

**CONSTRUCTION MANAGER/
GENERAL CONTRACTOR AGREEMENT**

for

hereinafter referred to as the "Project."

THIS AGREEMENT, made and entered into this ___th day of _____, 201_ by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called "DFCM," and _____, incorporated in the State of Utah and authorized to do business in the State of Utah, hereinafter called the "Construction Manager/General Contractor" or "CM/GC," whose address is _____, Utah 84____.

WITNESSETH: WHEREAS, DFCM intends to have the Services and Work performed to construct the _____, in _____, Utah, and WHEREAS, the CM/GC agrees to perform Construction Management services and perform as a General Contractor for the sum herein stated.

NOW, THEREFORE, DFCM and the CM/GC for the consideration provided in this Agreement, agree as follows:

**ARTICLE 1.
CM/GC'S SERVICE AND RESPONSIBILITIES**

- A. **In General.** The CM/GC accepts the relationship of trust and confidence established by this Agreement and covenants with the DFCM as follows:
1. **Cooperation.** To cooperate with the DFCM, as well as the Architect/ Engineer (A/E) selected by DFCM for the design services for the Project;
 2. **Best Skills, Efforts and Judgments.** Use the CM/GC's best skills, efforts and Judgments in furthering the interest of the DFCM;
 3. **Efficient Business Administration and Supervision.** To furnish efficient business administration and supervision;
 4. **Perform the Services and Work.** To furnish at all times an adequate supply of workers, the appropriate materials and equipment, and perform the Services and Work in the best and most expeditious and economic manner in accordance with the Contract Documents; and
 5. **Inspection and Approval.** That the Work shall be subject to inspection and approval of DFCM or its authorized representative.

- B. Independent Contractor.** In performing its obligations hereunder, the CM/GC shall be deemed an independent contractor and not an agent or employee of DFCM. The CM/GC shall have exclusive authority to manage, direct, and control the Services and Work; all of which must meet the Contract Documents.
- C. General Contractor and Professional Service Duties.** The term "CM/GC" as used in this Agreement is deemed to include all the duties of a General Contractor, including those described by the terms "General Contractor" and "Contractor" in the DFCM General Conditions (hereinafter referred to as the "DFCM General Conditions") and Supplemental General Conditions ("also referred to as General Conditions") which are current as of the date of this Agreement and on file at the office of DFCM and available on the DFCM website (<https://dfcm.utah.gov/wp-content/uploads/DFCM-General-Conditions.pdf>), and hereby incorporated by reference as part of the Contract Documents as well as the professional services of a business, administrative and management consultant to DFCM; including all budget, scheduling, quality, safety and all other services related to assuring compliance with this Agreement and the Contract Documents. The DFCM and CM/GC shall be bound by all the requirements and provisions of said DFCM General Conditions. The definitions in the General Conditions shall apply to this Agreement except as specifically modified by this Agreement. It is intended that this CM/GC's Agreement not reiterate all the applicable provisions of said DFCM General Conditions and the fact that some provisions are reiterated herein does not lessen the importance of the provisions that are not so reiterated. If the CM/GC is selected prior to the selection of the A/E for the Project, the CM/GC shall assist in the selection of the A/E.
- D. Standard of Care.** The Standard of Care for the Services and Work under this Agreement shall be as follows: The CM/GC and all those for whom the CM/GC is liable at any tier shall exercise the degree of skill and diligence as is exercised by licensed members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The CM/GC shall be liable to DFCM or the State of Utah, less any "betterment" obtained by the Owner, for all Owner costs, damages, claims, liabilities, additional burdens, judgments, fines, penalties, damages, demolition, removal or modification of Work, any A/E or Owner delay damages, increased material costs, or third-party claims (i.e. an A/E claim against DFCM or the State of Utah), to the extent caused by acts, failure to act, negligence, errors or omissions that do not meet this standard of care. This standard of care may be further modified in the Attachments hereto. Owner reserves the right to deduct from any payment otherwise due under this Agreement, the amount related to any such error or omission.

ARTICLE 2. FLCC AND BASIS OF COMPENSATION

Special Provision when Agreement is limited to only cover Preconstruction Services.

(USE ONLY ON AGREEMENTS FOR PRE-CONSTRUCTION SERVICES ONLY) This Agreement shall initially include only the scope of work (services) and compensation for the pre-construction phase for an initial contract Sum of _____ DOLLARS ().

- A. Amount of FLCC.** The Fixed Limit of Construction Costs (FLCC) for this Agreement is \$_____, which includes the CM/GC's fees. The FLCC may only be increased in advance and in writing by DFCM.
- B. FLCC as Ultimate Limitation.** The scope of Work (including CM/GC services) must at all times be within the FLCC. The DFCM as well as the State of Utah shall not be liable to the CM/GC for any amount over the FLCC. The FLCC as stated herein may be modified in writing and in advance by the DFCM or as a result of the entitlement of the CM/GC for additional monies in accordance with the procedures and substantive requirements of the DFCM General Conditions and Contract Documents.

- C. **FLCC Reasonable.** By executing this Agreement and at the time of submittal of each GMP proposal, the CM/GC agrees that the FLCC is a reasonable limit for the total cost of the Project.
- D. **Pre-Construction Phase Compensation.** For Work (including services) performed as described in Article 5.A. (Pre-Construction Phase), the CM/GC will be compensated \$_____. This shall include the cost of all labor and salaries as well as consumable materials required to perform the services. This compensation shall include insurance, benefits, employment taxes, overhead and profit.
- E. **Construction Phase Compensation.**
1. **CM/GC Fee.** The CM/GC's Construction Management Fee for Services and Work performed during the entire construction phase, including punch list completion is a lump sum of _____% of the FLCC ($\$FLCC \times \text{_____}\% = \_____). This includes the cost as outlined in the CM/GC's Management Plan dated _____, 201_ which is hereby incorporated by reference.
 - a. **Fee Includes.** This Fee includes overhead (e.g. home office), profit for the entire job and home office personnel who will be managing the project during bidding, construction and closeout, including the warranty period. This fee also includes employment taxes, insurance, workers compensation, as well as salaries and benefits for all personnel that are not identified in Article 2.E.3 below.
 - b. **Fee Does Not Include.** This fee does not include general conditions (temporary construction costs) or the monthly supervision cost described below. As used in this Article 2, "general conditions" means temporary construction costs directly related to the Services and Work.
 - c. **How Fee Modified.** This fee is subject to modification by DFCM only as the scope of the work changes, and can be adjusted appropriately as the scope of work changes affect the size and/or duration of the Project.
 - d. **Scope Changes Impact on Fee.** Following the establishment of the GMP, the CM/GC change order markup described in Article 6.B.7. of this Agreement, will compensate the CM/GC for the additional overhead and profit associated with a change in scope of Work, however; a decrease in scope of Work and Contract Time, prior to or after the establishment of the GMP, shall result in a decrease in the amount of the CM/GC Fee, at the effective percentage rate established in the original proposal, prorated for the amount of Contract Time that is reduced from the original schedule. Similarly, an increase to the scope of Work prior to the establishment of the GMP shall result in an increase in the amount of the CM/GC Fee at the effective percentage rate established in the original proposal, prorated for the amount of the Contract Time that is added to the original schedule.

Fee Not Increased Due to Material/Labor Costs. The CM/GC Fee shall not be increased due to an increase in cost of material, labor, general conditions or site supervision.
 2. **Deemed Included in Fee.** Compensation for the following items is deemed already included in the CM/GC's fee and not subject to any additional payment beyond said fee by DFCM:
 - a. **Wrongful Acts or Negligence.** Costs, losses and expenses, including legal and consultant expenses, to the extent they have resulted from the act, fault or negligence of the CM/GC,

any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable, including but not limited to any loss or expense related to securing the property as required by this Agreement or to prevent injury to persons, the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property.

- b. **Maintaining/Operating Offices.** All expenses related to maintaining and operating the CM/GC's principal and branch offices.
 - c. **Capital Expenses.** Any part of the CM/GC's capital expenses, including interest on the CM/GC's capital employed for the Work.
 - d. **Overhead/General Expenses.** Overhead or general expenses of any kind, except as may be expressly included in Article 3 of this Agreement.
 - e. **Food/Refreshments.** Food and refreshments for construction meetings or in association with the Project, unless approved in writing and in advance by DFCM based on a showing of benefit to the Project.
 - f. **Incentive Awards.** Incentive awards of any kind, unless approved in writing and in advance by DFCM based on a showing of benefit to the Project.
 - g. **Training.** Training costs either associated or not associated with the Project, unless approved in writing and in advance by DFCM based on a showing of benefit to the Project.
3. **Not Part of Fee, but Part of GMP Proposal.** The following items, while not part of the fee, are to be included in any GMP proposal or approved GMP:
- a. **Supervision Costs.** The total amount of the construction supervision costs shall be a lump sum of ____% of the FLCC ($\$FLCC \times \text{____\%} = \_____).
 - b. **Self-Performed Work.** If DFCM authorizes the CM/GC to self-perform portions of the Work, said Work shall be compensated as a Cost of the Work and reimbursed at actual cost incurred based on documentation (direct personnel expense, including labor burden, materials, equipment, etc.) plus a fixed negotiated fee that shall not exceed ____% of the cost of said Work.
 - i. **Includes.** Self performed work eligible for said fee shall only include labor, materials, and equipment provided directly by the CM/GC and not by subcontractors.
 - ii. **Does not Include.** Self-performed work eligible for said fee shall not include items furnished by the CM/GC as a general conditions (temporary construction cost) item.
 - c. **Temporary Construction Costs (General Conditions).** The CM/GC shall be compensated for temporary construction costs (commonly referred to in the industry as "general conditions") and reimbursed as a lump sum of ____% of the FLCC ($\$FLCC \times \text{____\%} = \_____). Temporary Construction Costs means such items, to the extent used on the

Project: construction trailer, office equipment, computers, phones, temporary toilets, and safety precautions including site items such as cost of debris removal, fencing, security and similar items. In order to qualify as a temporary construction cost, such item must be necessary for the construction of the Project.

- i. **Rental Rates.** Rental rates for all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the CM/GC or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, shall be at rental charges at actual cost, and in no case greater than the applicable "R.S. Means Construction Cost Data." If the equipment is owned by the CM/GC, then the rental rate shall not exceed the demonstrated cost of ownership by the CM/GC for the applicable time period and in no case greater than the applicable "R.S. Means Construction Cost Data." Other than hand tools with a value under \$100, equipment that is necessary to be purchased for use on the Project by the CM/GC shall first be approved in writing by the DFCM. Following the completed use, the CM/GC may retain ownership of the equipment upon credit of remaining market value compensated to DFCM, otherwise DFCM shall retain ownership.
- ii. Excluded from the 1.5% fee are large cranes, temporary construction utilities (water, gas, power), and weather conditions (winter protection).
- d. **Cost of Subcontractors.** Actual payments made by the CM/GC to Subcontractors for Work performed pursuant to subcontracts properly entered into under this Agreement.
- e. **Taxes.** Sales, use or similar taxes related to the Services and Work and for which the CM/GC is liable and imposed by any governmental authority.
- f. **Insurance Premiums.** Actual cost of premiums for insurance, which the CM/GC is required by the Contract Documents to purchase and maintain based on the amount of the approved GMP.
- g. **Bonds.** Actual cost of payment and performance bonds based on the amount of the approved GMP.

ARTICLE 3. CONSTRUCTION COST

- A. **Construction Cost Includes.** Construction Cost shall be the total of the following for the entire Project: the Preconstruction phase payment by DFCM to the CM/GC, the cost of separate subcontracts, the cost of self-performed Work, the CM/GC fee, eligible supervision costs, eligible general conditions (eligible temporary construction costs), allowed use of CM/GC's Contingency, as well as payment and performance bond costs.
- B. **Construction Cost Does Not Include.** Construction Cost does not include the compensation of the A/E and its consultants, or the cost of inspections or testing provided for by DFCM.

- C. **Standard of Care for Cost Estimate.** The cost estimate provided by the CM/GC shall be consistent with the standard of care in the industry for a project of similar magnitude and complexity. If it is reasonably determined by DFCM that the CM/GC breached this standard of care in providing budget and cost estimates, DFCM reserves the right to seek all available appropriate remedies from the CM/GC.
- D. **CM/GC Incentive to Manage Within FLCC.** If the final costs of the Project are less than or equal to the final approved FLCC, then the CM/GC shall be entitled to 30% of the savings between the final approved GMP and the final costs, or \$100,000, whichever is less, and the balance shall belong to the State. For purposes of this paragraph, changes to the final GMP that are the responsibility of DFCM (i.e. DFCM initiated scope changes, unforeseen conditions and design error/ omissions) under the Contract Documents, shall not affect the CM/GC's entitlement herein.
- E. **Contingency for Undefined Design.** The CM/GC shall include an estimating contingency in their cost estimate for undefined design. The Contractor shall continue to reduce this estimating contingency as the design becomes more defined and ultimately shall be eliminated.
- F. **Guaranteed Maximum Price (GMP).** Prior to any construction, the CM/GC shall submit a GMP proposal for a specific scope of Work (including services) to DFCM, and have it approved by DFCM. Notwithstanding any other provision of this Agreement, the CM/GC guarantees that the construction cost for the agreed to scope of Work will not exceed the GMP for that scope of Work. The GMP may only be increased by a Change Order for circumstances described in Article 7 of the DFCM General Conditions. The CM/GC's GMP proposal shall include the CM/GC's Contingency of up to 2% of the total cost of the proposed scope of Work, including eligible general conditions, temporary construction costs, CM/GC fee, supervision cost, bond and insurance. If there is to be more than one bid package, the GMP proposal must be calculated by the CM/GC in order to ensure that the completion of all bid packages and future anticipated increases in the GMP will not exceed the FLCC. The total of the CM/GC's Contingency for the entire project cannot exceed 2% of the FLCC.
1. **CM/GC's Contingency.** Any use of the CM/GC's Contingency shall be based on a documented proposal by the Contractor and approved by DFCM, which approval shall not be unreasonably withheld. This contingency fund shall only be used for the following types of Services and Work and for only direct cost of construction:
 - a. Where the procurement of the bid package(s) results in costs that are likely to, or does exceed the FLCC, the CM/GC's Contingency can be used to offset this increased cost;
 - b. For construction errors, or replacement of defective Work that is self-performed by the CM/GC;
 - c. For completion of Work as a result of Subcontractor default; and/or
 - d. For items or the value of items included in the Contract Documents, but missed by the CM/GC in the line items of the approved GMP proposal. This may include such items as general conditions (temporary construction costs), self-performed Work and other items that are directly related to the CM/GC itself and not the subcontractor or suppliers.
 2. **When CM/GC's Contingency Cannot Be Used.** This CM/GC's Contingency cannot be used for:

- a. Errors by subcontractors, suppliers or manufacturers at any tier;
 - b. Coordination issues between subcontractors at any tier that are not related to CM/GC error; and/or
 - c. Replacement of defective Work installed by subcontractors at any tier.
3. **Contactor's Contingency Exhausted.** If the entire CM/GC's Contingency fund is used, any additional funds to complete the scope of work (including services) defined in the Construction Documents must be provided at 100% by the CM/GC.
 4. **Carry Forward of CM/GC's Contingency.** At the end of the final completion (construction) of each bid package, where there are multiple bid packages, any remaining CM/GC's Contingency shall carry forward to the future bid package Work.
 5. **CM/GC's Contingency at Final Completion.** At Final Completion of the Project, if there are any funds remaining in the CM/GC's Contingency the funds may qualify for distribution in accordance with Article 3. D.
 6. **Issues Not Related to CM/GC's Contingency.** Design errors and omissions, unforeseen site conditions, and Owner requested scope changes do not apply to the CM/GC's Contingency.

ARTICLE 4. PAYMENTS TO THE CM/GC

- A. **Payments for Basic Services.** Payments for Basic Services, approved additional services and reimbursable costs, upon proper invoicing, justification and documentation, shall be made monthly for Services and Work properly performed, all in accordance with this Agreement.
- B. **General Payment, Retainage and Accounting Provisions.**
 1. **DFCM General Conditions Apply.** All applicable provisions of the DFCM General Conditions regarding payment, withholding of payment, retainage, certification of payment and other payment requirements and rights of DFCM and the CM/GC shall apply.
 2. **Retainage.** Retainage in the amount of 5% shall be withheld from each payment to the CM/GC for any Services or Work under this Agreement. The retainage, including any additional retainage imposed and the release of any retainage, shall be in accordance with Utah Code Ann. Sec. 13-8-5, as amended. The CM/GC shall also comply with the requirements of Utah Code Ann. Sec. 13-8-5, as amended, including restrictions of retainage regarding Subcontractors and the distribution of interest earned on the retention proceeds.
 3. **DFCM Not Responsible for CM/GC'S Retention Requirements.** The DFCM shall not be responsible for enforcing the CM/GC's obligations under Utah law in fulfilling the retention law requirements with Subcontractors at any tier.
 4. **Interest Bearing Account.** The CM/GC's retainage shall be held by DFCM, in an interest bearing account with said interest to accrue to the account of the CM/GC. Said interest shall be distributed by DFCM to the CM/GC upon release of retention funds.

5. **DFCM'S Right to Withhold Certain Amount and Make Use Thereof.** DFCM may withhold from payment to the CM/GC such amount as, in DFCM's judgment, may be necessary to pay just claims against the CM/GC or Subcontractors at any tier for labor and services rendered and materials furnished in and about the Work. The DFCM may apply such withheld amounts for the payment of such claims in DFCM's discretion. In so doing, the DFCM shall be deemed the agent of the CM/GC and payment so made by the DFCM shall be considered as payment made under this CM/GC's Agreement by the DFCM to the CM/GC. DFCM shall not be liable to the CM/GC for any such payment properly made. Such withholdings and payments may be made without prior approval of the CM/GC and may also be made prior to any determination as a result of any dispute, PRE, Claim or litigation. However, the CM/GC shall be notified prior to any such withholding and will be given an opportunity to inform DFCM as to any reason why the withholding shall not occur.
6. **Final Payment.** Before final payment is made, the CM/GC must submit evidence satisfactory to the DFCM that all payrolls, materials bills, subcontracts at any tier and outstanding indebtedness in connection with the Work have been properly paid. Final Payment will be made after receipt of said evidence, final acceptance of the Work by the DFCM as well as compliance with the applicable provisions of the DFCM General Conditions.
7. **CM/GC Respond to Financial Responsibility and Related Requests; Waivers, Releases, Bonds.** The CM/GC shall respond immediately to any inquiry in writing by DFCM as to any concern of financial responsibility and DFCM reserves the right to request any waivers, releases or bonds from the CM/GC in regard to any rights of Subcontractors (including suppliers) at any tier or any third-party prior to any payment by DFCM to the CM/GC.
8. **Reimbursement to DFCM.** Notwithstanding any other provision of this Agreement, the CM/GC shall reimburse DFCM for the portion of any expenses paid by DFCM to the CM/GC, which is attributable to the CM/GC's breach of its duties under this Agreement, including the breach of any duty by any Subcontractor or supplier at any tier or anyone for whom the CM/GC may be liable.

ARTICLE 5. BASIC SERVICES

The CM/GC's Basic Services consist of the two phases described below and any other services included in this Agreement as Basic Services.

- A. **Preconstruction Phase.** The CM/GC shall perform the following:
 1. **Project Schedule.** Provide for DFCM's review and acceptance, and periodically update a Project critical path schedule that coordinates and integrates the CM/GC's services, the A/E's services and DFCM's responsibilities with anticipated construction schedules.
 2. **Detailed Estimate.** Prepare for DFCM's approval a detailed estimate of Construction Cost, as defined in Article 3 of this Agreement. Provide in CSI or other DFCM-approved format, including a square foot (SF) cost analysis of each trade. The CM/GC shall update and refine this estimate throughout the design and construction process, including working with the A/E during each of the A/E design phases, including Schematic Design, Design Development & Construction Document phases. The overall objective is for the CM/GC and the A/E to present a mutually agreed upon design and estimate that complies with the Project scope and FLCC requirements. Estimates shall be divided for the separate bid packages that are going to be used for bidding.

If the estimate exceeds the approved Fixed Limit of Construction Cost (FLCC) defined in Article 2 of this Agreement, then the CM/GC shall, as part of its basic preconstruction services, cooperate with the A/E to present to the DFCM a mutually agreed upon value-engineering of the Project back within the FLCC.

- 3. Consultation with DFCM and A/E and Construction Document Review.** The CM/GC shall conduct a complete review and consult with DFCM and the A/E of all aspects and phases of the drawings and specifications. This review and consultation shall evaluate the following: constructability, budget issues, scheduling issues, safety concerns, errors and omissions. The CM/GC shall be responsible for being aware of site conditions, market conditions and all other customary information needed to review all aspects and phases of the drawings and specifications.
- 4. Phases.** Advise on the separation of the Project into separate bid packages/phases for various categories of Work.
- 5. Schedule of Purchases.** Investigate and recommend a schedule of all purchases, including State provided, of materials and equipment requiring long lead-time procurement, and coordinate this schedule with the early preparation of portions of the Contract Documents by the A/E. Expedite and coordinate delivery of these purchases.
- 6. Bidding (including proposals) Services.**
 - a.** "Bid" and "Proposal" Meaning. For purposes of this Agreement, the term "bid" and other terms based on that word used in the invitation to bid process shall be deemed to refer to "proposal" and the corollary words related to the request for proposal process, when the request for proposal process is used in lieu of an invitation for bids.
 - b.** Prequalification Criteria. The CM/GC shall prepare, when appropriate, prequalification criteria for bidders. Subcontractors and suppliers at all tiers must be properly licensed in the State of Utah and must meet all qualification requirements of the specifications/Contract Documents.
 - c.** Ensure Bids are Received. The CM/GC is responsible for the procurement of subcontractors and suppliers for the Project. The CM/GC shall develop Subcontractor interest to ensure bids are received.
 - d.** Pre-Bid Conferences. The CM/GC shall conduct pre-bid conferences to familiarize potential bidders with the bidding documents. The CM/GC shall ensure that the Construction Documents are available to all potential bidders.
 - e.** Procure Subcontractors Similarly as DFCM. All procurements recommended and conducted by the CM/GC shall be in accordance with one of the source selection methods provided for in the Utah Procurement Code, UCA 63-56, "Part 4, Source Selections and Contract Formation," and the applicable rules of the Utah State Building Board in Utah Administrative Code, Title R23, in the same manner as if the subcontract Work was procured directly by DFCM. This is met by compliance with the CM/GC Procurement Manual (located on the DFCM Website) in administering the selection process for the Subcontractors, which Manual is hereby incorporated by reference as part of this Agreement.

- f. Selection of Bidders. The CM/GC shall receive bids, prepare bid analyses and award subcontracts or reject bids. DFCM, the Using Agency and the A/E shall be consulted during this procurement process, however, the determination and responsibility for the procurement of the subcontractors and suppliers is that of the CM/GC. The CM/GC shall conduct pre-award conferences with bidders that have been recommended for award by any selection committee.
- g. Manage Scope to be within FLCC. The CM/GC shall consult with the A/E in order to suggest reasonable adjustments in the scope of the Project, and to suggest alternate bids in the Construction Documents as needed to adjust the Construction Cost, which shall not exceed the FLCC. If DFCM determines as a result of the bidding process that the FLCC is exceeded or will likely be exceeded, DFCM reserves the right, in its sole discretion to: (1) give written approval of an increase in FLCC, including applying the CM/GC's Contingency to such increase; (2) authorize re-bidding; (3) revise the scope of the Work; and/or (4) terminate the Project.
- h. Bidders Contract with CM/GC Only. There shall be no contractual relationship between the subcontractors/suppliers and the DFCM or A/E. The CM/GC shall prepare and execute the required subcontractor/supplier agreements. The CM/GC shall be fully responsible for the performance of its Subcontractors and suppliers at any tier similar to a General Contractor under the DFCM General Conditions.

7. Self-Performed Work.

- a. Per UCA 63-56-501(2) and applicable Utah law, the CM/GC may request that it be allowed to self-perform portions of the Work for the benefit of the Project. The self-performed Work may be allowed as follows:
 - i. When the proposal for the self-performed Work is approved by DFCM as part of the CM/GC selection process; or
 - ii. When the CM/GC has been selected for the self-performed Work through a selection process that is similar to the selection of subcontractors by DFCM.
- b. Savings in self-performed Work may be eligible for the incentive described in Article 3.D.

- 8. Termination.** If it is reasonably determined by the DFCM Director or designee that the CM/GC has not provided satisfactory preconstruction services, the DFCM Director or designee may determine to terminate this Agreement upon ten (10) days notice to the CM/GC and may use another CM/GC to complete the preconstruction phase and/or perform the construction phase services. All items required to be transferred or delivered to DFCM under the DFCM General Conditions for a termination for cause shall be so transferred or delivered promptly by the CM/GC to DFCM. Upon such termination, the CM/GC sole remedy shall be payment for properly performed services up to the date of such termination. For instance, as a result of such termination under this paragraph, the CM/GC is not entitled to receive: (1) any fee related to Work not properly performed; (2) any fee related to Work not yet performed; or (3) any amount related to lost profits. The CM/GC shall be liable to DFCM for all damages and liabilities provided for in this Agreement, the DFCM General Conditions and the Contract Documents.

B. Construction Phase.

- 1. Written Authorization to Commence Construction.** The CM/GC shall complete construction in accordance with Contract Documents prepared by the A/E and approved by DFCM. Upon receipt of a fully executed Change Order that includes a GMP for a specific Scope of Work, the CM/GC is authorized to commence the Construction Phase. All the requirements of this Article 5.B. shall be included as part of any approved GMP.
- 2. Payment and Performance Bonds.** Concurrent with the authorization to proceed with the Construction Phase, the CM/GC shall provide 100% Payment and Performance Bonds for the amount of the Guaranteed Maximum Price (GMP) and meeting the requirements contained in the Contract Documents
- 3. Administrative and Management Services.** Provide administrative and management services as required to coordinate the Work of the Subcontractors with each other and the CM/GC, DFCM and the A/E.
- 4. Team Members.** The CM/GC's team must be consistent with the team members designated in the CM/GC's proposal and such team must contain an adequate number of members and have the qualifications necessary to complete the project in accordance with this Agreement. No member of the CM/GC's Team submitted in the selection process of the CM/GC, shall be removed from the Project unless said team member shall leave the employ of the CM/GC or unless DFCM requests or approves the change. Any request to replace a team member shall be submitted to DFCM in writing and subject to approval of DFCM upon a showing that such replacement is consistent with the qualifications provided in the selection process of the CM/GC.
- 5. Supervision.** The CM/GC shall provide competent supervision of the Work and shall cause the Work to be performed in accordance with the Contract Documents.
- 6. Meetings.** The CM/GC shall schedule and conduct pre-construction, construction and progress meetings. The CM/GC shall prepare and promptly distribute minutes of all such meetings. Said minutes shall not be considered official minutes until approved by DFCM. At the beginning of each meeting, the minutes of the prior meeting shall be the first item on the agenda and the minutes shall be reviewed for editing or approval at that time.
- 7. Critical Path Scheduling.** The CM/GC shall provide an updated critical path schedule prior to the commencement of the Work. This critical path schedule shall be further updated in a prompt manner to reflect any changes. The CM/GC shall comply with all scheduling requirements in the Contract Documents and the DFCM General Conditions.
- 8. Construction Cost Management.** The CM/GC shall perform regular monitoring of the approved estimate of Construction Cost, including actual costs for activities in progress and estimates for uncompleted tasks. The CM/GC shall promptly identify in writing to the DFCM and A/E, variances between actual/estimated costs in regard to the budget for the FLCC. The CM/GC shall use its best efforts to work with the A/E as a team in an effort to have designs presented to the Owner be properly determined in advance by the CM/GC to meet the FLCC. The CM/GC shall:
 - a.** Maintain cost accounting records on authorized Work performed under unit costs and Work performed on the basis of actual costs of labor and materials.

- b. Recommend necessary or desirable changes to DFCM, review requests for changes, review subcontractor pricing, and procure reasonable subcontractors' bids.
 - c. Develop and implement procedures for the review and processing of applications by Subcontractors for progress and final payments.
9. **Safety.** The CM/GC shall be responsible for the overall safety of the Project and shall review the safety programs developed by each of the subcontractors as required by the Contract Documents. The CM/GC shall fulfill the safety responsibilities provided for in the DFCM General Conditions.
10. **Assist in Selection Processes.** If required by DFCM or the Contract Documents, the CM/GC shall assist DFCM in selecting and retaining the professional services of surveyors, special consultants and testing laboratories and coordinate their services.
11. **Manage Subcontractors and the Work.** The CM/GC shall determine that the Work of each subcontractor is being performed in accordance with the Contract Documents. The CM/GC shall promptly remediate any defects or deficiencies in the Work. The CM/GC is solely responsible for the performance of all subcontractors at any tier. Subject to review by the A/E and DFCM, the CM/GC shall reject Work that does not conform to the requirements of the Contract Documents.
12. **Inspections.** The CM/GC shall timely arrange for all code inspections, special inspections or testing needed to assure compliance with the Contract Documents.
13. **Requests for Interpretations.** The CM/GC shall promptly submit to the A/E and DFCM, any subcontractor requests for interpretations of the drawings and specifications, and promptly assist in the resolution of such requests.
14. **Forward Insurance Certificates.** The CM/GC shall receive Certificates of Insurance from the Subcontractors, and upon specific request by the DFCM Project Manager, forward such to DFCM.
15. **Review of Submittals.** The CM/GC shall establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals. The CM/GC shall receive from the subcontractors all shop drawings, product data, samples and other submittals, and review such for conformance with the Contract Documents. After review by the CM/GC, the CM/GC shall deliver the submittals to the A/E for review.
16. **Logs, Records.** The CM/GC shall keep a daily log containing a record of weather conditions, subcontractors' Work on the site, number of workers, Work accomplished, all necessary data for verification of subcontractor performance, including, but not limited to, unit quantities, problems encountered, and other data as DFCM may require. The CM/GC shall make the log available to DFCM and the A/E promptly upon request.

The CM/GC shall maintain at the Project site, on a current basis: a record copy, all of which shall be marked to record all changes made during construction, of all contracts, specifications, drawings, addenda, change orders and other Modifications; all shop drawings, product data; samples; submittals; purchases; materials; equipment; maintenance and operating manuals and instructions; as well as other related documents and revisions related to the Project. The CM/GC shall make all records promptly available to DFCM upon request.

17. **Operation and Maintenance (O&M) Records, Record Drawings.** At the completion of the Project, the CM/GC shall promptly submit to the A/E, all O & M manuals and as-built (record drawings). The A/E will review these submittals for accuracy and then promptly forward the submittals to DFCM.
18. **Manage DFCM-Purchased Items.** The CM/GC shall arrange for delivery, storage, protection/security for DFCM-purchased items that are delivered to the CM/GC.
19. **Assist with Commissioning.** With the DFCM's designated Commissioning Agent, the A/E and DFCM's maintenance personnel, the CM/GC shall observe the subcontractors' testing and operation of utilities, control systems and equipment.
20. **Substantial Completion.** The CM/GC shall notify the A/E when the Project, or a portion thereof, is ready for a Substantial Completion inspection. Upon Substantial Completion, the CM/GC shall promptly complete the punch list items as provided for in the DFCM General Conditions.

ARTICLE 6. ADDITIONAL SERVICES/WORK

- A. **In General.** It is understood and agreed by the parties hereto that no money will be paid to the CM/GC for additional labor or materials furnished unless a new contract in writing or a Modification hereof in accordance with the DFCM General Conditions and the Contract Documents for such additional labor or materials has been executed. The DFCM specifically reserves the right to modify or amend this Agreement and the total sum due hereunder, either by enlarging or restricting the scope of the Work (including services).
- B. **Specific Additional Services.** The following Additional Services shall be performed by the CM/GC upon authorization in advance and in writing from DFCM and shall be paid for as provided in this Agreement:
 1. **DFCM Provided Furnishings/Equipment.** Services related to DFCM-provided furnishings and equipment not specified in the Contract Documents.
 2. **Certain Replacement of Work.** To the extent not the fault of the CM/GC, consultation on replacement of Work damaged by fire or other cause during construction, and furnishing services in conjunction with the replacement of such Work.
 3. **Certain Post-Warranty Services.** To the extent not the fault of the CM/GC, inspections of, and services related to, the Project after the end of the warranty period.
 4. **DFCM-Approved Extras.** Other services that are not part of the CM/GC's basic services and not otherwise specified in this Agreement, upon advance written direction from DFCM.
 5. **Infringement of Copyright, Patents.** Other than for those matters caused by the fault or negligence of the CM/GC, royalties, damages for infringement of patents and costs of defending suits related thereto; all at the actual cost to the CM/GC. Advance authorization by DFCM is not needed for the CM/GC to be entitled to these costs.

6. **Emergencies.** Other than for those matters caused by the fault or negligence of the CM/GC, actual costs incurred due to an emergency affecting the safety of persons and property. Advance authorization by DFCM is not needed for the CM/GC to be entitled to these costs.
7. **Mark-up for Subcontractor Additional Work.**
 - a. **CM/GC Markup.** For additional Work performed by Subcontractors that was not part of the scope of Work related to the GMP, the CM/GC will be compensated 5% of the subcontract or material price in lieu of the markups otherwise provided for in the DFCM General Conditions. This compensation is for home office coordination as well as CM/GC overhead and profit.
 - b. **Subcontractor Markup.** Subcontractors shall receive a markup for additional Work in accordance with the DFCM General Conditions.

ARTICLE 7. TIME AND DELAY REMEDY

- A. **Time of Essence, Standard of Care.** Time is of the essence for the performance required by this Agreement. The CM/GC shall perform basic and additional services in an expeditious manner and consistent with the Standard of Care requirements of this Agreement.
- B. **Completion Date.** At the time a bid date is set for a particular subcontract, the DFCM and CM/GC will jointly establish a completion date (or dates) for the Work of that subcontract, which shall be consistent with the DFCM-approved Project Schedule for the entire Project.
- C. **Liquidated Damages.** The CM/GC agrees to pay liquidated damages in the amount of \$_____ per day for each day after expiration of the Contract Time until the CM/GC achieves Substantial Completion in accordance with the Contract Documents, if CM/GC's delay makes the damages applicable. This provision for liquidated damages: (a) is to compensate DFCM for delay only; (b) is provided for herein because actual damages can not be readily ascertained at the time of execution of this Agreement; (c) is not a penalty; and (d) shall not prevent DFCM from maintaining Claims for other non-delay damages, such as costs to complete or remedy defective Work.
- D. **Delay/Hindrance Claim Limitation.** No PRE, Claim or action shall be maintained by the CM/GC, Subcontractors or suppliers at any tier, against DFCM for damages or other claims due to losses attributable to hindrances or delays from any cause whatsoever, including acts and omissions of DFCM or its officers, employees or agents, except as expressly provided in the DFCM General Conditions.
- E. **Extensions of Time.** Extension of Time requests must comply with the DFCM General Conditions.

ARTICLE 8. THE DFCM'S RESPONSIBILITIES

- A. **DFCM-Provided Requirements.** The DFCM has provided the requirements for the Project in the Request for Proposals, which is part of the Contract Documents.

- B. Budget.** DFCM has advised the CM/GC of the budget of the Project, which is the FLCC identified in this Agreement. DFCM is responsible for maintaining its own Owner's Contingency, which shall be used for unforeseen conditions, design omissions/errors and other matters that increase the cost of the Project to the extent any such costs are not due to the fault or responsibility of the CM/GC under the Contract Documents.
- C. DFCM Representative.** The DFCM shall designate a representative authorized to act upon behalf of DFCM with respect to the Project. The DFCM shall examine documents submitted by the CM/GC and shall render decisions pertaining thereto in a timely manner in order to avoid unreasonable delay in the progress of the CM/GC's Work as indicated by the DFCM-approved critical path schedule.
- D. DFCM-Provided Tests, Inspections, Reports.** The DFCM may furnish structural, mechanical, chemical and other laboratory tests, inspections and reports. The CM/GC shall cooperate with any such tests or inspections.
- E. Audit Rights.** The DFCM may audit applications for payments or any other aspect of the Services and Work of the CM/GC and of the subcontractor or suppliers at any tier. The CM/GC shall cooperate with DFCM in providing all necessary information for any DFCM audit.
- F. Provide Construction Documents.** The DFCM shall assure that the CM/GC is provided the Construction Documents in a digital format. The CM/GC shall be responsible for making any further copies of the Construction Documents, subject to the copyright requirements in the DFCM General Conditions.
- G. Right to Perform.** The DFCM reserves the right to perform Work related to the Project with DFCM's own forces, and to award contracts to other entities in connection with the Project, which are not part of the CM/GC's responsibilities under this Agreement. The CM/GC shall coordinate the CM/GC's Work with work of DFCM's separate contractors as required by the Contract Documents. The CM/GC shall promptly notify DFCM in writing if any such independent action will in any way compromise the CM/GC's ability to meet the CM/GC's responsibilities under this Agreement.

ARTICLE 9. INDEMNIFICATION

The CM/GC shall comply with the indemnification provisions of the DFCM General Conditions.

ARTICLE 10. TERMINATION, SUSPENSION OR ABANDONMENT

This Agreement may be terminated, suspended or abandoned in accordance with the DFCM General Conditions.

ARTICLE 11. DISPUTE RESOLUTION

Any dispute, PRE or Claim between the parties shall be subject to the provisions of Article 7 of the DFCM General Conditions. DFCM reserves all rights to pursue its rights and remedies as provided in the DFCM General Conditions.

**ARTICLE 12.
SUCCESSORS AND ASSIGNS**

The DFCM and CM/GC, respectively bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement, and to partners, successors, assigns and legal representatives of such other party with respect to all covenants, provisions, rights and responsibilities of this Agreement. The CM/GC shall not assign this Agreement without the prior written consent of DFCM, nor shall the CM/GC assign any money due or to become due as well as any rights under this Agreement, without prior written consent of DFCM.

**ARTICLE 13.
EXTENT OF AGREEMENT**

- A. Agreement Includes the Following.** This Agreement includes this Agreement, the Request for Proposals for this Project, including the Instructions to Proposers and the CM/GC's Proposal (including Management Plan) to the extent not in conflict with the other Contract Documents, said DFCM General Conditions, Supplemental General Conditions, final drawings, specifications, Addenda and Modifications as approved by DFCM for this Project, the CM/GC's Proposal for this Project, the CM/GC's bonds submitted to DFCM, and all the attachments (including schedules) and documents incorporated by reference into this Agreement; all of which are hereby incorporated by reference as a part of this Agreement and are also referred to as the "Contract Documents." This Agreement represents the entire and integrated Agreement between DFCM and the CM/GC and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both DFCM and the CM/GC.
- B. Hierarchy.** The following documents shall be read together with the provisions of this Agreement, and in case of irreconcilable conflict between any provisions of the various documents, the first mentioned document in the following list shall control: Modifications, Addendum to drawings and specifications, drawings and specifications (as approved by DFCM), this Agreement including the attachments to this Agreement, the CM/GC's Proposal for this Project (including Management Plan) as may be modified by DFCM and indicated in the attachment to this Agreement, the DFCM's Request for Proposal for this Project, and the DFCM General Conditions.

**ARTICLE 14.
AUTHORITY TO EXECUTE AND PERFORM AGREEMENT**

The CM/GC and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers. Each signatory below represents that he/she is duly authorized by their respective entity to execute this Agreement on behalf of their respective entity.

**ARTICLE 15.
ATTORNEY FEES AND COSTS**

Except as otherwise provided in the dispute resolution provisions of the DFCM General Conditions, the prevailing party shall be entitled to reasonable attorney fees and costs incurred in any action in any court of competent jurisdiction and/or appellate body to enforce this Agreement or recover damages or any other action as a result of a breach thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CM/GC:

APPROVED AS TO AVAILABILITY
OF FUNDS:

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

**DIVISION OF FACILITIES
CONSTRUCTION AND MANAGEMENT**

*/S/ DFCM
DFCM

APPROVED AS TO FORM:
ATTORNEY GENERAL
July 10, 2017
By: MICHAEL J. KELLEY
Asst Attorney General

APPROVED FOR EXPENDITURE:

*/S/ Division of Finance
Division of Finance

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