items listed in Sections 4.2.3.1.1 – 4.2.3.1.34 (“General Conditions Cost(s)”).

**4.2.3.1.1** An on-site office, furnishings and office equipment, including utility, telecommunication and internet connections, printers and copiers and miscellaneous office supplies. The on-site office shall provide workspaces for the DFCM Project Manager and the A/E, including a desk, chair, filing cabinet, lighting and internet connection.

**4.2.3.1.2** On-site temporary storage units / trailers.

**4.2.3.1.3** Project related information technology costs, including, without limitation, computers, network connectivity, software and software licenses and IT support.

**4.2.3.1.4** Mobilization, demobilization and, if required in conjunction with Section 12.3.10 of the General Conditions, remobilization.

**4.2.3.1.5** Jobsite radio, cell phones and similar electronic communications equipment.

**4.2.3.1.6** Project sign and banners – inclusive of the scrim on the fence.

**4.2.3.1.7** BIM level of development – 300 per industry standards.

**4.2.3.1.8** Progress photos, videos, models and mock-ups.

**4.2.3.1.9** Submittal expressage / shipping.

**4.2.3.1.10** Project security inclusive of means necessary to monitor for and prevent trespassing, vandalism and/or theft, but not including on-site security guards.

**4.2.3.1.11** Temporary access card system.

**4.2.3.1.12** All general labor for material handling, unloading, scaffolding erection, site safety and quality control.

**4.2.3.1.13** Safety requirements: hard hats; safety vests; safety glasses; gloves; boots; fall protection; respirators; other personal protective equipment and site safety not included in subcontracts and any and all safety measures

and/or equipment required by OSHA / UOSHA and/or any Authority with Jurisdiction. Hard hats, safety vests and safety glasses for loan to visitors are included. First aid supplies are included.

**4.2.3.1.14** Handrails and toe boards, opening protection, fire extinguishers, temporary stairs, scaffolding and safety nets, as required.

**4.2.3.1.15** On-site construction water and drinking water.

**4.2.3.1.16** Temporary toilets (including transport, toilet paper, related chemicals, maintenance and daily cleaning).

**4.2.3.1.17** Temporary roads and roadway maintenance.

**4.2.3.1.18** Traffic control and safety, not including flagmen / traffic control personnel.

**4.2.3.1.19** Finish protection.

**4.2.3.1.20** Construction cleanup, including daily clean-up, weekly clean-up and final clean up and including labor, dump permits and fees, trash chutes and hoppers.

**4.2.3.1.21** Dust Control and temporary erosion control.

**4.2.3.1.22** SWPPP management, inspections and permits.

**4.2.3.1.23** LEED management and tracking.

**4.2.3.1.24** LEED waste recycling and tracking.

**4.2.3.1.25** State of Utah High Performance Building Standards documentation.

**4.2.3.1.26** Construction documents and hard copy plans

**4.2.3.1.27** Temporary fences with screening – inclusive of all phasing as required.

**4.2.3.1.28** Barricades and covered walkways, as required.

**4.2.3.1.29** Small tools.

**4.2.3.1.30** Machinery and equipment not included in subcontracts, including backhoes, dozers, forklifts, small and medium size cranes, trucks, vans, golf carts, and all-terrain vehicles, compressors, generators, pumps and dewatering equipment and all associated fuel, lubrication, filter, maintenance and similar costs.

**4.2.3.1.31** As-built documentation / project close out.

**4.2.3.1.32** Punchlist and warranty items.

**4.2.3.1.33** Any general conditions / temporary construction type items not expressly included under Section 4.2.3.1, except as provided in Section 4.2.4.

**4.2.3.1.34** Sales and Use Tax, if any, on any items described in Sections 4.2.3.1.1 – 4.2.3.1.33.

**4.2.3.2 PROHIBITION ON SHIFTING ITEMS INCLUDED TO SUBCONTRACTORS**. Unless allowed by DFCM pursuant to a Change Order, Contractor shall not shift the cost of items included in Contractor’s General Conditions Compensation to Subcontractor(s). By way of example, charging Subcontractor(s) a fee to access Contractor’s payment software, which fee is then passed on to DFCM in the subcontract cost, is prohibited. Pursuant to Utah Code § 63G-6a-1210, in DFCM’s discretion, any such improperly shifted costs will be credited against the Contract Price at twice the amount of such improperly shifted cost.

**4.2.4 ADDITIONAL GENERAL CONDITIONS COST(S)**. “Additional General Condition’s Costs(s)” includes the items listed in Sections 4.2.4.1 – 4.2.4.5.

**4.2.4.1** Tower cranes and large mobile cranes (including operators).

**4.2.4.2** Parking costs (except as provided in Section 4.2.2.3) or UDOT costs for on-site employees.

**4.2.4.3** Winter conditions – furnace(s), heater(s) and boiler(s), heating fuel and electricity and temporary enclosures not included in Section 4.2.3.1.28.

**4.2.4.4** On-site security guards.

**4.2.4.5** Flagmen / traffic control personnel.

**4.2.5 BID PACKAGE COST(S).** DFCM shall pay theBid Package Cost(s) as provided in Section 3.1.9.2.4.

**4.2.6 CONTRACTOR’S DIRECT SELF-PERFORMED WORK COMPENSATION.**

**4.2.6.1** For Work performed by the Contractor as a Subcontractor pursuant to Section 3.2.3.1, the Contractor’s compensation is included in the applicable Bid Package Cost(s).

**4.2.6.2** For Direct Self-Performed Work performed directly by Contractor pursuant to Section 3.2.3.2, DFCM shall pay the Contractor the Direct Cost(s) of the Work plus Contractor’s Direct Self-Performed Work Mark-Up.

**4.2.6.2.1 DIRECT COST(S) OF THE WORK.**

**4.2.6.2.1.1** For Direct Self-Performed Work, costs of materials and equipment incorporated or to be incorporated in the completed construction.

**4.2.6.2.1.2** For Direct Self-Performed Work, wages or salaries of construction workers and those costs described in Section 4.2.2.1 of Supervisory Employees limited to superintendents, assistant superintendents and foremen employed as employees by the Contractor to perform the construction of the Work at the Project site, or, with DFCM’s prior written approval, at locations other than the Project site.

**4.2.6.2.1.3** For Direct Self-Performed Work, costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for employees not covered by collective bargaining agreements, customary benefits (excluding discretionary bonuses) such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Direct Cost(s) of the Work under Section 4.2.6.2.1.2, including those costs described in Section 4.2.2.2 of Supervisory Employees limited to superintendents, assistant superintendents and foremen, provided such costs are based on costs described in Section 4.2.2.1 and included in the Direct Cost(s) of the Work under Section 4.2.6.2.1.2.

**4.2.6.2.1.4** For Direct Self-Performed Work, if Contractor and DFCM agree to a schedule of rates for labor costs, in lieu of actual costs under Sections 4.2.6.2.1.2 and 4.2.6.2.1.3, such schedule is attached as Attachment “*Labor Rates*”, or, alternatively, may be attached to the Guaranteed Maximum Contract Price Change Order. Any such schedule shall supersede actual costs under Sections 4.2.6.2.1.2 and 4.2.6.2.1.3. If DFCM and Contractor agree to

a schedule of labor rates, such rates shall remain unchanged throughout the duration of this Agreement, unless DFCM and Contractor execute a Change Order.

**4.2.6.2.2 EMERGENCIES.** Costs of responding to emergencies under Section 6.1.10 of the General Conditions not caused, in whole or in part, by Contractor, a Subcontractor and/or Sub-subcontractor shall, subject to applicable insurance provisions in the Contract Documents, constitute a Direct Cost(s) of the Work and shall be subject to Contractor’s Direct Self-Performed Work Mark-Up, if established in Section 1.7.

**4.2.7** **CONTRACTOR’S REIMBURSEABLE COST(S)**. DFCM shall reimburse the Contractor the following costs, at Contractor’s cost, without mark-up.

**4.2.7.1** Premiums for insurance and bonds that the Contractor is required to provide by the Contract Documents.

**4.2.7.2** Sales and/or Use Taximposed by a governmental authority that are related to the Work and for which the Contractor is liable on Additional General Conditions Cost(s) and materials and equipment under Section 4.2.6.2.1.1, provided the Contractor shall cooperate with DFCM in connection with applying for any tax exemptions which may be available in connection with the Work for the benefit of DFCM.

**4.2.7.3** Fees and assessments for permits and inspections which the Contractor is required to pay for pursuant to the Contract Documents. Such fees include, without limitation, impact fees, connection fees and hook-up fees if the Contractor is required by the Contract Documents to pay impact fees, connection fees and/or hook-up fees.

**4.2.7.4** Fees of laboratories for tests which the Contractor is required by the Contract Documents to provide, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 9.1.3 of the General Conditions or by other provisions of the Contract Documents.

**4.2.7.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

**4.2.7.6** On-site utilities required for the Work, including, without limitation, electricity and natural gas.

**4.2.8 CONSTRUCTION CONTINGENCY.**

**4.2.8.1** The Construction Contingency shall only be used to cover costs which: (1) Contractor can demonstrate could not reasonably have been anticipated and accounted for at the time of execution of the Guaranteed Maximum Contract Price Change Order; and (2) which do not qualify as a change in the Work.

**4.2.8.2** Subject to applicable insurance provisions in the Contract Documents, costs of responding to emergencies under Section 6.1.10 of the General Conditions caused, in whole or in part, by Contractor, a Subcontractor and/or Sub-subcontractor shall be paid from Construction Contingency. Subject to applicable insurance provisions in the Contract Documents, to the extent, if any, that Construction Contingency is not sufficient to pay amounts incurred in responding to emergencies under this Section 4.2.8.2, such costs shall be paid by Contractor.

**4.2.8.3** The Construction Contingency may not be used to cover the costs listed in Sections 4.2.8.3.1 – 4.2.8.3.2 and any such costs shall be borne be Contractor, without reimbursement by DFCM.

**4.2.8.3.1** Costs of replacing, correcting, repairing and/or replacing defective Work, whether executed by the Contractor, a Subcontractor, a Sub-subcontractor, anyone employed by any of them or anyone for whose acts any of them may be liable.

**4.2.8.3.2** Construction Contingency may not be used to cover unanticipated costs to the extent that use of Construction Contingency would cause the Contract Price to exceed the Guaranteed Maximum Contract Price.

**4.2.8.4** Expenditures from the Construction Contingency shall be made only by Change Order without adjustment in the Guaranteed Maximum Contract Price.

**4.2.8.5** Subject to Section 5.1.5 of the General Conditions, the Contractor may elect to use a portion of Construction Contingency for Subcontractor Default Insurance (“SDI”). Contractor’s election to use a portion of Construction Contingency for SDI and the amount of Construction Contingency to be used for SDI are both subject to the prior written approval of DFCM, which approval DFCM may withhold in DFCM’s sole discretion.

**4.2.8.6** At any time prior to Substantial Completion, DFCM may utilize all or any portion of Construction Contingency for DFCM’s own purposes, in DFCM’s sole discretion, provided, however, than in such event, if, subsequent to such event, any cost arises for which Contractor would be responsible that would have been covered by Construction Contingency but for DFCM’s exercise of DFCM’s rights under this Section 4.2.8.6, Contractor shall be entitled to a Change Order compensating Contractor for the cost that would have been covered by Construction Contingency but for DFCM’s exercise of DFCM’s rights under this Section 4.2.8.6.

**4.2.8.7** At final completion of the Work, unexpended Construction Contingency, if any, shall be the property of DFCM.

**4.3 ADDITIONAL COMPENSATION PROVISIONS.**

**4.3.1 PAYMENT**

**4.3.1.1** Payment of undisputed amounts forPreconstruction Phase Services are due at the time of receipt by DFCM of the Contractor’s properly documented invoice. Payment of the Contractor’s Preconstruction Phase Services Fee shall be made monthly in proportion to services performed on a percentage of completion basis. Unless this requirement is waived in writing by DFCM, payment of Contractor’s Preconstruction Phase Services Fee shall be subject to retainage of five percent (5%) which retainage shall be paid to the Contractor as provided in Utah Code § 13-5-1upon satisfactory performance by the Contractor of all Preconstruction Phase Services required of the Contractor by the Contract Documents. Payments not made within the time required by Utah Code § 15-6-2 shall bear interest as provided in Utah Code §15-6-3.

**4.3.1.2** Payment for Construction Phase Services shall be made as provided in Article 8 of the General Conditions. Payment of the Contract Price shall be subject to retainage of five percent (5%) which retainage shall be paid to the Contractor as provided in Utah Code § 13-5-1 upon satisfactory performance by the Contractor of all Construction Phase Services required of the Contractor by the Contract Documents.

**4.3.2 DISCOUNTS, REBATES AND REFUNDS.**

**4.3.2.1** Cash discounts obtained on payments made by the Contractor shall accrue to DFCM if: (1) before making the payment, the Contractor included them in an Application for Payment and received payment from DFCM; or (2) DFCM has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to DFCM, and the Contractor shall make provisions so that they can be obtained.

**4.3.2.2** Amounts that accrue to DFCM in accordance with the provisions of Section 4.3.2.1 shall be credited to DFCM as a deduction from the Contract Price.

**4.3.2.3** At the written election of DFCM, salvageable tools, equipment and materials for which Contractor has been fully compensated by payment of Contractor’s General Conditions Compensation and/or Additional General Conditions Cost(s) shall be the property of DFCM and shall be delivered by Contractor to DFCM at no charge as directed by DFCM.

**4.3.3 AUDITING OF BOOKS AND RECORDS OF CONTRACTOR OR SUBCONTRACTOR.**

**4.3.3.1** The Contractor shall keep full and detailed books and records that relate to this Agreement and exercise such controls as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to DFCM.

**4.3.3.2** The Contractor shall preserve these books and records for a period of six (6) years after final payment under this Agreement, or until all audits initiated under section 4.3.3.4 within the six-year period have been completed, whichever is later.

**4.3.3.3** The Contractor shall require Subcontractors to maintain all books and records relating to a subcontract for a period of six (6) years after final payment under a subcontract, or until all audits initiated under section 4.3.3.4 within the six-year period have been completed, whichever is later.

**4.3.3.4** DFCM or an audit entity under contract with DFCM may audit the books and records of the Contractor and the Contractor shall provide in the Contractor’s subcontracts that DFCM or an audit entity under contract with DFCM may audit the books and records of the Subcontractors. An audit under this section: (1) is limited to the books and records that relate to this Agreement and/or subcontracts entered into pursuant to this Agreement; and (2) may occur only at a reasonable place and time.

**ARTICLE 5. CM / GC MODIFICATIONS TO THE GENERAL CONDITIONS.**

**5.1** The term “Guaranteed Maximum Contract Price” is substituted for the term “Contract Price” in the General Conditions with the following exceptions: (1) in Section 1.1, definition of the “Contract Price”; and (2) in Section 12.3.2.7.2.

**5.2** The word “within” is substituted for the word “for” at line five (5) of Section 4.1.5.

**5.3** The term “Guaranteed Maximum Contract Price Change Order” is substituted for the term “the Contractor’s Agreement” in Sections 4.6.1.1 and 4.6.1.3.

**5.4** The term “execution of the Guaranteed Maximum Contract Price Change Order” is substituted for the term “being awarded the Work” and the term “Guaranteed Maximum Contract Price Change Order” is substituted for the term “Contractor’s Agreement” in Section 4.6.2.1.

**5.5** Delete the last sentence of Section 4.6.12.2 and substitute the following: “Notwithstanding any other provisions of these General Conditions or the Contract Documents to the contrary, to the extent that Contractor is

entitled to receive: (1) an adjustment in Contractor’s Construction Phase Services Fee, Contractor’s Construction Supervision Compensation, Contractor’s General Conditions Compensation and/or Construction Contingency under Section 7.4.2.1 of these General Conditions; (2) an adjustment in Additional General Conditions Cost(s) under Section 7.4.2.2 of these General Conditions; (3) an adjustment in Bid Package Cost(s) under Section 7.4.2.3 of these General Conditions; (4) an adjustment in Contractor’s Self-Performed Work Compensation under Section 7.4.2.4 of these General Conditions; and/or (5) an adjustment in Contractor’s Reimbursable Costs(s) under Section 7.4.2.5 of these General Conditions, this Section 4.6.12.2 shall be inapplicable, and the adjustment(s) shall be deemed to include all the compensable delay damages provided by this Section.”

**5.6** Contractor and DFCM acknowledge that because Contractor was selected using a request for proposals standard procurement process, Section 5.1.2 of the General Conditions, Utah Code § 63A-5b-605 and Rule R23-1-614 are not applicable to the award of subcontracts under this Agreement, provided, however, that subsequent to

the prequalification of Subcontractors, a DFCM requested change in a qualified Subcontractor shall be subject to Sections 5.1.2.1 – 5.1.2.2 of the General Conditions.

**5.7** Delete Section 7.1.7.2.3 in its entirety and substitute the following:

**7.1.7.2.3** Whenever actual costs are greater or lesser than the estimated cost of an Allowance, the Guaranteed Maximum Contract Price shall be adjusted by Change Order and shall be calculated, for an additive Change order, as provided in Section 7.4.2, and for a deductive Change Order, as provided in Section 7.4.3.

**5.8** The term “execution of the Guaranteed Maximum Contract Price Change Order” is substituted for the term “award of the Contractor’s Agreement” in Section 7.2.3 of the General Conditions.

**5.9** Delete Section 7.4.2 and its Subsections and Section 7.4.3 in their entirety and substitute the following Sections 7.4.2 and 7.4.3.

**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 the Guaranteed Maximum Contract Price shall be calculated as follows.

**7.4.2.1 Contractor’s Construction Phase Services Fee, Contractor’s Construction Supervision Compensation, Contractor’s General Conditions Compensation and Construction Contingency.** Because the Contractor’s Construction Phase Services Fee, Contractor’s Construction Supervision Compensation, Contractor’s General Conditions Compensation and Construction Contingency are calculated as a percentage of the Adjusted Fixed Contract Price Limit, the Contractor shall be entitled to no additional compensation and no adjustment in the Guaranteed Maximum Contract Price for profit and/or increases in Overhead Cost(s), Supervision Cost(s), General Conditions Cost(s) or costs that would be covered by Construction Contingency unless and until authorized changes in Additional General Conditions Cost(s) and/or subcontracted Work cause the initial Guaranteed Maximum Contract Price to equal or exceed the initial Adjusted Fixed Contract Price Limit.

**7.4.2.1.1** At such time as authorized changes in in Additional General Conditions Cost(s) and/or subcontracted Work cause the initial Guaranteed Maximum Contract Price to equal or exceed the initial Adjusted Fixed Contract Price Limit, Contractor’s Construction Phase Services Fee, Contractor’s Construction Supervision Compensation, Contractor’s General Conditions Compensation and Construction Contingency shall be modified as provided in Sections 7.4.2.1.1.1 – 7.4.2.1.1.4.

**7.4.2.1.1.1** Contractor’s Construction Phase Services Fee and the Guaranteed Maximum Contract Price shall be adjusted based on the percentage rate established in Section 1.4 of the Agreement of documented increased Additional General Conditions Cost(s) under Section 7.4.2.2, if any, and the increased cost of the change in subcontracted Work under Section 7.4.2.3.

**7.4.2.1.1.2** Contractor’s Construction Supervision Compensation and the Guaranteed Maximum Contract Price shall be adjusted based on the percentage rate established in Section 1.5 of the Agreement of the documented increase in Additional General Conditions Cost(s) under Section 7.4.2.2, if any, and the increased cost of the change in subcontracted Work under Section 7.4.2.3.

**7.4.2.1.1.3** Contractor’s General Conditions Compensation and the Guaranteed Maximum Contract Price shall be adjusted based on the percentage rate established in Section 1.6 of the increased cost of the change in subcontracted Work under Section 7.4.2.3.

**7.4.2.1.1.4** Construction Contingency shall be adjusted at the percentage rate of two percent (2%) of the increased cost of the change in subcontracted Work under Section 7.4.2.3.

**7.4.2.2 Additional General Conditions.** Compensation for Additional General Conditions Cost(s) and the Guaranteed Maximum Contract Price shall be adjusted based on the documented increase in Additional General Conditions Cost(s).

**7.4.2.3** **Bid Package Cost(s).** Adjustments in subcontracts shall be calculated based on the increased cost of the change in the subcontracted Work, subject to Sections 7.4.2.3.1 and 7.4.2.3.2.

**7.4.2.3.1** The maximum mark-up percentage to be paid to any Subcontractor and/or Sub-subcontractor, regardless of tier, on self-performed Work shall be a single mark-up percentage not-to-exceed fifteen percent (15%) of the net increased direct cost of (1) direct labor and allowable labor burden costs attributable to the change in the Work; (2) the net cost of material and installed equipment incorporated into the change in the Work; and (3) net rental costs of major equipment and related fuel costs necessary to complete the change in the Work. When Contractor is performing Work as a Subcontractor pursuant to Section 3.2.3.1 of the Agreement, Contractor’s compensation for changes in the subcontracted Work shall be subject to the limitations in this Section 7.4.2.3 and Sections 7.4.2.1.1, 7.4.2.2, 7.4.2.4 and 7.4.2.5 shall not apply.

**7.4.2.3.2** With respect to pricing the portion of Change Orders involving work performed by a lower tier Sub-subcontractor, the maximum mark-up percentage allowable to a Subcontractor or Sub-subcontractor supervising the lower tier Sub-subcontractor’s work shall not exceed seven percent (7%) of the net increase of all approved changes in the Work performed by all Subcontractors and Sub-subcontractors combined for any particular Change Order.

**7.4.2.3.3** Contractor agreesto 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 limitations in all sub-subcontracts with their respective Sub-subcontractors of any tier.

**7.4.2.4** **Contractor’s Direct Self-Performed Work Compensation.** Contractor’s Direct Self-Performed Work Compensation shall be adjusted based on the documented increase in the Direct Cost(s) of the Work plus Contractor’s Direct Self-Performed Work Mark-up. Because Contractor’s Direct Self-Performed Work Compensation is inclusive of Contractor’s profit, Overhead Cost(s), Supervision Cost(s), General Conditions Cost(s) and contingencies arising out of, related to and/or connected with Direct Cost(s) of the Work, Contractor shall be entitled to no adjustment in Contractor’s Construction Phase Services Fee, Contractor’s Construction Supervision Compensation, Contractor’s General Conditions Compensation or Construction Contingency for changes in Contractor’s Direct Self Performed Work Costs(s).

**7.4.2.5** **Contractor’s Reimbursable Cost(s).** Contractor’s Reimbursable Cost(s) shall be adjusted based on the documented increase in Contractor’s Reimbursable Cost(s).

**7.4.3 DEDUCTIVE CHANGE ORDERS.** Deductive Change Orders shall be calculated based on the documented reduced cost(s) attributable to the changed Work, provided, however, Contractor’s Construction Phase Services Fee, Contractor’s Construction Supervision Compensation and Contractor’s General Conditions Compensation shall not be modified due to deductive changes in the Work, except in the case of substantial inequity to DFCM, and Contractor’s Direct Self-Performed Work Mark-up and the mark-ups identified in Sections 7.4.2.3 shall not be reduced for deductive changes in the Work, except in the case of substantial inequity to DFCM.

**5.10** In Section 12.1.2**,** delete everything after the phase “payment” at line 3 and substitute the following:“on a percentage of completion basis, the portion of the Contract Price attributable to Work properly completed as of the date of termination, but Contractor shall in no event be entitled to recover consequential damages as a result of such termination, or any portion of the Contract Price on the Work not executed.”

**5.11** Delete Section 12.3.5.1.1 in its entirety and substitute the following: “The portion of the Contract Price, on a percentage of completion basis, attributable to Work properly performed as of the date of termination;”

**5.12** Delete Section 12.3.5.1.3 in its entirety and renumber Section 12.3.5.1.4 as Section 12.3.5.1.1.3 and Section 12.3.5.1.5 as 12.3.5.1.4.

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| --- | --- |
| **Contractor:** | **DFCM:** |
|  | \*/S/DFCM  Approved for Expenditure  \*/S/Division of Finance  Approved as to Availability of Funds  \*/S/ Pat Gillins, DFCM Finance Program Manager |
| *(Signature)* |
| *(Title)* |
|  | \*Electronic signatures are effective when the AIM Status History page is attached to this Contract, The AIM Status Page identifies the State Signatures. |