

## Short Form Construction Contract for Small Projects

This Contract ("Contract") is made and entered into on [Click here to enter a date](#), by and between the State of Utah Division of Facilities Construction and Management ("DFCM"), and the following Contractor:

Contractor name("Contractor")  
Contractor's street address  
City, State, Zip

### 1. Project Information:

Project name  
Agency  
Property name and/or location

### 2. Scope of Work:

Contractor's Scope of Work shall be as follows or shall be as set forth on the referenced Exhibit attached hereto and incorporated herein, as such Scope of Work may be modified by Change Order and/or Change Directive pursuant to paragraph 4 of the Contract Conditions: [Scope of Work](#)

### 3. Contract Documents:

The Contract Documents consist of this Contract, the Contract Conditions, attached Exhibits, all Solicitation Documents, Bids, Drawings, Specifications and any other Contract Documents included by reference.

### 4. Project Commencement and Completion:

Contractor shall commence the Work on the date of the Notice to Proceed or as agreed to with DFCM ("Commencement Date") and complete the Work by the [Click here to enter a date](#) ("Completion Date"). Contractor shall pay DFCM Liquidated Damages in the amount of \$[Liquidated Damages](#) for each calendar day that Contractor fails to complete the Work after the Completion Date.

### 5. Compensation:

DFCM shall pay Contractor for the Contractor's Work the Contract Price of [Text value of contract](#) (\$[Numeric value of contract](#)).

#### Contractor:

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(Signature)

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(Title)

#### DFCM:

\*/S/DFCM  
Approved for Expenditure  
\*/S/Division of Finance  
Approved as to Availability of Funds  
\*/S/ David D. Williams, Jr., DFCM Financial Director

\*Electronic signatures are effective when the AIM Status History page is attached to this Contract, The AIM Status Page identifies the State Signatures.

## Contract Conditions

- 1. The Work.** The term “Work” means the construction and services required by the Contract Documents and includes all labor, materials, equipment, services and other items necessary for the proper execution and completion of the Work by Contractor. All minor details of work which are not shown in the Contract Documents but are necessary for the proper execution and completion of the Work, shall be considered as incidental, and as a part of and included with the Work to be performed by Contractor for the Contract Price.
- 2. Contract Documents.** Contractor shall perform the Work in strict compliance with the Contract Documents. Contractor waives the execution of any unexecuted Contract Documents and agrees to be bound by the terms of such Contract Documents to the same extent as if they were executed at the time of execution of this Contract. Contract Documents shall be the property of DFCM and shall not be used by Contractor for any other project without the written permission of DFCM. If there are any conflicts or inconsistencies within or between documents comprising the Contract Documents, Contractor shall provide the better quality or greater quantity of Work or materials, as applicable, unless directed otherwise by DFCM in writing.
- 3. Payment.** DFCM agrees that DFCM will make Progress Payments as required by Utah Code § 15-6-2 for properly completed Work, subject to retention of five percent (5%) which retention shall be paid to Contractor as required by Utah Code § 13-8-5. Any payment of undisputed amounts not paid to Contractor as required by Utah Code § 15-6-2 shall bear interest as provided in Utah Code § 15-6-3.
- 4. Changes.** DFCM may order changes in the Work by issuing a written Change Order (which shall be countersigned by Contractor) which shall: (a) describe the changes in the Work; (b) state the change in the Completion Date agreed to by DFCM and Contractor, if any; and (c) state the adjustment to the Contract Price, if any, agreed to by DFCM and Contractor for the cost or credit to DFCM resulting from the change. If DFCM and Contractor cannot agree on a change to the Completion Date and/or the cost or credit to the DFCM resulting from a change in the Work, DFCM may issue a written Change Directive directing a change in the Work and stating an adjustment to the Completion Date and/or Contract Price as unilaterally determined by DFCM, and Contractor shall promptly proceed with the Work, as changed. If Contractor does not agree with DFCM’s final adjustment to the Completion Date and/or Contract Price resulting from a Change Directive such dispute shall be resolved in accordance with paragraph 19. The Completion Date and Contract Price may be changed only by a Change Order or Change Directive. Under no circumstances will the Contractor be entitled to additional compensation for changes in the Work not authorized in a written Change Order or Change Directive signed by DFCM.
- 5. Time.** Time is of the essence of this Contract. Contractor acknowledges that DFCM will suffer damage if the Work is not completed by the Completion Date. Contractor shall be liable for and shall pay to DFCM: (a) if Liquidated Damages are agreed to, such Liquidated Damages; or, (b) if Liquidated Damages are not agreed to, all damages, including compensatory damages, consequential damages and all other direct and indirect damages suffered by DFCM as a result of Contractor’s failure to complete the Work by the Completion Date.
- 6. Quality / Warranty.** Contractor shall perform the Work in a good and workmanlike manner, using high quality materials and personnel skilled in the type of work required and in compliance with all applicable laws, regulations, ordinances, industry standards and requirements of governmental entities having jurisdiction over the Work. DFCM may reject Work which is not in accordance with the Contract Documents or which is otherwise defective in which event Contractor shall correct such Work at Contractor’s cost. If within one (1) year of the Completion Date any of the Work is found to be not in

accordance with the Contract Documents or is found to be otherwise defective, Contractor shall promptly correct it at Contractor's cost, however this one (1) year correction period shall not alter the terms of any special warranties required by the Contract Documents or limit any other remedy available to DFCM.

- 7. Subcontractors.** Contractor shall not employ any subcontractor for the Work to whom DFCM objects in writing and Contractor shall remove from the Project Location any subcontractor, sub-subcontractor and/or other person or entity to which DFCM objects. Contractor shall pay subcontractors and suppliers as required by Utah Code § 58-55-603. Contractor's subcontracts are contingently assigned to DFCM provided that such assignment shall only be effective after termination of the Contract for cause pursuant to paragraph 17 and only as to those subcontracts which DFCM accepts in writing. Pursuant to Utah Code § 78B-4-513, Contractor's causes of action for defective design and/or construction in connection with the Work, if any, are assigned to DFCM, contingent upon acceptance of such assignment by DFCM in writing.
- 8. DFCM Occupancy.** In the event DFCM or any other agency or political subdivision of the State of Utah ("Agency") occupies the Project Location during the performance of the Work, Contractor shall conduct the Work so as to minimize interference with DFCM's / Agency's occupancy at the Project Location.
- 9. Safety.** Contractor is responsible for the safety of Contractor's employees and property at the Project Location and for the safety of all other persons and property at the Project Location and shall at all times protect such persons and property at the Project Location from Contractor's operations.
- 10. Responsibility for Acts / Omissions of Others.** Contractor shall be responsible and liable for the acts and omissions of Contractor's employees at the Project Location, subcontractors, sub-subcontractors and anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.
- 11. Taxes / Fees / Permits.** Contractor shall pay all taxes and fees and shall secure and pay for all permits, licenses, tests and inspections necessary for proper execution and completion of the Work.
- 12. Hazardous Materials.** Contractor shall be responsible for any release of Hazardous Material(s) on or from the Project Location which release is caused in whole or in part by Contractor or by any subcontractor, sub-subcontractor and/or any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and Contractor agrees to indemnify, defend and hold harmless DFCM and the other parties indemnified pursuant to paragraph 13 of these Contract Conditions from and against all remediation costs, claims, damages, losses and expenses, including, but not limited to attorneys' fees, arising out of or resulting from such release. In the event Contractor encounters any Hazardous Material(s) at the Project Location, Contractor shall immediately cease work, notify DFCM of such condition by the most expeditious means available and Contractor shall not resume work until any such Hazardous Material(s) have been removed from the Project Location or rendered harmless and Contractor has been directed in writing by DFCM to resume work.
- 13. Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless DFCM, Agency, if any, and the State of Utah from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, arising out of or resulting from the performance of the Work by Contractor or any subcontractor of any tier. The obligation to indemnify shall be effective even if the active or passive negligence or misconduct of DFCM or another indemnified party contributes to the loss or claim. This indemnity will not extend to claims demands, liability or expense arising out of the sole negligence or

willful misconduct of DFCM or another indemnified party. In any and all claims against the indemnified parties identified hereunder by any employee of Contractor, any subcontractor, any sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for Contractor, any subcontractor or any sub-subcontractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.

**14. Contractor's Insurance.** Prior to the Commencement Date Contractor shall purchase from and maintain in a company or companies licensed to do business in the State of Utah and rated "A-" or better by the A. M. Best Company the following insurance coverage (or greater if required by law) with deductibles per claim/occurrence of not greater than \$10,000: (a) Workers' compensation—statutory limits; (b) Employer's liability—\$2,000,000; (c) Comprehensive Automobile Liability Insurance—combined single limits (covering bodily injury liability, death and property damage) of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate and which names DFCM as an additional insured; and (d) General Liability Insurance written on a Commercial General Liability Coverage Form (provided on an "occurrence" form and not on a "claims made" form) which shall name DFCM as an additional insured by endorsement to the policy and which coverages shall include Broad Form Property Damage, Blanket Contractual Liability, Independent Contractor's Liability, Products-Completed Operations (which shall be maintained without interruption by Contractor for a period of 2 years from the Completion Date), Personal and Advertising Injury and X, C and U (explosion, collapse and underground) hazards. The limits of Contractor's General Liability Insurance shall be not less than \$1,000,000 combined single limit (bodily injury, death and property damage combined) each occurrence, \$2,000,000 general annual aggregate limit, \$2,000,000 Products-Completed operations annual aggregate limit and \$2,000,000 personal and advertising injury limit. Contractor shall require Contractor's subcontractors to secure and maintain the same insurance coverages, with the same minimum deductibles, the same minimum limits of liability and for the same period of time as required of Contractor by this paragraph unless this requirement is waived in writing by DFCM. If Contractor employs, directly or indirectly, any "Design Professional(s)" as that term is defined in Utah Code § 13-8-7 in connection with this Project, Contractor shall require such Design Professional(s) to secure and maintain throughout the period of this Project and for a period of 3 years after the Completion Date professional liability insurance for errors or omissions in the design services provided by the Design Professional(s) with respect to this Project, procured from companies authorized to do business in the State of Utah and rated A- or better by the A. M. Best Company, with deductibles per claim of not greater than \$100,000, and with limits of liability of not less than \$1,000,000 per claim; \$2,000,000 annual aggregate. If the professional liability insurance required by this Contract contains a design/build exclusion applicable to the design services required by the Contract Documents, the policy shall be endorsed to delete such exclusion for the Project. Contractor will supply DFCM with satisfactory evidence of the insurance required by this Contract prior to the Commencement Date. Should Contractor (or any subcontractor or Design Professional directly or indirectly employed by Contractor) fail to obtain and maintain the insurance required by this paragraph DFCM may, but shall not be obligated to, purchase such insurance, the cost of which shall be charged to Contractor and deducted from the Contract Price. Contractor shall bear full responsibility for and shall pay on demand any and all damages suffered by DFCM and/or other parties indemnified pursuant to paragraph 13 of these Contract Conditions which result from Contractor's failure to comply with the insurance requirements of this Contract.

**15. Builder's Risk Insurance.** Provided that the Contract is for new buildings, structures, or construction projects, or for the alteration or repair of, or addition to existing buildings, structures, or improvements, DFCM shall maintain Builder's Risk Insurance to protect the interest of the Contractor, subcontractors, or sub-subcontractors subject to all of the terms, conditions, limitations, exclusions, waivers and/or

endorsements stated in the State of Utah Property Insurance Form available on DFCM's website, [dfcm.utah.gov](http://dfcm.utah.gov). To the extent that the Builder's Risk Insurance provides for a deductible (including, without limitation, a specific loss deductible, cumulative loss deductible and/or sub-deductible), any deductible applicable to such covered damages or losses to property shall be paid by the Contractor. Except for losses arising out of design errors or omissions, DFCM and Contractor waive all rights against each other and the other indemnified parties and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by the Builder's Risk Insurance, but only to the extent of the actual recovery of insurance proceeds by the injured party, except such rights as they have to proceeds of such insurance held by DFCM as fiduciary. Contractor shall promptly provide DFCM with information and shall cooperate with DFCM respecting any covered loss or Contractor shall bear any and all costs associated with failure to substantiate a loss. If Contractor desires insurance coverage for risks other than those covered by Builder's Risk Insurance and/or insurance coverage on a project that does not qualify for Builder's Risk Insurance under this paragraph 15, Contractor may obtain such insurance, however, the cost thereof shall be borne by Contractor and shall not be included in the Contract Price.

**16. Performance and Payment Bond.** Unless the Director of DFCM waives this requirement in writing, if the Contract Price equals or exceeds One Hundred Thousand Dollars (\$100,000), Contractor shall, prior to the Commencement Date, provide DFCM with a Performance Bond and Payment Bond on AIA Document A312-2010 in the full amount of the Contract Price. Unless otherwise directed in writing by DFCM, Contractor shall email the Performance and Payment Bonds to DFCM at [dfcmcontracts@utah.gov](mailto:dfcmcontracts@utah.gov).

**17. Termination for Cause.** DFCM may terminate this Contract for cause if Contractor: (a) fails to supply adequate skilled workers or proper materials and/or equipment; (b) fails to make payment of money Contractor owes subcontractors; (c) disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction of the Work; (d) engages in unlawful conduct as described in Utah Code § 58-55-501; (e) engages in unprofessional conduct as described in Utah Code § 58-55-502; (f) otherwise is guilty of a substantial breach of any of the Contract Documents. Upon any such event DFCM may, without prejudice to any other right or remedy and after giving Contractor three (3) days written notice, terminate employment of Contractor and may take possession of all materials, equipment, tools and machinery owned by Contractor at the Project Location and may finish the Work by whatever method DFCM may deem expedient. In such case, Contractor shall not be entitled to receive any payment until the Work is finished. If the Contract Price exceeds amounts previously paid to Contractor and the additional costs of finishing the Work, including compensation to DFCM for its damages arising directly or indirectly from the default and services and expenses made necessary by the default, such excess shall be paid to Contractor and shall constitute payment in full under this Contract. If such costs, damages, services and expenses exceed the Contract Price, Contractor shall pay the difference to DFCM upon demand.

**18. Termination for Convenience.** DFCM may, without cause, terminate this Contract at any time and for any reason upon three (3) days prior written notice to Contractor. Upon such termination, Contractor agrees to waive any claim for damages including loss of any anticipated profits, consequential damages or lost opportunity costs on account thereof, and as the sole right and remedy of Contractor, DFCM shall pay Contractor the portion of the Contract Price, adjusted by any Change Order and/or Change Directive, on a percentage completion basis, of all Work properly completed by Contractor to the date of termination.

**19. Disputes.** Utah Administrative Code § R23-26 is incorporated herein by reference. The Contract shall be governed by the law of the State of Utah and any action arising out of or relating to the Contract or the

Work shall be brought only in a court having jurisdiction in the County of the Project Location, State of Utah. In any action arising out of or relating to the Contract or the Work DFCM and Contractor shall each bear their own attorneys' fees, costs and expenses.

- 20. Notices.** Delivery of notices and/or correspondence to Contractor shall be deemed complete when emailed to Contractor's email or mailed to Contractor's address. Unless otherwise directed in writing by DFCM, notices and correspondence from Contractor shall be emailed to DFCM at [dfcmcontracts@utah.gov](mailto:dfcmcontracts@utah.gov).
- 21. Assignment.** Contractor shall not assign this Contract, any money due to Contractor under this Contract and/or any claims arising under this Contract without the written permission of DFCM. DFCM may assign this Contract provided that: (a) such assignment is not to the substantial detriment of the Contractor under this Contract; and (b) DFCM's assignee shall assume DFCM's obligations under this Contract (in which case DFCM shall be relieved of DFCM's obligations under this Contract).
- 22. Third Party Rights.** Except for third-parties expressly indemnified under this Contract, and then only to the extent of such indemnity, nothing in this Contract shall create a contractual relationship or cause of action in favor of a third party against either DFCM or Contractor.
- 23. Successors and Assigns.** This Contract shall be binding upon and inure to the benefit of the successors, transferees, assigns and heirs of DFCM and Contractor.
- 24. Interpretation / Severability.** In interpreting this Contract, there shall be no presumption or standard of construction in favor of or against either DFCM or Contractor. It is the intent of DFCM and Contractor that this Contract comply with all applicable requirements and not violate any applicable prohibitions of the law of the State of Utah. Notwithstanding anything in this Contract to the contrary, to the extent (and only to the extent) if any, that any provision, clause, sentence, paragraph or part of this Contract does not comply with and / or violates the law of the State of Utah, the enforceability of the remainder of this Contract shall not be affected and any such provision, clause, sentence, paragraph or part of this Contract which do not comply with and / or which violate the law of the State of Utah shall be interpreted and applied so as to give effect, to the extent reasonably possible, to the intent of such provision, clause, sentence, paragraph or part of this Contract in a manner which complies with and/or which does not violate the requirements and / or prohibitions of the law of the State of Utah.
- 25. Entire Agreement.** This Contract represents the entire and integrated agreement between DFCM and Contractor and supersedes prior negotiations, representations or agreements, either written or oral.

#### End of Contract Conditions