Solicitation for Inspection Services

(Inclusive of changes made in Addendums No. 1 & 2)

Value Based Selection Method

May 5, 2020

FY 2021 PRE-QUALIFICATION CODE INSPECTION SERVICES FOR STATEWIDE CONSTRUCTION PROJECTS

Various Locations, Utah

DFCM Project No: N/A

TABLE OF CONTENTS

	Page Numbers
Title Sheet	1
Table of Contents	2
Notice to Inspection Firms	3
DFCM Mandatory Pre-Submittal Meeting & COVID-19 Social Distancing	4
Description of Solicitation	4
Procurement Process	5
Solicitation Schedule	12
Professional Services Agreement	13
Attachments:	
Exhibit A – Standard Fee Schedule	

Current copies of the DFCM General Conditions dated August 9, 2019 and all Supplemental General Conditions are available upon request at the DFCM office and on the DFCM Website and are hereby made part of these contract documents by reference.

The Agreement and General Conditions have been updated from versions that were formally adopted and in use prior to August 6, 2019. The changes made to the General Conditions are identified in a document entitled General Conditions prior to August 6, 2019 available on the DFCM Website.

Utah Public Procurement Website:

- **Solicitation Specific Questions:** Refer to Solicitation Schedule for deadline. All questions are to be submitted to dfcmcontracts@utah.gov .

- **U3P Technical/Bidding Questions:** sciquestadmin@utah.gov.

NOTICE TO INSPECTION FIRMS

The State of Utah - Division of Facilities Construction and Management (DFCM) is soliciting the services of qualified firms/teams to perform **Code Inspection Services.**

FY 2021 PRE-QUALIFICATION FOR CODE INSPECTION SERVICES FOR STATEWIDE CONSTRUCTION PROJECTS
DEPARTMENT OF FACILITIES & CONSTRUCTION MANAGEMENT
VARIOUS LOCATIONS, UTAH

Description: DFCM will pre-qualify firms to conduct code inspection services for construction projects throughout the state of Utah. In order to pre-qualify, inspection firms must demonstrate that they have the necessary skills, training, certifications, satisfactory performance ratings/references, and management approach to ensure that code inspections will be performed accurately and timely. In addition, pre-qualified inspection firms will be required to contract with and manage "Special Inspection and Testing Firms" to conduct special inspections required by code.

The solicitation documents, including the submittal requirements, selection criteria and schedule, will be available beginning at **3:00 PM on Tuesday, May 5, 2020** on the Utah Public Procurement Place (U3P). For questions regarding this request, please contact **Dana Edwards-Wyms at dfcmcontracts@utah.gov**
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A **MANDATORY** pre-submittal meeting will be held using online video conferencing at **1:00 PM on Wednesday, May 20, 2020***. All code inspection firms wishing to submit for pre-qualification for FY2021, including firms previously pre-qualified by DFCM, must attend this meeting.
**Please see page 4 regarding requirements for attending the mandatory pre-submittal meeting via online video conferencing.*

Submittal dates for the required references, statements of qualifications and management plans will be based on the Solicitation Schedule in the Solicitation for Inspection Services.

The Division of Facilities Construction & Management reserves the right to reject any or all submittals or to waive any formality or technicality in any submittal in the interest of the State.

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT
State Office Building
4315 S. 2700 W., FL 3
Taylorsville, Utah 84129-2128

DFCM MANDATORY PRE-SUBMITTAL MEETINGS & COVID-19 SOCIAL DISTANCING

Due to the COVID-19 (Coronavirus) pandemic and the need for social distancing, the inspections mandatory pre-submittal meeting will be held as follows:

1. The mandatory pre-submittal meeting will be held using online video conferencing.

2. As noted in the Solicitation Schedule, submit one (1) email address for your firm to dfcmcontracts@utah.gov by the date and time listed in the **Solicitation Schedule – Thursday, May 14, 2020 by 12:00 PM**. The email address submitted will allow you to be admitted to the pre-submittal meeting via online video conference.

3. On the date and at the time of the mandatory pre-submittal meeting listed in the Solicitation Schedule for the online video conference, **it is your firms responsibility to connect and virtually attend the mandatory pre-submittal meeting**.

4. Please note that it is the firms responsibility to ensure that their proposal is received by DFCM by the date and time specified in the Solicitation Schedule. DFCM encourages all submitters to verify that their email submission has been received by DFCM. In addition, we strongly encourage submitters to send their information well in advance of the deadline. Proposals that are received after the specified time frame will be deemed nonresponsive.

DESCRIPTION OF SOLICITED SERVICES

DFCM will pre-qualify firms to conduct code inspection services for DFCM construction projects throughout the state.

This pre-qualification will remain in effect from July 1, 2020 through June 30, 2021.

PROCUREMENT PROCESS

1. Request for Inspection Services Documents

The RFSQ documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this document by reference.

2. Solicitation Schedule

The Solicitation Schedule lists the important events, dates, times, locations of meetings and the submittals date that must be met by the inspection firms.

3. Mandatory Pre-Submittal

A mandatory pre-submittal meeting will be held on the date and time and at the location listed on the Solicitation Schedule.

A representative from each code firm is required to attend. During the meeting, a presentation will be made to describe the DFCM inspection pre-qualification and assignment process. Interested firms may ask questions and request clarification about the process.

A FIRMS ABSENCE FROM THE PRE-SUBMITTAL MEETING OR FAILURE TO REGISTER PRECLUDES PARTICIPATION AS A SUBMITTING FIRM.

4. Submittal Due Dates and Times

All required submittals must be delivered to and be received by the Division of Facilities Construction and Management by the date, time and locations listed on the Solicitation Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery. It is the responsibility of the submitting firm to ensure that delivery is made and has been received.

5. Requests for Information and Questions

All requests for information regarding this project and questions must be submitted to **dfcmcontracts@utah.gov** no later than the time and date listed on the Solicitation Schedule. All questions and requests for clarification will be addressed in an addendum issued by the date listed in the Solicitation Schedule and emailed to all pre-submittal meeting attendees.

6. Contact Information

Except as authorized by the DFCM or as otherwise stated in the request or the pre-submittal meeting, communication during the selection process shall be directed solely to **dfcmcontracts@utah.gov** . In order to maintain the fair and equitable treatment of everyone and comply with the Utah Procurement Code, inspection firms shall not unduly contact or offer gifts or gratuities to DFCM employees, any Board Officer, employee or agent of the State of Utah, users or selection committee members in an effort to influence the selection process or in a manner that gives the appearance of influencing the

selection process. This prohibition applies before the request, as the project is developed, and extends through the award of an agreement. Failure to comply with this requirement may result in a disqualification in the selection process. Inspection firms should be aware that selection committee members will be required to certify that they have not been contacted by any of the inspection firms in an attempt to influence the selection process.

7. Addendum

All responses to questions and requests for clarification will be in writing and issued as an addendum to this Solicitation. The addenda will be posted on U3P.

Any addendum issued prior to the submittal deadline shall become part of the Solicitation for Inspection Services and any information required shall be included in your submission.

8. Past Performance and Reference Information for Pre-Qualification

ALL inspection firms shall submit a list of reference information on all projects completed by the firm from **June 4, 2019 through June 3, 2020**. DFCM will randomly select **four (4)** of the references provided to call and collect performance information from.

Firms shall provide references with the following information:

a) Company for which the firm provided code inspection services
b) Name and address of the project
c) Name, **email**, and phone number of the point of contact who can answer questions about the project.
d) Completion and/or commencement dates.
e) Inspections budget – code and special inspections.
f) Project type – school, office, warehouse, etc.

9. Submitting Statement of Qualifications and Management Plans for Pre-Qualification

Under this solicitation, all inspection firms shall submit a management plan and a statement of qualifications to pre-qualify as a Code inspection firm for the 2020-2021 fiscal year.

The statement of qualification and management plan submittal shall be combined into **one (1) PDF document** and shall be limited to **15 pages maximum**. The submittal is to be **delivered to DFCM via email** at dfcmcontracts@utah.gov by the date and time listed on the Solicitation Schedule. Late submittals will be considered nonresponsive and will be deemed disqualified. **DO NOT SUBMIT VIA U3P.**

Statements of Qualifications

The statement of qualifications is a short document that details the professional licenses, certifications, experience and qualifications of the firm and the firm's key personnel. It identifies the lead contact person and other critical members of the team. It describes what the team brings to the code inspection process and how their knowledge and experience will benefit the process. It should include information (history) of code inspections performed by the firm and the team members. Include special qualifications or certifications that are applicable, and a current certificate of liability insurance.

Management Plan

The management plan should describe the firm's management approach and should include: (a) the process used for selecting and managing sub-consultants such as special inspection firms; (b) a description of how the

firm/team will be organized and detailing the firm's ability and plan to conduct code inspections for the project; (c) the method used to develop a schedule to ensure that code inspections are completed; (d) any other information that will assist the selection committee in evaluating the firm's management approach. Include an organization chart of key personnel and a description of their duties. The management approach document should be concise yet contain sufficient information for evaluation by the selection committee. The organization chart is a separate document and is not counted as one of the 15 pages.

Selection Criteria

The following criteria and weighting will be used in evaluating each firm. The selection committee will consider all criteria in performing a comprehensive evaluation of each firm. Each firm will be scored by each selection committee member in the categories listed below.

(a) Past Performance and References - The committee will evaluate and score each firm's past performance rating in accordance with the information outlined in section eight (8) above.

Possible Points: 20

(b) Statement of Qualifications – Strength of Team**.** The committee will evaluate each firm's statement of qualifications as well as additional information the firm included in their submission.

Possible Points: 40

(c) Project Management Plan - The committee will evaluate and score each firm's project management plan in accordance with the information outlined above.

Possible Points: 40

TOTAL POINTS = 100 POINTS

Firms with points totaling 80 or above will be pre-qualified for DFCM projects.

DFCM reserves the right to adjust selection criteria based on project specifications.
This pre-qualification will remain in effect from July 1, 2020 through June 30, 2021.

10. Selection Committee

The selection committee will be composed of individuals from DFCM.

11. Termination or Debarment Certifications

The firm must submit a certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from soliciting work by any governmental department or agency. The firm must also certify that neither it nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the firm cannot certify these two statements, the firm shall submit a written explanation of the circumstances for review by DFCM. Firms are to submit these certifications with their Statement of Qualifications.

12. Awarding of Projects

Pre-qualified firms will be assigned projects by DFCM as follows:

A. Projects under $100,000.00:
Projects where the fee is expected to be under $100,000.00 will be selected by assignment of a firm by the DFCM staff with preference being given to the closest firm to the project site. The DFCM small purchase administrative rules apply to these firms. The contract shall require compliance with all the provisions that apply to firms that sign the Professional Services Agreement.

B. Projects $100,000.00 or over:
Pre-Qualified firms will be invited to submit a Management Plan and Statement of Qualifications on projects with fees expected to be $100,000.00 or more. The following criteria will be used in the selection process.

(1) Management Plan

The management plan should describe the firm's management approach and should include: (a) the process used for selecting and managing sub-consultants such as special inspection firms; (b) a description of how the firm/team will be organized and detailing the firm's ability and plan to conduct code inspections for the project; (c) the method used to develop a schedule to ensure that code inspections are completed; (d) the firm's understanding of DFCM's code inspection requirements and standards; and (e) any other information that will assist the selection committee in evaluating the firm's management approach. Include an organization chart of key personnel and a description of their duties. The management plan should indicate the travel distance and time for each inspector to the project site. The management approach document should be concise **(limit 5 pages)** yet contain sufficient information for evaluation by the selection committee. The organization chart is a separate document and is not counted as one of the five pages.

(2) Statements of Qualifications

The statement of qualifications is a short document that details the professional licenses, certifications, experience and qualifications of the firm and the firm's key personnel. It identifies the lead contact person and other critical members of the team. It describes what the team brings to the code inspection process and how their knowledge and experience will benefit the process. It should include information (history) of code inspections performed by the firm and the team members. Include special qualifications or certifications that are applicable, and a current certificate of liability insurance.

Selection Criteria

The following criteria and weighting will be used in evaluating each firm. The selection committee will consider all criteria in performing a comprehensive evaluation of each firm. Each firm will be scored by each selection committee member in the categories listed below.

(a) Performance Ratings - The committee will evaluate and score each firm's past performance rating in accordance with the information outlined in section eight (8) above.
Possible Points: 20

(b) Statement of Qualifications – Strength of Team**.** The committee will evaluate each firm's statement of qualifications as well as additional information the firm included in their submission. **Possible Points: 40**

(c) Project Management Plan - The committee will evaluate and score each firm's project management plan in accordance with the information outlined above.
Possible Points: 40

TOTAL POINTS = 100 POINTS

**** Points will be totaled and the highest point total will determine the best value to the state ** Points Possible and Selection Criteria are determined on project by project basis.**

13. Fee Negotiation, Fee Schedule and Form of Agreement

Firms submitting for pre-qualification agree to comply with the State of Utah Code Inspection Fee Schedule in Exhibit "A", attached. For projects with an estimated fee of $100,000 or more, DFCM will require a cost proposal from the selected firm that complies with the fee schedule and that includes an estimate of the number of code inspections, special inspections, travel time and management fees that will be billed based on the approved plans and specifications of the project. Upon review and acceptance of the cost proposal, DFCM will issue a Professional Services Agreement to the firm for the project. If DFCM rejects the cost proposal, DFCM can enter into negotiations with the firm or reserve the right to assign another firm to the project.

Projects with estimated fees of less than $100,000 will be directly awarded to a pre-qualified firm and issued a Professional Services Agreement for an amount not to exceed 1% of the projects construction budget.

14. Licensure

The inspection firm shall comply with and require its inspectors and special inspection firms to comply with the license laws of the State of Utah and ensure that all required certifications are current and up-to-date. All such licenses and certifications must be fully in place at the time of submission of statement of qualifications.

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

SOLICITATION SCHEDULE
INSPECTION SERVICES
U3P SOURCING EVENT #DE0021
REVISED SCHEDULE PER ADDENDUM NO. 1

PROJECT NAME: **FY21 PRE-QUALIFICATION FOR CODE INSPECTION SERVICES FOR STATEWIDE CONSTRUCTION PROJECTS – VARIOUS LOCATIONS, UTAH**

DFCM PROJECT NO. **N/A**

Event	Day	Date	Time	Place
Request for Consultant Services Available	Tuesday	May 5, 2020	3:00 PM	U3P Website** *
MANDATORY: Firm's Email Address Submission for Online Video Conferencing	Monday	May 18, 2020	5:00 PM	**Emailed to: dfcmcontracts@utah.gov**
Mandatory Pre-submittal Meeting via Online Video Conference	Wednesday	May 20, 2020	1:00 PM	Online Video Conference – The connection information will be emailed to the address you provide.
Last Day to Submit Questions	Friday	May 22, 2020	3:00 PM	**Emailed to:** dfcmcontracts@utah.gov
Addendum Deadline	Tuesday	May 26, 2020	3:00 PM	U3P Web site** and Emailed from dfcmcontracts@utah.gov
Digital copies of References, Statements of Qualifications, Management Plan, and Termination/ Debarment Certifications Due	Wednesday	June 3, 2020	12:00 NOON	One (1) electronic PDF copy **Emailed to:** dfcmcontracts@utah.gov **DO NOT SUBMIT VIA U3P**
Pre-Qualification Announcement	Friday	June 19, 2020	3:00 PM	U3P Web site** and emailed to each qualifying firm.

*DFCM's Web site address is **www.dfcm.utah.gov**.

U3P Web site address **https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah

DFCM Project No. _____

DIVISION OF FACILITIES CONSTRUCTION & MANAGEMENT PROFESSIONAL SERVICES AGREEMENT

Building Inspection, Special Inspection and Testing Services

THIS AGREEMENT, made this the day of_____, 2017, by and between the DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, hereinafter called the "DFCM", and _____, a corporation of the State of Utah, whose address is _____, Utah_____hereinafter called the "Consultant." WITNESSETH:

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

BUILDING INSPECTION, SPECIAL INSPECTION, AND TESTING SERVICES

_____, UTAH

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 Exhibit "A," which is attached hereto and by this reference incorporated herein. 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 of the Request for Consultant Services under which the services covered by this Agreement were procured, all exhibits or other documents that are attached to this Agreement or incorporated by reference, and the DFCM General Conditions and Supplemental General Conditions which are current as of the date of this Agreement which are incorporated herein by this reference. 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 dated May 25, 2005.

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** _____

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 The Consultant's fee may include reimbursement for lodging and meals which are related to requested inspections that are not within 100 miles of travel from inspector's home or office or require overnight stay. Said compensation for Consultant will be at the then current State of Utah rate for lodging and meals used for State employee reimbursement or a higher amount if approved by the Building Official due to unusual circumstances. These expenses are included in the guaranteed maximum price amount. The DFCM will not pay a mileage allowance.

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 Sub-consultants. The fee for such work shall be 10% of the Sub-consultant'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, it's Sub-consultants, 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 Sub-consultants 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 Sub-consultants, 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 IBC, 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 onsite 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 Sub-consultants prior to beginning work to discuss the scope of the project. Consultant shall coordinate the work of Sub-consultants 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 Sub-consultants. Time spent on site managing the inspection services and overseeing Sub-consultants 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 Sub-consultant 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**_____.** 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 Sub-consultants 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 Sub-consultant 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 Sub-consultants.

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. Manufacturer's 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 Sub-consultant and notify the Building Official prior to the inspection.

6.2.3 Consultant shall provide an onsite 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 Sub-consultants 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 Sub-consultant has failed to perform, the original Sub-consultant is not qualified or capable of performing, and/or the original Sub-consultant 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 Sub-consultant.

7.1.2 The Consultant shall not contract with a proposed person or entity to which 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 Sub-consultants 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 Sub-consultant Relations.

7.2.1 By appropriate enforceable agreement, the Consultant shall require each Sub-consultant 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 Sub-consultant 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 Sub-consultant so that subcontracting thereof will not prejudice such rights, and shall allow to the Sub-consultant, unless specifically provided otherwise in the Sub-consultant 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 Sub-consultants. The Consultant shall promptly pay each Sub-consultant, upon receipt of payment from the DFCM, out of the amount paid to the Consultant on account of such Sub-consultant's portion of the work, the amount to which said Sub-consultant is entitled. The Consultant shall, by appropriate Agreement with each Sub-consultant, require each Sub-consultant to make payment to its Sub-consultant 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 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, reimbursable, 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 effected 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, CLAIMS AND DISPUTES;

13.1 GENERAL CONDITIONS REQUIREMENTS APPLY. The provisions of Articles 7.7. through and including 7.14 of the 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 Sub-consultants 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 Sub-consultant, after the expiration of the time period for the Consultant/Sub-consultant PRE process under Paragraph 7.7.5 of the 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 Sub-consultants 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 Sub-consultants 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 Sub-consultant 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 Sub-consultant, agent, independent Sub-consultant, 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 Sub-consultant, agent, independent Sub-consultant, 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 Sub-consultant, agent, independent Sub-consultant, 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 Sub-consultant, agent, independent Sub-consultant, 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 Non-fraudulent Latent Acts, Errors, Omissions or Breaches of Duty.** In the event of an unintentional and non-fraudulent 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 terms is used in UCA 78-12-21.5(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.

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

CONSULTANT:

_____

Signature Date

Title: _____

State of _____)

: ss. Please type/print name clearly

County of _____)

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

_____

Notary Public

(SEAL)

My Commission Expires _____

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

DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT

*/S/ Region Director Asst. Attorney General Region

Approved for expenditure:

*/S/ Division of Finance
D. Williams, Jr.

Approved as to availability of funds:

*/S/ David D. Williams, Jr. Division of Finance David

CBA Financial Director

*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.