

DIVISION OF FACILITIES CONSTRUCTION & MANAGEMENT
PROFESSIONAL SERVICES AGREEMENT
Building Code & Special Inspection and Testing Services

THIS AGREEMENT, made this [Click here to enter a date](#), by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called the "DFCM", and [Consultant Name](#), a corporation of the State of [State](#), whose address is [Consultant's Address](#), hereinafter called the "Consultant."

WITNESSETH: That whereas, the DFCM intends to have services performed by Consultant as follows:

BUILDING CODE & SPECIAL INSPECTION AND TESTING SERVICES

Project Name
Agency
Location

WITNESSETH, WHEREAS the DFCM intends to have Consultant fully complete the objectives of this Agreement, and

WHEREAS, the Consultant, for the sum herein stated, agrees to perform the Scope of Work hereinafter specified,

THEREFORE, the DFCM and the Consultant, for the consideration hereinafter provided, agree as follows:

ARTICLE 1. SCOPE OF WORK. The scope of work shall include building, electrical, plumbing, and mechanical inspection services, special inspections and material tests as specified by the specific project and as stated in this Agreement and further specified in the current version of the [DFCM Inspection Services Policies](#) which is incorporated herein by reference and can be found on the [DFCM Website](#). This Agreement shall commence upon the written issuance of a Notice to Proceed by DFCM and shall remain in effect through the duration of the project and completion of the punch list.

ARTICLE 2. EXTENT OF AGREEMENT. This Agreement includes the provisions under which the Consultant was qualified to perform Building Code and Special Inspections, all exhibits or other documents that are attached to this Agreement or incorporated by reference, and the [DFCM General Conditions](#) ("General Conditions") and all Supplemental General Conditions ("also referred to as General Conditions") on file at the office of DFCM and available on the [DFCM website](#), are hereby incorporated by reference as part of this Agreement. In case of conflict, the following documents supersede each other in accordance with the following hierarchy: codes and applicable law, the body of this Agreement, attachments to this Agreement, and the following documents on file with DFCM and incorporated by reference as a part of this Agreement if fully set forth herein: the Request for Consultant Services, the current DFCM Design Manual, [DFCM General Conditions](#).

ARTICLE 3. COMPENSATION.

3.1 Not-to-Exceed Amount. The maximum amount payable for code inspections, special inspections, material testing, and for all reimbursable expenses for this project is **NOT TO EXCEED (AMOUNT IS THE PROJECT TESTING/INSPECTION BUDGET LINE ITEM WHICH IS 1% OF THE TOTAL CONSTRUCTION BUDGET – THIS HIGHLIGHTED AREA IS TO BE REMOVED BEFORE THE AGREEMENT IS ISSUED DOLLARS AND Cents amount in text CENTS (\$Numeric Value of Contract).**

3.2 Payments. DFCM agrees to pay the Consultant from time to time as the work progresses, but not more than once each month after the date of the notice to proceed, and only upon receipt of an invoice containing sufficient detail to justify the amount of payment requested. Payment shall be made

within thirty (30) days of the DFCM's receipt of the Consultant's invoice except that this requirement shall not apply to any amount: (a) for which the Consultant's invoice does not provide sufficient detail to demonstrate payment is due, (b) that the DFCM disputes is due under the terms of the agreement, or (c) reasonably withheld by the DFCM to cover any default or failure to perform by the Consultant. To the extent that the amount due DFCM for any such default or failure to perform exceeds any amount that would otherwise be due the Consultant, the Consultant shall be liable for such excess to the DFCM. The DFCM may seek enforcement of such obligation by legal action, and if such is necessary, shall recover the related costs and attorney fees. Notwithstanding the above, the DFCM agrees that the Consultant is not responsible for damages arising directly or indirectly from any delays for causes beyond the Consultant's control. The DFCM shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

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

3.4 Acceptance of Payments. The acceptance by the Consultant of a payment without a written protest filed with DFCM within 3 calendar days of receipt of such payment, shall release the DFCM from all claims and all liability to the Consultant for fees and costs of the performance of the services associated with the services related to such payment pursuant to this Agreement.

3.5 Determination of Costs. DFCM is relying on the expertise of Consultant in preparing the refined scope of work in order to assure that the inspection activities are defined and performed at a level necessary to fulfill all safety and contract documents compliance issues. Both parties shall cooperate in good faith to sequence inspections in order to reduce costs while assuring proper performance. Payments shall be determined as follows:

3.5.1 Number of inspection hours multiplied by the hourly rate in Exhibit A.

3.5.2 Number of trips multiplied by the trip expense for the project identified in Exhibit A. Trip expense shall include time and transportation to and from the job site. All billable trips must be requested in advance by the Contractor's superintendent or DFCM's Building Official (hereinafter "Building Official").

3.5.3 Incidental Services/Reimbursements. Consultant shall provide all services as established by standard professional custom and practice. The Consultant reimbursements for this project have been estimated as a NOT-TO-EXCEED part of the fee and are allowed on (with no mark-up) as follows:

1. Travel/Lodging/Meals: only for the members whose distance of travel from their office to the site is greater than 100 miles from the servicing office location. Must have prior written approval from DFCM:

a. Travel: flights shall be coach on commercial airlines; personal vehicle use will be reimbursed at the current Federally allowed reimbursement rate per mile; and incidental travel (taxi, bus, airport long term parking only, and other ground transportation) submit an original receipt for each item (tips for taxi, baggage, etc. are not reimbursable);

b. Lodging may be booked through the state and will be reimbursed at either the actual cost or the state rate (whichever is less). Tips for baggage, maid service, doormen, etc. are not reimbursable. The state rates are located at the following web address: [State Travel Website](#);

c. For in-state travel, meal per diems are allowed at the state rate as identified at the following web address (tips and tax on meals are included in the per diem amount): [State Travel Website](#);

d. For consultants traveling from out-of-state, meal per diems are allowed at the state rate as identified at the following address (tips and tax on meals are included in the per diem amount): [State Travel Website](#);

2. **Miscellaneous:** e.g. express mail, photos, long distance calls. An original invoice must be submitted for each item.

Exceptions to the above shall be approved by the DFCM Director in writing.

3.5.4 Fees for material testing and special inspection expenses shall be calculated by multiplying the hours and the type of tests performed by the applicable rates in Exhibit A.

3.5.5 The Consultant fee may include a management fee for overseeing the work of special inspection and materials testing Subconsultants. The fee for such work shall be 10% of the Subconsultant's fee for said services. The Consultant shall not be paid a management fee for special inspections and material testing services provided by the Consultant.

ARTICLE 4. CHANGES IN WORK.

4.1 Agreement Modifications. Any changes in the scope of the services to be performed under this Agreement shall be in the form of a written modification to this Agreement, mutually agreed to and signed by duly authorized representatives of both parties, specifying any such changes, fee adjustments resulting therefrom, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of services. Said modification must be signed by both DFCM and Consultant **IN ADVANCE** of the Consultant performing the work that is the subject of the change. It shall be the responsibility of the Consultant to notify the DFCM of any work it may contend is beyond the scope of this Agreement in advance of the performance of such work.

4.2 Scope of Work Change. Consultant shall immediately notify DFCM of substantial changes in building plans, specifications, Contractor's schedule or planned scope of work that may affect the guaranteed maximum price amount. Change of the guaranteed maximum price amount caused by substantial changes must be negotiated and agreed to in writing in advance by DFCM and Consultant as a modification to this Agreement. No adjustment in the not-to-exceed contract amount shall be paid if Consultant fails to notify DFCM of substantial changes when the change occurs.

ARTICLE 5. CONSULTANT'S DUTIES.

5.1 Responsibilities, In General.

5.1.1 **Discipline and Competence.** The Consultant shall enforce strict discipline and good order among the Consultant's employees, its Subconsultants, agents, representatives and other persons performing under this Agreement. The Consultant shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Consultant and Subconsultants shall always conduct themselves in a professional and courteous manner. Methods of intimidation, anger, or other non-professional conduct will be grounds for termination of the offending person or the termination of this Agreement, as determined by the DFCM. Consultant must perform in a manner that is consistent with customary practices.

5.1.2 **Standard of Care.** The services of Consultant and its Subconsultants, if any, shall be performed in accordance with and judged solely by the standard of care exercised by 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 Consultant shall be liable to the DFCM or the State of Utah for claims, liabilities, additional burdens, penalties, damages or third-party claims (i.e. a Contractor claim against DFCM or the State of Utah), to the extent caused by any errors or omissions that do not meet this standard of care.

5.2 Building Inspections.

5.2.1 All inspections shall be in conformance with the State adopted Building, Electrical, Mechanical, and Plumbing Codes and the DFCM's specifications as contained in the construction documents.

5.2.2 The inspector will report directly to the Building Official. The inspector will perform inspection and other services as directed by the Building Official.

5.2.3 All of the Consultant's inspectors (including special inspectors) must be licensed in the State of Utah in one or more of the following areas. Inspector: I Combination, I UBC, I NEC, I IPC and I IMC. All inspectors will submit qualifications to be approved by the Building Official. Inspectors will not perform inspections in trade areas for which they are not properly licensed by the State of Utah.

5.2.4 Consultant shall notify the Building Official at least two business days prior to any change in the primary person performing on-site inspections. The replacement inspector is subject to approval by the Building Official.

5.2.5 Consultant shall regularly visit site and make note of any work which has been covered without being inspected. Consultant shall immediately notify the Building Official of any work that has been covered without inspection.

5.3 Special Inspections and Materials Tests.

5.3.1 Consultant is responsible to oversee the special inspections and material tests for the project. Duties include but are not limited to: site supervision, inspection coordination, test and inspection management, personnel management, reporting, conflict resolution and billing.

5.3.2 Consultant shall submit qualification of special inspectors and material testing personnel to the Building Official for approval. Personnel are not permitted on site until they have been approved.

5.3.3 Consultant shall meet with Subconsultants prior to beginning work to discuss the scope of the project. Consultant shall coordinate the work of Subconsultants to ensure that all required special inspections and materials tests are completed in a timely and efficient manner.

5.3.4 Consultant shall ensure that special inspecting/testing personnel have access to relevant construction documents before beginning their work.

5.3.5 Consultant shall periodically visit site to oversee the work of the Subconsultants. Time spent on site managing the inspection services and overseeing Subconsultants is not billable, except for management visits included as part of the attached cost proposal.

5.3.6 The Consultant shall not receive a financial benefit from the fees that are charged by a Subconsultant other than the management fee allowed in Article 3.3.5, Compensation.

5.4 Time Frame for Services. The Consultant shall complete the scope of work in a manner to achieve any milestones identified in the Solicitation for Consultant Services or the attachments to this Agreement. The full scope of work shall be completed by [Click here to enter a date](#). Consultant shall be responsible to DFCM for any damages related to delay in providing the services under this Agreement including delays caused to third parties where DFCM may be held liable where any of such delays are due to the act, error or omission of Consultant under this Agreement.

5.5 Use of "Sales Agents." The Consultant warrants that no sales agent has been employed or retained except as indicated in writing to DFCM.

5.6 Laws, Codes and Regulations. Consultant and its Subconsultants shall use their best efforts consistent with the Standard of Care stated herein to comply with laws, codes, rules, regulations, ordinances and quality requirements applicable to the Project.

ARTICLE 6. BUILDING INSPECTION PROCEDURES

6.1 Building, Mechanical, Electrical, and Plumbing Inspections.

6.1.1 The Contractor's superintendent will contact the Consultant to arrange for building inspections. The Consultant shall respond to all inspection requests no later than one (1) business day after receiving the request. If the Consultant cannot respond within this time period, he shall find a qualified Subconsultant and notify the Building Official prior to the inspection. The Consultant shall not initiate an inspection without an advance request from the Contractor's superintendent or the Building Official. Consultant shall immediately notify the Building Official if Consultant believes that inspections are required which are not being requested by the Contractor.

6.1.2 Consultant shall make note of all retests and associated expenses on the monthly invoice.

6.1.3 The Consultant's inspector, upon request, shall show proper identification to the Contractor. Any site-specific security clearance requirements must be complied with by the Consultant and Subconsultants.

6.1.4 Standards for all inspections. Inspections shall indicate whether there is compliance with:

- a. Current edition of the applicable building codes.
- b. Project drawings and specifications.
- c. Manufacturers recommendations and installation instructions.
- d. Applicable DFCM construction standards.

6.2 Special Inspections and Materials Tests.

6.2.1 The special inspections and material tests will be conducted according to the project's construction documents and specifications and according to standard material testing and inspection practices. Additional inspections/tests may be requested by the DFCM.

6.2.2 Contractor's superintendent will contact Consultant to schedule special inspections and material tests. Consultant will then schedule the appropriate personnel to complete the inspections or tests. Consultant will inform personnel of type of inspection, time requested, and location of work. The Consultant shall respond to all inspection requests no later than one (1) business day after receiving the request. If the Consultant cannot respond within this time period, he shall find a qualified Subconsultant and notify the Building Official prior to the inspection.

6.2.3 Consultant shall provide an on-site sign-in log for inspection/testing personnel. The log shall include the time the inspector arrived and left, the type of inspection or test, and the inspector's name. The inspection/testing personnel shall complete the log entries before leaving the site.

6.2.4 Consultant shall document all failed inspections and tests on monthly invoices and the expense associated with retesting.

ARTICLE 7. SUBCONSULTANTS

7.1 Required Approval.

7.1.1 Subconsultants listed in Exhibit A shall be used for this work and not replaced during the course of this Agreement except with the advance written approval of the Building Official after complying with the following criteria.

a. The Consultant has established in writing that the change is in the best interest of the State of Utah.

b. The Consultant has established an appropriate reason for the change which may include, but is not limited to, the following reasons: the original Subconsultant has failed to perform, the original Subconsultant is not qualified or capable of performing, and/or the original Subconsultant has requested in writing to be released.

c. The circumstances related to the request do not indicate any bad faith in the original inclusion of the Subconsultant.

7.1.2 The Consultant shall not contract with a proposed person or entity to whom the DFCM has made a reasonable and timely objection. The Consultant shall not be required to contract with anyone to whom the Consultant has made reasonable objection.

7.1.3 The change in Subconsultants shall be evidenced by a modification to this Agreement. This modification shall also address any impact the change may have on the fees contained in Exhibit A.

7.2 Subconsultant Relations.

7.2.1 By appropriate enforceable agreement, the Consultant shall require each Subconsultant to be bound to the Consultant by the terms of this Agreement, and to assume toward the Consultant all the obligations and responsibilities which the Consultant, by this Agreement, assumes towards the DFCM.

7.2.2 Each Subconsultant agreement shall preserve and protect the rights of the DFCM and Consultant under this Agreement with respect to the work to be performed by the Subconsultant so that subcontracting thereof will not prejudice such rights, and shall allow to the Subconsultant, unless specifically provided otherwise in the Subconsultant agreement, the benefit of all rights and remedies against the Consultant that the Consultant, by this Agreement, has against the DFCM.

7.3 Payment to Subconsultants. The Consultant shall promptly pay each Subconsultant, upon receipt of payment from the DFCM, out of the amount paid to the Consultant on account of such Subconsultant's portion of the work, the amount to which said Subconsultant is entitled. The Consultant shall, by appropriate Agreement with each Subconsultant, require each Subconsultant to make payment to its Subconsultant in a similar manner.

ARTICLE 8. COMMUNICATION AND DOCUMENTATION

8.1 Communications. Consultant shall promptly communicate to the Building Official and DFCM's Representative. Consultant may communicate directly with the Contractor about any Stop Work Order, an urgent health or safety matter at the site, or if the direct communication with the Contractor will facilitate the performance of the work by the Contractor. Any communication with the Contractor must be part of the inspector's report prepared at the site. Consultant shall not be entitled to rely upon any representation, statement or conduct of any person or entity, except as provided in this Agreement.

8.2 Documentation in General. Consultant shall prepare written reports to document the results of all inspections and tests and any discussions thereof with the Contractor. Consultant shall also take photographs and other means of documentation as may be appropriate. Consultant shall be prepared to take photographs of any inspection where such photograph assists in the understanding of the condition of the site or facility being inspected.

8.3 Inspection Reports. Consultant shall make a written report of each inspection indicating whether there is compliance with the project drawings and specifications, project specific criteria, and applicable codes. This report must be completed before leaving the project site. A copy of the inspection report listing necessary corrections shall be left with the Contractor's superintendent. Consultant shall make note of all retests and associated expenses on the monthly invoice. Consultant shall provide a copy of all reports to the Building Official, DFCM's Representative, and the A/E (Architect/ Engineer) within two (2) business days of the inspection. Failure to timely deliver the inspection report may be considered a material breach of this agreement and DFCM may pursue all available remedies. This delivery is to be accomplished by electronic mail.

8.4 Unresolved Issues. Consultant shall provide a list of unresolved issues attached to each report.

8.5 Special Inspection and Testing Reports. Consultant shall provide a report of the results of special inspections and materials tests to the Building Official, DFCM's Representative, and the A/E within two (2) business days. Consultant shall notify Building Official of test or inspections that have failed and are not immediately correctable.

8.6 Immediate Notification of Unusual Problems. In addition, Consultant shall promptly notify the Building Official by telephone of any unusual problems discovered during the inspection. If the Building Official does not answer the telephone call, then a voice message shall be left for the Building Official.

8.7 Final Report. Upon completion of each project, Consultant shall provide to the Building Official an electronic copy of the following as applicable:

8.7.1 A final inspection and recommendation from the building inspector assigned to that project to allow occupancy and to issue the Certificate of Occupancy based on the building meeting all applicable laws and codes;

8.7.2 A Certificate of Fire Clearance from the Fire Marshal;

8.7.3 A final inspection report and approval of the Special Inspection firm assigned to the project;

8.7.4 The approval of the state elevator inspector where applicable;

8.7.5 The approval of the state boiler inspector where applicable;

8.7.6 Verification that the domestic water lines have been tested and are free from contamination;

8.7.7 Submittal of the "installation certificate" for the stucco system when required by the evaluation report;

8.7.8 A final report from the smoke control Special Inspector as applicable;

8.7.9 Steel Fabricators certificate of compliance. (When steel fabrication takes place in an "approved fabrication shop" the fabricator shall submit a certificate of compliance to the Building

Official stating that the work was performed in accordance with the approved construction documents per IBC1704.2.2).

8.8 Copies to Agencies. Upon Request, Consultant shall provide a copy of the above reports to the Using Agency.

8.9 Modification to Report Requirements. Notwithstanding the provisions of Article 2, the requirements of this Article 8 may be modified through alternative provisions contained in the attachments to this Agreement.

ARTICLE 9. APPEAL OF CONSULTANT’S DECISIONS. Consultant shall cooperate with and participate in any appeal made pursuant to the DFCM’s appeal process of Consultant’s decisions. Consultant shall provide reports, documentation, and testimony as required. Consultant shall be compensated for its reasonable costs to respond to an appeal only if the Consultant’s decision is upheld in the appeal.

ARTICLE 10. HAZARDOUS OR EMERGENCY SITUATIONS; STOP WORK ORDERS. If the Consultant encounters a hazardous or emergency situation, the Consultant is authorized to issue any warranted Stop Work Order or any other customary means of resolving the hazardous or emergency situation. The Consultant shall immediately inform the Building Official and the DFCM Representative of any action taken and provide a detailed analysis in the report prepared at the site. On the same day that the Stop Work Order is issued, Consultant shall provide a copy of this report to the Building Official and the DFCM Representative. This delivery may be accomplished through electronic means.

ARTICLE 11. INSURANCE. To protect against liability, loss and/or expense in connection with the performance of services described under this agreement, the Consultant shall obtain and maintain in force during the entire period of this agreement without interruption, at its own expense, insurance as listed below from insurance companies authorized to do business in the State of Utah. Consultant shall require that the insurance requirements contained in this Article be met by each testing and inspection firm with which it subcontracts to accomplish its responsibilities under this Agreement. The following are minimum coverages that may be supplemented by additional requirements contained in the Solicitation for Consultant Services or any other document used to procure Consultant’s services.

11.1 Professional Liability Insurance. The Consultant shall maintain, at its expense, Professional Liability Insurance, on a “claims made” basis, with an aggregate policy limit of not less than \$2,000,000 and not less than \$1,000,000 per occurrence. Any change in this insurance requirement shall be noted in an attachment to this Agreement. Unless project specific insurance is required by the DFCM through a provision in the Solicitation for Consultant Services or an attachment to this Agreement, this coverage may be written under a practice policy with limits applicable to all projects undertaken by the Consultant but the coverage must be maintained in force for the discovery of claims for a period of three (3) years after the date final payment is made to the consultant under this Agreement. The policy must contain a “retroactive” or “prior-acts” date which precedes the earlier of, the date of this Agreement or the commencement of the Consultant’s services. The policy must also include contractual liability coverage applicable to the indemnity provision of this Agreement for those portions of the indemnity provisions that are insured under the Consultant’s policy.

11.2 Worker’s Compensation Insurance and Employers’ Liability Insurance. Worker’s Compensation Insurance shall cover full liability under the Worker’s Compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction’s laws.

11.3 Commercial General Liability Insurance. Commercial General Liability Insurance shall be on an “occurrence basis” and shall include insurance for premises and operations, independent contractors, projects/completed operations, and contractual liability coverage with limits not less than listed below. The State of Utah shall be named as an additional insured party, as primary coverage and not contributing, and the policy shall be endorsed to include a waiver of subrogation in favor of the State of Utah.

\$1,000,000	General Aggregate
\$1,000,000	Products-Completed Operations Aggregate
\$500,000	Personal and Advertising Injury
\$500,000	Each Occurrence

11.4 Other Insurance Coverages. Consultant shall maintain the following insurance at levels Consultant determines: Comprehensive Automobile Liability Insurance, Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage, and Aircraft Use. Any minimum requirements for these insurance coverages will be identified in the Solicitation for Consultant Services or any other document used to procure Consultant’s services. Any type of insurance or any increase of limits of liability not described in this agreement which the Consultant requires for its own protection or on account of any statute, rule, or regulation shall be its own responsibility and at its own expense.

11.5 Not Relieve Responsibility. The carrying of insurance required by this agreement shall not be interpreted as relieving the Consultant of any other responsibility or liability under this agreement or any applicable law, statute, rule, regulation or order.

ARTICLE 12. TERMINATION

12.1 Termination by Consultant. This Agreement may be terminated by Consultant upon seven (7) calendar days written notice should the DFCM fail substantially to perform, through no fault of the Consultant and the DFCM has failed to cure the failure to perform within fourteen calendar(14) days of the DFCM’s receipt of written notice of its failure to perform. Upon termination of this Agreement, the Consultant shall deliver all work performed to the DFCM. In the event of termination, the Consultant shall be compensated for services properly performed under this Agreement up to date of the notice of termination. The Consultant agrees that in the event of such termination of default and such default is not successfully challenged by DFCM, its total remedy and monetary recovery from the DFCM is limited to full payment for all work performed, reimbursables, under this Agreement up to the date of termination as well as any reasonable monies owed as a result of the Consultant having to terminate contracts necessarily entered into by the Consultant pursuant to this Agreement. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

12.2 Termination by DFCM. The performance of service under this Agreement may be terminated by the DFCM in whole or in part at any time, whenever the DFCM shall determine that such termination is in the best interest of the DFCM. This includes any termination by DFCM for convenience or for cause. Any such termination shall be affected by delivery to Consultant of a written notice of termination specifying the extent to which performance of work under the Agreement is terminated and the date upon which such termination becomes effective. The Consultant agrees that in the event of such termination, its total remedy and monetary recovery from the DFCM is limited to full payment for all work performed, plus reimbursables, under this Agreement up to the date of termination. Consultant further acknowledges that in the event of such termination, all work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents produced by Consultant under this Agreement up to the date of termination are the property of the DFCM.

ARTICLE 13. PRELIMINARY RESOLUTION EFFORTS (PRE), CLAIMS AND DISPUTES;

13.1 DFCM GENERAL CONDITIONS REQUIREMENTS APPLY. The provisions of Articles 7.7. through and including 7.14 of the [DFCM General Conditions](#) shall apply to Preliminary Resolution Efforts, Claims and Disputes under this Agreement. References in said Articles 7.7 through and including 7.14 to the term “Contractor” and “Subcontractor” shall refer to the Consultant and Subconsultants or Subcontractors at any tier under this Agreement, respectively.

13.2 TIME FOR FILING. Notwithstanding paragraph 13.1 above, the PRE must be filed in writing with the DFCM Representative within twenty-one (21) days of any of the following:

13.2.1. Issuance of a denial by DFCM of a Consultant request for additional monies or other relief under this Agreement;

13.2.2. In the case of a Subconsultant, after the expiration of the time period for the Consultant/Subconsultant PRE process under Paragraph 7.7.5 of the [DFCM General Conditions](#); or

13.2.3. When the Consultant knows or should have known about any other issue where the Consultant seeks additional monies, time or other relief from the State of Utah or DFCM.

13.3 Not Limit DFCM Rights. As stated in [Rule R23-26-1\(6\)](#), this does not limit the right of DFCM to have any of its issues, disputes or claims considered. DFCM reserves all rights to pursue its issues, disputes or claims in law or equity including, but not limited to, any or all of the following: damages, delay damages and impacts, losses, liability, patent or latent defects, or failure to perform under this Agreement. If the Director appoints an expert or a panel to consider any such issue(s), dispute(s) or claims(s) of DFCM, the Consultant shall cooperate with such expert or panel process.

ARTICLE 14. MISCELLANEOUS PROVISION.

14.1 Safety. The Consultant shall ensure that all employees and Subconsultants are aware of safety requirements before arriving on site. Safety requirements include, but are not limited to, wearing approved hard hat, safety glasses, and footwear.

14.2 Ownership of Work Product. All work product, which includes, but is not limited to all manuals, forms, contracts, schedules, reports, documentation, photographs, data, electronic data, comments and any and all documents supplied to or produced by Consultant under this Agreement are the property of the DFCM. Said work product and the information contained therein are the exclusive property of the DFCM and are not to be used by Consultant on any other projects with any other parties except by the advance written agreement of the DFCM. Consultant agrees to maintain the level of confidentiality, to the extent permitted by law, needed to protect the State's interest in the design, construction, and management of the project.

14.3 Legal Relationship. This Agreement is for the performance of services and not the sale of goods, and is to be construed according to the laws of the State of Utah. Consultant's relationship to the State is that of an independent contractor. No partner or employee of Consultant shall, by reason of this Agreement, become an employee of the State of Utah. The Consultant shall have no authorization, expressed or implied, to bind the DFCM or the State of Utah to any agreement, settlement, liability, or understanding whatsoever, nor to perform any acts as agent for the DFCM or the State of Utah except as specifically set forth in this Agreement. The DFCM shall identify the desired performance outcome and the Consultant shall determine the manner and method of achieving that outcome consistent with professional and customary practices. Nothing in this section is intended to limit or reduce any governmental immunities to the extent any may be available to Consultant by reason of its performance of inspections on behalf of the State of Utah.

14.4 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

14.5 Hold Harmless Requirement. To the fullest extent permitted by law, the Consultant hereby agrees to indemnify and save harmless the State of Utah, the Division of Facilities Construction and Management, their officers, agents and employees any anyone for whom DFCM may be held liable from and against any and all claims, damages or liabilities arising from negligent or wrongful acts, errors or omissions of the Consultant and its Subconsultants or subcontractors at any tier and anyone for whom Consultant may be liable.

14.6 Ownership of Documents. All work product, which includes but is not limited to all manuals, forms, contracts, schedules, reports, comments and any and all documents supplied to or produced by Consultant under this Agreement are the property of the DFCM, whether the work for which they are made is executed or not.

14.7 DFCM Reviews, Limitations. No review by the DFCM or any entity/user, approval or acceptance, or payment for any of the services required under this Agreement shall be construed to operate as a waiver by the DFCM of any right under this Agreement or of any cause of action arising out of the performance or nonperformance of this Agreement, and the Consultant shall be and remain liable to the DFCM in accordance with applicable law for all damages to the DFCM caused by the Consultant's acts, errors and/or omissions.

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

14.9 Performance Evaluation. DFCM may conduct a performance evaluation of the Consultant's services, including specific personnel of Consultant or any Subconsultant at any time. Results of any evaluation will be made available to the Consultant.

14.10 Statute of Limitation and Statute of Repose. An action by or against the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable, shall comply with and be bound by the applicable and lawful statute of limitation and statute of repose provisions. Notwithstanding this, any action by or against the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable, that is based in contract or warranty shall be commenced within six (6) years of the date of substantial completion of the improvement or abandonment of construction except that such period of limitation shall be modified as follows:

14.10.1 **Fraudulent Concealment.** In the event that the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable has fraudulently concealed the act, error, omission or breach of duty, or the injury, damage or other loss caused by the act, error, omission or breach of duty, the six year period shall not begin to run until such time as the DFCM discovers or, through the exercise of reasonable diligence, should have discovered its claim.

14.10.2 **Willful and Intentional.** In the event that the Consultant, the Consultant's Subconsultant, agent, independent Subconsultant, or anyone for whom the Consultant may be liable commits a willful or intentional act, error, omission, or breach of duty, the six-year period shall not begin to run until such time as the DFCM discovers or, through the exercise of reasonable diligence, should have discovered its claim.

14.10.3 **Unintentional and Nonfraudulent Latent Acts, Errors, Omissions or Breaches of Duty.** In the event of an unintentional and nonfraudulent latent act, error, omission or breach of duty, the DFCM shall have the time period allowed by Utah law and the Utah Code, unless a longer period is provided for in an attachment to this Agreement.

14.10.4 **"Different Period of Limitation" from Utah Code.** These provisions are understood and agreed to by the Consultant as establishing a "different period of limitations" as that term is used in [UCA 78B-2-225\(3\)\(a\)](#) or any other similar statute of the Utah Code. These provisions are not intended

to shorten any time period allowed by Utah law and code for non-contract actions, including but not limited to, those based in tort.

14.11 Waivers. No waiver by the DFCM or Consultant of any default shall constitute a waiver of the same default at a later time or of a different default.

14.12 Applicable Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Utah. Venue for any legal proceeding regarding this Agreement shall in the Salt Lake County, State of Utah.

14.13 Authority to Execute. The Consultant and DFCM each represent that the execution of this Agreement and the performance thereunder is within their respective duly authorized powers.

14.14 Public Contract Requirements. In accordance with Utah Code § 63G-27-201, unless this Agreement is for a total value of less than \$100,000 or Consultant has fewer than 10 full time employees or this Agreement is otherwise exempt under Utah Code § 63G-27-201: (1) the Consultant certifies that the Consultant 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 Consultant agrees not to engage in a boycott of the State of Israel during the duration of this Agreement; (3) the Consultant shall notify DFCM if the Consultant begins engaging in an economic boycott; and (4) the Consultant acknowledges and agrees that the Consultant's notice under clause (3) of this Section 14.14 may be grounds for termination of this Agreement by DFCM for cause.

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

CONSULTANT:

Contractor Name

APPROVED AS TO FORM:
ATTORNEY GENERAL
May 12, 2020
By: MIKE KELLEY
Asst Attorney General

**DIVISION OF FACILITIES CONSTRUCTION
AND MANAGEMENT**

*/S/DFCM

DFCM

Approved for expenditure:

*/S/ Division of Finance

Division of Finance

Approved as to availability of funds:

*/S/ Pat Gillins

DFCM Finance Program Manager

*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.

DFCM Project No. Project Number
DFCM Contract No. Contract Number



FY2023 DFCM CODE INSPECTION RATE

BUILDING, PLUMBING, MECHANICAL, & ELECTRICAL INSPECTIONS UNIT RATE	
Code Inspections	\$78.00 per hour

FY2023 DFCM SPECIAL INSPECTIONS & TESTING RATES

SOILS & AGGREGATES	
In-place density tests (soils technician)	\$42.00 per hour
Proctor - Standard	\$112.00 each
Proctor - Modified	\$112.00 each
Atterberg Limits	\$42.00 each
Gradation Analysis (PI)	\$49.00 each

STRUCTURAL STEEL, WELDING, & FIREPROOFING	
Structural Steel and Welding Special Inspector	\$56.00 per hour
Fireproofing Special Inspector	\$56.00 per hour
Fireproofing lab density	\$53.00 each

NON-DESTRUCTIVE TESTING	
CWI	\$56.00 per hour
UT - Ultrasonic	\$56.00 per hour
MPT - Magnetic Particle	\$56.00 per hour
RT	\$112.00 per hour+materials

CONCRETE TESTING	
ACI level I - Sampling Technician	\$42.00 per hour
ACI level II - ICC Special Inspector	\$56.00 per hour
Concrete Cylinder Compressive Strength	\$15.00 each
Concrete and Shotcrete Cores * Pre-approval Required*	Negotiated

MASONRY	
ICC Special Inspector	\$56.00 per hour
Compression, Composite Prisms	\$56.00 each
Grout Compressive Strength	\$29.00 each

ASPHALT	
Asphalt Inspector - Including Density Tests	\$43.00 per hour
Theoretical Maximum Specific Gravity (Rice)	\$120.00 each
Asphalt Cores	\$62.00 each
Burn-off Tests	\$150.00 each
Core Density	\$35.00 each
Field Marshall (3 specimen set)	\$105.00 per set
Field Marshall with Stability and Flow (3 specimen set)	\$170.00 per set

PROJECT ENGINEERING & MANAGEMENT *PRE-APPROVAL REQUIRED*	
Engineering Technician	\$43.00 per hour
Staff Engineer	\$80.00 per hour
Professional Engineer (P.E.)	\$100.00 per hour

MISCELLANEOUS	
Administrative Time (clerical/administrative time spent collecting EDMS documents required for project closeout)*	\$30.00 per hour / maximum of \$150.00 per project unless otherwise approved
Work Time: between 7am and 5pm on weekdays	Regular Rate
Overtime: over 8 hours/day, Saturdays, Sundays, and Holidays	1.5 x hourly rate
Drive time including over 8 hours/day	Regular Rate
Swing Shift and Graveyard Shift	Regular Rate
Sample Pick-up	.50 x hourly rate

TRAVEL REIMBURSEMENT	
Mileage	\$0.49 Per mile
Time	Hourly inspector rate in .25 increments

PER DIEM *PRE-APPROVAL REQUIRED*	
Daily Per Diem	In compliance with the current Utah Code

*Added effective 8.16.2021. Please call or email dfcmmcontracts@utah.gov if clarification is needed. Please list as 'Administrative Time' on invoices.