STATE OF UTAH - DEPARTMENT OF ADMINISTRATIVE SERVICES

**Division of Facilities Construction and Management** | DFCM

# Solicitation for Consultant Services

Value Based Selection Method

May 28, 2009

# PROGRAMMING
## FOR THE
# BEVERLEY TAYLOR SORENSON ARTS AND EDUCATION COMPLEX

## UNIVERSITY OF UTAH
### SALT LAKE CITY, UTAH

DFCM Project No. 09131750

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Current copies of the following documents are hereby made part of this Solicitation for Consultants (SFC) by reference. These documents are available on the DFCM web site at http://dfcm.utah.gov or are available upon request from DFCM.

DFCM Supplemental General Conditions dated July 15, 2008
DFCM Design Manual dated March 15, 2006
DFCM General Conditions dated May 25, 2005

# NOTICE TO CONSULTANTS

The State of Utah - Division of Facilities Construction and Management (DFCM) is soliciting the services of qualified firms/individuals to perform Programming services for the following project:

**BEVERLEY TAYLOR SORENSON ARTS AND EDUCATION COMPLEX**
**UNIVERSITY OF UTAH – SALT LAKE CITY, UTAH**
**DFCM PROJECT NO. 09131750**

Project Description: This service will provide an architectural program for the new Beverley Taylor Sorenson Arts and Education Complex. It will also include a site analysis section which will make recommendations regarding the location of the new facility which will be in the immediate vicinity of the existing Milton Bennion Hall. The programming activity will also synthesize and update information from other program documents which were done previously. The new complex will contain a lecture hall, performing arts auditorium, classrooms, offices, art and dance studios, and support spaces. The complex will bring together renowned University faculty and programs to create unparalleled integrative arts preparation for every new teacher and educational leader and will advance excellence in arts education that encompasses dance, music, visual art, and theater. This project is a collaboration of the College of Fine Arts, including the Tanner Dance Program, and the College of Education. Construction budget for this project is $22,770,000.

The selection shall be under the Value Based Selection method. The Solicitation for Consultants (SFC) documents, including the submittal requirements and the selection criteria and schedule, will be available in electronic format on CDs at 2:00 PM on Thursday, May 28, 2009 from DFCM at the State Office Building - Room 4110, Salt Lake City, Utah 84114 and on the DFCM web site at http://dfcm.utah.gov. For questions regarding this solicitation, please contact Rick James, Project Manager, DFCM, at (801) 541-7783. No others are to be contacted regarding this solicitation.

A **MANDATORY** pre-submittal meeting will be held at 10:00 AM on Tuesday, June 9, 2009 in Room 201, Milton Bennion Hall, University of Utah, 1705 Campus Center Drive, Salt Lake City, Utah. All Consultants wishing to submit on this project must attend this meeting.

Submittal dates for the required references, management plans, statements of qualifications, and interviews will be based on the Project Schedule included in the SFC.

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
MARLA WORKMAN, CONTRACT COORDINATOR
4110 State Office Bldg., Salt Lake City, Utah 84114

# PROJECT DESCRIPTION

The College of Education, the College of Fine Arts, and the Tanner Dance Program seek to construct an Arts and Education Center and Classrooms Complex at the University of Utah. The complex will bring together renowned University faculty and programs to create unparalleled integrative arts preparation for every new teacher and educational leader and will advance excellence in arts education that encompasses dance, music, visual art, and theater.

This project is ultimately the integration of two separate existing plans: one from the Tanner Dance Program and one from the College of Education. The College of Education, the College of Fine Arts, and the Tanner Dance Program have joined together to create the idea of combining programs in a meaningful and original way.

The complex will be a vibrant laboratory facility in which the practice and performance of art by children will be supported by:

- Interdisciplinary faculty expertise
- Documented training and research practices
- Sophisticated technologies
- Well-established community and school partnerships

To accomplish its objectives, the Arts and Education Complex will house a set of core activities to focus collaboration between the College of Education and College of Fine Arts. Historically research agendas, training programs, and community partnerships have been developed by fine arts and education faculty working in colleges that operate independently. This traditional model can only go so far. To bridge these gaps, the Arts and Education Complex will create a single interdisciplinary faculty working toward common goals, especially the Tanner Dance Program and the Youth Art Division Programs.

The Arts and Education Complex will create a laboratory setting for youth programs in each art form. It will assist in providing new models of professional development services and delivering the arts to schools, districts, and communities. These collaborations will allow the program to implement the best practices and ideas of all partnering entities while pushing them in exciting new directions. The complex will be extraordinarily unique - no other institution currently supports such levels of collaboration and creative exchange.

The complex will also allow and encourage arts and education faculty to work together and with other colleagues to generate new knowledge about arts and education and create innovative new methods for sharing information with other university, schools, and individuals across Utah and beyond. Specifically, the complex will:

- Create a new interdisciplinary center for integrating arts into academic learning
- House and expand the renowned community and professional development programs currently offered by Tanner Dance.
- Integrate the Tanner Dance Program and other programs comprising the Youth Arts Division in the College of Fine Arts (Youth Theater, the Music Preparatory Division, and programs at Kingsbury Hall, Pioneer Theater Company, and the Utah Museum of Fine Arts) into the College of Education's teacher training and community partnership programs.

- Support all these activities through existing university education research center, applied technology centers, and community partnership programs, several of which would relocate to the complex and be expanded including
- Center for integrating the Arts and Academic Learning
- Center for Math and Science Education
- Utah Reading and Literacy Center
- Center for the Advancement of Technology in Education
- Eunice Kennedy Shriver National Center for Community of Caring
- Utah Education Policy Center

Additionally, the Complex for Arts and Education will prepare future teachers in all subjects, to understand how the arts impact learning; infuse the arts into their curriculum, and work side-by-side with arts specialists, specifically:

- Establish and administer a university-wide teacher education program that integrates the arts and academic learning across all subjects, including reading, math and science.
- Establish and administer a new interdisciplinary Arts Specialist Training and Education Master's Degree program offered jointly by the Colleges of Fine Arts and Education.
- Link these initiatives to degree and training programs currently offered by the Colleges of Fine Arts and Education and Tanner Dance and expand their reach.

Youth and Family Arts Programming should also be included. These activities shall infuse the arts into children's lives. Each yea, the complex will engage over 25,000 children in the arts (dance, music visual arts, and theater) through the expanded offerings of the Tanner Dance Program and other programs of the Youth Arts Division in the College of Fine Arts.

Programming will also include a site analysis of the potential sites immediately adjacent to the existing Milton Bennion Hall.

# PROCUREMENT PROCESS

The State of Utah intends to enter into an agreement with a firm to provide professional services as described.

The selection of the firm will be made using a Value Based Selection (VBS) system. The Project Schedule lists the important events, dates, times and locations of meetings and submittals. The terms of the project schedule are hereby incorporated by reference and must be met by the selected firm.

## 1. Solicitation for Consultant Documents

The Solicitation for Consultant (SFC) documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this SFC by reference. The SFC will be available at DFCM per the attached schedule and on the DFCM web site at http://dfcm.utah.gov.

## 2. Contact Information

Except as authorized by the DFCM Representative or as otherwise stated in the SFC or the pre-submittal meeting, communication during the selection process shall be directed to the specified DFCM Representative. In order to maintain the fair and equitable treatment of everyone, Consultants shall not unduly contact or offer gifts or gratuities to DFCM, 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 SFC is issued, 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. Consultants should be aware that selection committee members will be required to certify that they have not been contacted by any of the Consultants in an attempt to influence the selection process.

## 3. Requests for Information

All requests for information regarding this project shall be in writing and directed to:

Rick James (DFCM Representative)
Division of Facilities Construction and Management
4110 State Office Building
Salt Lake City, Utah 84114
E-mail: rjames@utah.gov
Facsimile: (801) 538-3267

## 4. Project Schedule.

The Project Schedule lists the important events, dates, times, and locations of meetings and submittals that must be met by the Consultant.

## 5. Mandatory Pre-Submittal Meeting

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

A representative from each interested prime firm is required to attend. During the meeting, a presentation will be made to describe the overall scope of work and intended schedule. Interested firms may ask questions and request clarification about the project and the procurement process.

Subconsultants are invited to attend this meeting but it is not mandatory for them.

**THE PRIME FIRMS ABSENCE FROM THE PRE-SUBMITTAL MEETING AND/OR FAILURE TO REGISTER PRECLUDES PARTICIPATION AS A SUBMITTING FIRM ON THIS PROJECT.**

## 6. Submittal Due Dates and Times

All required submittals must be delivered to, and be received by, the Division of Facilities Construction and Management previous to the date and time indicated in the Project Schedule. Submittals received after the specified time will not be accepted. Please allow adequate time for delivery. If using a courier service, the submitting firm is responsible for ensuring that delivery will be made directly to the required location. It is your responsibility to allow for the time needed to park on Capitol Hill as recent construction activity has made the parking more difficult. Identification is required to enter the building.

## 7. Last Day to Submit Questions

All questions must be received at the office of DFCM no later than the time and dated listed in the Project Schedule. Questions must be submitted in writing to Rick James at DFCM.

## 8. Addendum

All references to questions and requests for clarification will be in writing and issued as addenda to the Solicitation for Consultant Services. The addenda will be posted on DFCM's web site.

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

## 9. Past Performance and References

As a Consultant completes each DFCM project, DFCM, the contractors and the using agency or institution will evaluate the Consultant. It is the intent of DFCM that this process will be the major source for evaluating past performance.

Consultants shall submit past performance and reference information by the time indicated on the Project Schedule.

For all DFCM projects completed in the last five years identify the project by name, number and DFCM project manager. Each Consultant wishing to compete for this project that has not completed at least three DFCM projects in the last five years, will be required to provide one copy of a list of references on additional similar projects for a total of three projects.

For non-DFCM projects provide the following information:

| | |
|---|---|
| Point of Contact: | Person who will be able to answer any customer satisfaction questions. |
| Phone Number: | Phone number of the contact we will be surveying. |
| User Name: | Name of Company / Institution that purchased the construction work. |
| Project Name: | Name of the project. |
| Date Completed: | Date of when the work was completed. |
| Address: | Street, city and state where the work was performed. |
| Size: | Size of project in dollars. |
| Duration: | Duration of the project / construction in months. |
| Type: | Type of the project (i.e.: School, Offices, Warehouse, etc) |

## 10. Management Plan

Firms will be required to develop and submit a plan demonstrating how they will manage their responsibilities, identifying risks, and how risks will be mitigated. An organization chart showing the roles and responsibilities of all pertinent decision-makers is a required part of the presentation.

Address project specific criteria, risks that have been identified by the SFC and additional risks that the team has identified. State how those risks will be mitigated.

As part of the Management Plan include your proposed project schedule. Indicate critical dates and other information in sufficient detail for the selection committee to determine if the time frames are reasonable.

The Management Plan should be concise yet contain sufficient information for evaluation by the selection committee.

The submitting firm shall provide seven copies of the Management Plan by the time indicated on the Project Schedule.

## 11. Statements of Qualifications

The submitting firm shall provide seven copies of the Statements of Qualifications by the time indicated on the Project Schedule.

The Statement of Qualifications is a short document that indicates the experience and qualifications of the firm, the project manager and other critical members of the team. It describes what talents their team brings to the project, how their knowledge of the subject will provide benefit to the process, how the team has been successful in the past and how that relates to this project. It should include information on similar projects that have been completed by the firm, project manager and other team members. Include the experience and special qualifications that are applicable to this project and/or are part of the project specific selection criteria.

## 12. Selection Committee

The Selection Committee may be composed of individuals from DFCM, the User Agency/Institution, and a representative from the design or construction disciplines.

## 13. 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 the firm 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.

## 14. Interviews

Interviews will be conducted with all firms who have met all of the requirements except as follows. If more than six firms are eligible for interviews, DFCM may convene the selection committee to develop a short list of firms to be invited to interviews. This evaluation will be made using the selection criteria noted below base on the information provided by the past performance/references, performance plan and statement of qualifications.

The purpose of the interview is to allow the firm to present its qualifications, past performance, management plan, schedule and general plan for accomplishing the project. It will also provide an opportunity for the selection committee to seek clarifications from the firm.

The proposed primary project management personnel, including the project manager, should be in attendance. The project manager is the firm's representative who has overall job authority, will be in attendance at all job meetings, and is authorized by the firm to negotiate and sign any and all change orders in the field, if necessary. Unless otherwise noted, the attendance of subconsultants is at the discretion of the firm.

The method of presentation is at the discretion of the firm. The interviews will be held on the date and at the place specified in the Project Schedule.

## 15. Selection Criteria for VBS Professional Services

The following criteria will be used in ranking each of the teams. The team that is ranked the highest will represent the best value for the state. The criteria are not listed in any priority order. The selection committee will consider all criteria in performing a comprehensive evaluation of the proposal. Weights have been assigned to each criterion in the form of points.

A. DFCM Past Performance Rating. **10 Points**. Each prime firm will be given a past performance rating. The rating will be based first on how well the firm did on past projects with DFCM. If a minimum of three DFCM past performance ratings are not available a rating will be established using any DFCM past performance ratings that are available, supplemented by references supplied by the firm at the time the Management Plans and SOQ are submitted.

B. Strength of Team. **25 Points** Based on the statements of qualifications, the interview, and management plan, the selection team shall evaluate the expertise and experience of the team and the project lead as it relates to this project in size, complexity, quality, duration, etc. Consideration will also be given to the strength brought to the team by critical consultants including how they were selected and the success the team has had in the past in similar projects.

C. Project Management Approach. **25 Points** Based on the information provided in the statements of qualifications, the management plan and information presented in the interview the selection team shall evaluate how each team has planned to approach the project. The selection team will also evaluate the degree to which risks to the success of the project have been identified and a reasonable solution has been presented.

D. Schedule. **20 Points** The Consultant's schedule will be evaluated as to how well it meets the objectives of the project. Unless other objectives are stated the shorter the duration that is evaluated to be feasible while achieving an appropriate design is preferred. The Consultant shall discuss during the interview the project schedule identifying major work items with start and stop dates that are realistic and critical subconsultants and if they have reviewed and agree to the schedule. The completion dates shown on the schedule will be used in the contract.

E. Relevant Project Experience. **20 Points** The Consultant's experience on specific projects which are relevant to this project will be scored by the committee. Show the experience of individuals on this proposed team which pertain to the project.

**TOTAL POSSIBLE POINTS: 100 POINTS**

## 16. Fee Negotiation

Following selection of a Consultant by the Selection Committee and prior to the award of the agreement, DFCM will negotiate the final agreement fee with the selected firm. Should the DFCM be unable to agree to a satisfactory contract with the top ranked firm at a price that DFCM

determines to be fair and reasonable to the State, discussions with that firm shall be formally terminated. Negotiations will then be undertaken with the second ranked firm.

This process will be repeated until an agreement is reached or DFCM determines that it is in the best interest of the State to initiate a new selection process.

## 17. Form of Agreement

At the conclusion of negotiations, the selected Consultant will be required to enter into an agreement using the attached form of the Professional Services Agreement.

## 18. Licensure

The Consultant shall comply with and require its subconsultants to comply with the license laws of the State of Utah.

# PROJECT SCHEDULE

**PROJECT NAME:** **BEVERLEY TAYLOR SORENSON ARTS AND EDUCATION COMPLEX UNIVERSITY OF UTAH – SALT LAKE CITY, UTAH**

**DFCM PROJECT NO.** **09131750**

**PROGRAMMING**

| Event | Day | Date | Time | Place |
|---|---|---|---|---|
| Solicitation for Consultant Available | Thursday | May 28, 2009 | 2:00 PM MDT | DFCM<br>4110 State Office Bldg<br>SLC, UT and the DFCM web site* |
| **Mandatory** Pre-submittal Meeting | Tuesday | June 9, 2009 | 10:00 AM MDT | Room 201<br>Milton Bennion Hall<br>University of Utah<br>1705 Campus Center Drive<br>SLC, UT |
| Last Day to Submit Questions | Thursday | June 18, 2009 | 4:00 PM MDT | Rick James – DFCM<br>E-mail rjames@utah.gov<br>Fax (801)-538-3267 |
| Addendum Deadline (exception for bid delays) | Monday | June 22, 2009 | 2:00 PM MDT | DFCM web site * |
| Management Plans, References, Statements of Qualifications, and Termination/Debarment Certifications Due | Thursday | June 25, 2009 | 12:00 NOON MDT | DFCM<br>4110 State Office Bldg<br>SLC, UT 84114 |
| Short Listing by Selection Committee, if applicable. | Thursday | July 2, 2009 | 10:00 AM MDT | TBA |
| Interviews | Tuesday | July 14, 2009 | 8:30 AM MDT | TBA |
| Announcement | Wednesday | July 15, 2009 | 2:00 PM MDT | DFCM web site * |

* **DFCM's web site address is http://dfcm.utah.gov.**

# DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made this __th day of _____, 20__, 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:

_____
_____
_____

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 of this Agreement,

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

**ARTICLE 1. EXTENT OF AGREEMENT AND SCOPE OF WORK.** This Agreement includes the provisions of the Solicitation for Consultant Services dated _____ and all documents attached thereto and all of which are hereby incorporated by reference as a part of this Agreement as if fully set forth herein. Except as noted in an Attachment hereto, the Consultant's services shall include all work described in the Consultant's proposal dated _____ which is attached hereto as Exhibit "A" and incorporated 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 is fully set forth herein: the Solicitation for Consultant Services, and the DFCM Design Manual dated March 15, 2006, which Design Manual is applicable to Architect/Engineer (A/E) programming and similar A/E consultation/studies that may be used later by an A/E in design work. Any reference in the DFCM Design Manual to A/E shall be deemed to refer to the Consultant under this Agreement.

**ARTICLE 2. TIME 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 _____.

**ARTICLE 3. PAYMENT.**

3.1 In accordance with the provisions and considerations set forth in this Agreement, the DFCM agrees to pay the Consultant a not-to-exceed (OR LUMP) sum of _____ _____ DOLLARS AND NO/100 CENTS ($ ) for the full and complete services included under the terms of this Agreement at the rates specified. This sum may be changed only by written authorization from the DFCM in the form of a modification to this Agreement properly executed by the DFCM.

3.2 The 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 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. The DFCM shall provide written notice to the Consultant of any adjustment to or rejection of Consultant's invoice.

3.3 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 The acceptance by the Consultant of final payment without a written protest filed with DFCM within three (3) calendar days of receipt of final payment, shall release the DFCM from all claims and all liability to the Consultant for fees and costs of the performance of the services pursuant to this Agreement.

**ARTICLE 4. CHANGES IN WORK.** 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.

**ARTICLE 5. CAD REQUIREMENTS.** The Consultant shall follow the requirements, as applicable, of the DFCM CAD requirements provided in the DFCM Design Manual for any submissions.

**ARTICLE 6. DOCUMENT OWNERSHIP.** 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. Said documents 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.

**ARTICLE 7. LEGAL RELATIONSHIP.**

7.1 **Independent Contractor.** 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.

7.2 **No Authority to Bind State; Exceptions.** The Consultant shall have no authorization, expressed or implied, to bind the State of Utah, or the Division of Facilities Construction and Management to any agreement, settlement, liability or understanding whatsoever, nor to perform any acts as agent for the State of Utah or DFCM, except as specifically set forth in this Agreement.

**ARTICLE 8. 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.

**ARTICLE 9. 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 (14) calendar 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 such 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 for 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 properly 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.

**ARTICLE 10. 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 this 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 properly performed, plus reimbursables, under this Agreement up to 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 11. 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 and anyone for whom DFCM may be held liable from and against any and all claims, damages or liabilities arising from wrongful or negligent acts, errors or omissions of the Consultant, any of Consultant's subconsultants or subcontractors at any tier and anyone for whom Consultant may be liable.

**ARTICLE 12. PRELIMINARY RESOLUTION EFFORTS, CLAIMS AND DISPUTES; GENERAL CONDITIONS REQUIREMENTS APPLY.**

12.1 **General Conditions Requirements Apply.** The provisions of Articles 7.7 through and including 7.14 of the DFCM General Conditions dated May 25, 2005 and Supplemental General Conditions dated July 15, 2008, on file with the DFCM as well as available on the DFCM website at **http://dfcm.utah.gov** and hereby incorporated by reference 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 Subcontracts at any tier under this Agreement, respectively. Unless inconsistent with the provisions of this Agreement, definitions in the DFCM General Conditions and Supplemental General Conditions shall apply to this Agreement.

12.2 **Time For Filing.** Notwithstanding paragraph 12.1 above, the PRE must be filed in writing with the DFCM Representative within twenty-one (21) days of any of the following:

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

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 DFCM General Conditions; or

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.

12.3 **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 13. 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. The following are minimum coverages that may be supplemented by additional requirements contained in Solicitation for Consultant Services or any other document used to procure Consultant's services.

13.1 **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. Employer's Liability Insurance shall provide the following limits of liability: $100,000 for each accident; $500,000 for Disease-Policy Limit; and $100,000 for Disease-Each Employee.

13.2 **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 |

13.3 **Other Insurance Coverages.** Consultant shall maintain the following insurance at levels Consultant determines: Professional Liability Insurance (an Attachment to this Agreement may be more specific in regard to Professional Liability Insurance), 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.

13.4 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 14. 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 licensed members of their respective professions having substantial experience providing similar services on projects similar in type, magnitude and complexity to the Project that is the subject of this Agreement. The 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 errors or omissions that do not meet this standard of care.

**ARTICLE 15. USE OF "SALES AGENTS."** The Consultant warrants that no sales agent has been employed or retained except as indicated in writing to DFCM.

**ARTICLE 16. LAWS, CODES AND REGULATIONS.** Consultant and its Subconsultants shall use their best efforts consistent with the Standard of Care stated herein to comply with all applicable laws, codes, rules, regulations, ordinances and quality requirements applicable to the Project.

**ARTICLE 17. DFCM REVIEWS, LIMITATIONS.** The right of the DFCM or any entity/user to perform plan checks, plan reviews, other reviews and/or comment upon the work of the Consultant, as well as any approval by the DFCM, shall not be construed as relieving the Consultant from its professional and legal responsibility for services required under this Agreement. 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.

**ARTICLE 18. 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.

**ARTICLE 19. 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.

**ARTICLE 20. 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:

20.1 **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.

20.2 **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.

20.3 **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.

20.4 **"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 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.

**ARTICLE 21. 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.

**ARTICLE 22. 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.

**ARTICLE 23. 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 entered into this Agreement on the day and year first above written.

**CONSULTANT:** _____

_____
Signature Date

Title: _____

_____
Please type/print name clearly

State of _____)
)
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
July 15, 2008
By: ALAN S. BACHMAN
Asst Attorney General

**DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**

_____
Lynn A. Hinrichs Date
Assistant Director Construction Management

Approved for expenditure:

_____
Division of Finance Date

Approved as to availability of funds:

_____
David D. Williams, Jr. Date
DFCM Administrative Services Director

**EXHIBITS:**

"A" - Solicitation for Consultant Services
"B" - if attached by DFCM. This may also include specific Professional Liability Insurance requirements including aggregate and per occurrence requirements.