



CONTRACT

STATE OF UTAH
UTAH DEPARTMENT OF TRANSPORTATION
ENGINEERING SERVICES
CM/GC REQUEST FOR PROPOSAL
FEE TYPE

CONTRACT NO. _____
EFFECTIVE DATE _____
TRACKING NO. _____

Project No.: Project No.
PIN Description: Location
FINET Prog No.: FINET Prog. No.
PIN No.: PIN No.
Work Discipline: Preconstruction Engineering

1. **CONTRACTING PARTIES:** This contract is between the Utah Department of Transportation, referred to as DEPARTMENT and,

Consultant
Address
City, State, Zip

Legal Status of Consultant: Legal Status
Fed ID No.: Fed ID No.

referred to as CONSULTANT.

2. **REASON FOR CONTRACT:** The DEPARTMENT does not have sufficient qualified staff to complete the work required in the suggested time frame and the CONSULTANT is professionally qualified and willing to assist the DEPARTMENT with Preconstruction Engineering services as further described in Attachment C.

3. **PROJECT/CONTRACT PERIOD:** The project/contract will terminate Date, unless otherwise extended or canceled in accordance with the terms and conditions of this contract.

4. **CONTRACT COSTS:** The CONSULTANT will be paid a maximum of Contract Amount for costs authorized by this Contract as further described in Attachment D.

5. **ATTACHMENTS INCLUDED AS PART OF THIS CONTRACT:**

- Attachment A – Certification of Consultant and Department
- Attachment B – Standard Terms and Conditions
- Attachment C – Services Provided by the Consultant
- Attachment D – Fees
- Attachment E -- Insurance

The parties below hereto agree to abide by all the provisions of this contract. IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONSULTANT – Consultant

UTAH DEPARTMENT OF TRANSPORTATION

By: _____
Title: _____
Printed Name: _____
Date

By: _____
Title: Title
Date

DEPARTMENT Comptroller’s Office

By: _____
Title: Contract Administrator
Date

CERTIFICATION OF CONSULTANT

By signing this contract on behalf of the CONSULTANT, I hereby certify I am a duly authorized representative of [Consultant](#) and that neither I nor the above CONSULTANT I hereby represent has:

- (a) employed or retained for commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above CONSULTANT) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid, or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract; except as hereby expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Utah Department of Transportation and the Federal Highway Administration, U.S. Department of Transportation in connection with this contract, involving participation of Federal-aid Funds, and is subject to applicable State and Federal laws, both criminal and civil.

STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to authority set forth in the Utah Transportation Code §§ 72-3-102, 105, and 107; the Utah Procurement Code §§ 63g-6a-101 et seq., and Utah Admin. Code r. R33. (*Provision revised June 22, 2016.*)
2. **CONTRACT JURISDICTION AND COMPLIANCE WITH LAWS:** The provisions of this contract shall be governed by the laws of the State of Utah. Also, the CONSULTANT and those engaged by the CONSULTANT shall comply with all Federal, State and local laws, regulations and other legally binding requirements that pertain to the services provided under this contract. The CONSULTANT shall furnish proof of its compliance with state licensing requirements to the DEPARTMENT upon request.
3. **RECORDS ADMINISTRATION:** The CONSULTANT shall maintain all books, papers, documents, accounting records and other evidence to support costs billed for under this contract. These records shall be retained by the CONSULTANT for a period of at least six (6) years after the contract terminates, or until all audits initiated within the six years have been completed, whichever is later. These records shall be made available at all reasonable times during the six-year period for audit and inspection by the DEPARTMENT and other authorized State or Federal auditors. The CONSULTANT'S records supporting the cost proposal shall also be retained and made available for review by authorized Federal or State staff. Copies of requested records shall be furnished to the DEPARTMENT upon request. (*Provision revised June 22, 2016.*)
4. **CONFLICT OF INTEREST:** The CONSULTANT certifies that none of its officers or employees are officers or employees of the State of Utah unless disclosure has been made in accordance with Utah Code § 67-16-8. The CONSULTANT certifies that no engineer, attorney, appraiser, inspector, surveyor or survey crew, or other person performing services for the CONSULTANT has, directly or indirectly, a financial or other personal interest, other than his employment or retention by the DEPARTMENT, in any contract or subcontract in connection with this project (Reference 23 CFR § 1.33 (2011)). An example of this situation would be the CONSULTANT subcontracts with the Contractor to perform survey work while contracted by the DEPARTMENT to perform construction engineering management services for the same project.

The CONSULTANT further warrants that it has no financial or other interest in the outcome of the work performed under the contract. Examples of this situation would be a Consultant who owns land, options to buy land, or some business enterprise that would be financially enhanced or diminished by any project alternatives.
5. **EMPLOYMENT OF DEPARTMENT EMPLOYEES:** The CONSULTANT agrees not to engage in any way the services on this contract of any present or former Utah Department of Transportation employee who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or contract modification for this contract.
6. **CONSULTANT, AN INDEPENDENT CONTRACTOR:** The CONSULTANT shall be an independent contractor, and as such, shall have no authority, express or implied to bind the DEPARTMENT to any agreement, settlement, liability, or understanding whatsoever; and agrees not to perform any acts as agent for the DEPARTMENT, except as specifically authorized and set forth herein. Persons employed by the DEPARTMENT and acting under the direction of the DEPARTMENT shall not be deemed to be employees or agents of the CONSULTANT. Compensation provided to the CONSULTANT herein shall be the total compensation payable hereunder by the DEPARTMENT.
7. **INDEMNITY - LIABILITY:**
 - (a) The CONSULTANT shall hold harmless and indemnify the DEPARTMENT and its officers, authorized agents and employees from and against claims, suits and cost, including attorneys' fees, for injury or damage to the extent caused by the negligent acts, errors, omissions, or willful misconduct of the CONSULTANT, or its subconsultants when acting within the scope of their subcontract, or their respective agents, employees or representatives.

- (b) The CONSULTANT is an independent contractor contracted with the DEPARTMENT. Any periodic plan and specification review or construction inspection performed by the DEPARTMENT arising out of the performance of the contract, does not relieve the CONSULTANT of its duty in the performance of the contract, or ensure compliance with customary standard of professional care.
- (c) Neither party to this Agreement shall be liable to the other party or any third party claiming through the other respective party, for any special, incidental, indirect, punitive, liquidated, delay or consequential damages of any kind including but not limited to lost profits or use of property, facilities or resources, that may result from this Agreement, or out of any goods or services furnished hereunder. *(Provision revised June 22, 2016.)*

8. **SEPARABILITY:** The declaration by any court, or other binding legal source, that any provision of this contract is illegal and void and shall not affect the legality and enforceability of any other provision of this contract, unless said provisions are mutually dependent.
9. **LIABILITY INSURANCE:** Services to be provided by the CONSULTANT under this contract are required to be covered by insurance. The CONSULTANT shall furnish the DEPARTMENT a Certificate of Insurance applying to this contract for each type of insurance required, to be approved by the DEPARTMENT, before the CONSULTANT begins work under this contract. The CONSULTANT'S insurer must be authorized to do business in Utah and must meet the specified A.M. Best rating or better at the time this contract is executed. The following insurance shall be maintained in force until all activities which are required by this contract or as changed by contract modification are completed and accepted by the DEPARTMENT:

- (a) General Liability insurance with a limit of not less than \$1,000,000 per occurrence and not less than \$3,000,000 aggregate and having an A.M. Best rating of A-class VIII or better. The limit if different for this contract will be as designated in Attachment C to this contract. If this coverage is written on a claims-made basis, the Certificate of Insurance shall so indicate.

The CONSULTANT represents that as long as commercially available the insurance shall remain in effect such that claims reported up to three (3) years beyond the date of substantial completion of this contract are covered.

- (b) Commercial Automobile insurance with a minimum combined single limit of \$1,000,000 per occurrence OR \$500,000 liability per person, \$1,000,000 per occurrence, \$250,000 Property Damage, and having an A.M. Best rate of A-class VIII or better.
- (c) Aircraft Liability in the amount of \$1,000,000 per occurrence if aircraft are utilized in connection with this contract.
- (d) The CONSULTANT shall provide evidence that his employees and sub-consultant employees are covered by Workers Compensation. If they are covered by Workers Compensation Fund of Utah, then the A.M. Best rating is not required in this area.
- (e) The CONSULTANT shall require the insurance company that issues the Certificates of Insurance for the evidence of the required insurance coverage to endeavor to provide the DEPARTMENT with 30-days written notice in the event that coverage is canceled before the policy expiration date stated in the Certificate. The CONSULTANT further agrees to provide the DEPARTMENT with 30-days written notice prior to making an alternation or material change to the required insurance coverage.

Policies referred to in 9(a), 9(b) and 9(c) above are required to be endorsed naming the DEPARTMENT and the State of Utah as Additional Insureds and, on General Liability and Aircraft Liability, indicate they are primary and not contributing coverage. All required policies, endorsements, insurance companies issuing same, and self-insured programs are subject to review and approval by the State of Utah, Risk Manager. *(Provision revised December 28, 2016.)*

10. **HEALTH INSURANCE:** The CONSULTANT agrees that if the CONSULTANT has an initial contract of 2 million dollars or more, or the contract and modifications are anticipated in good faith to exceed 2 million

dollars, or the CONSULTANT has a subcontract at any tier that involves a sub-consultant that has an initial subcontract of 1 million dollars or more, and/or the CONSULTANT has a subcontract at any tier that is anticipated in good faith to exceed 1 million dollars; hereby certifies the following:

- (a) The CONSULTANT and all applicable sub-consultants have and will maintain an offer of qualified health insurance coverage for their employees, as defined in Utah Code § 26-40-115 for the employees who live and/or work within the State of Utah, along with their dependents, during the duration of the contract.
- (b) Employee, for purposes of these requirements, shall be no broader than the use of the term employee for purposes of State of Utah Workers' Compensation requirements.

The CONSULTANT shall demonstrate its compliance with this part and Utah Code § 72-6-107.5 at the time this contract is executed and its continued compliance is subject to an audit by the DEPARTMENT or the Office of the Legislative Auditor General. The CONSULTANT and all applicable sub-consultants shall be subject to all applicable penalties. The CONSULTANT will provide these same requirements in all applicable subcontracts at every tier. (*Provision revised June 22, 2016.*)

11. PROGRESS:

- (a) The CONSULTANT may not begin the work governed by this contract prior to receiving an official Notice to Proceed from the DEPARTMENT. The CONSULTANT shall begin the work governed by this contract within one week after receiving a Notice to Proceed from the DEPARTMENT. The CONSULTANT shall prosecute the work diligently and to the satisfaction of the DEPARTMENT. If Federal Funds are used on this contract the work will be subject to periodic review by the Federal Highway Administration.
- (b) The CONSULTANT will prepare monthly progress reports following the format established by the DEPARTMENT in sufficient detail to document the progress of the work and support the monthly claim for payment. Payments will not be made without a supporting progress report. In addition, the CONSULTANT will update the DEPARTMENT'S "electronic Program Management" (ePM) system bi-weekly to reflect the status of the project.
- (c) Progress conferences will be held periodically. The CONSULTANT will prepare and present written information and studies to the DEPARTMENT so it may evaluate the features and progress of the work. Either party may request a conference; to be held at the office of either, or at a place designated by the DEPARTMENT. The conferences shall also include inspection of the CONSULTANT'S services and work products when requested by the DEPARTMENT.
- (d) The CONSULTANT will be required to perform such additional work as may be necessary to correct errors caused by the CONSULTANT in the work required under the contract without undue delays and without additional cost to the DEPARTMENT.
- (e) At any time, the CONSULTANT determines the contract work cannot be completed within the specified time or budget, the CONSULTANT shall immediately notify the DEPARTMENT, in writing, that the CONSULTANT cannot meet specified time or budget requirements and why. The DEPARTMENT may, at its sole discretion, agree to extend the contract by written modification.
- (f) The DEPARTMENT may terminate this contract in accordance with the termination provisions of this contract including failure of the CONSULTANT to make satisfactory progress on the contract work, or failure to provide satisfactory work product quality.
- (g) Should the DEPARTMENT desire to suspend the work, but not terminate the contract, the DEPARTMENT will notify the CONSULTANT verbally to suspend work immediately. The DEPARTMENT will follow this verbal notification with a written confirmation. When the DEPARTMENT provides verbal notification to the CONSULTANT to suspend work the CONSULTANT agrees to comply immediately or as directed by the DEPARTMENT. The work may be reinstated upon 30-days advance written notice from the DEPARTMENT.

- (h) Unless extended or terminated in writing, this contract will terminate on the expiration date, or at the end of the specified calendar days. (*Provision revised June 22, 2016.*)

- 12. NON DISCRIMINATION PROVISIONS:** The CONSULTANT agrees to abide by the provisions of the Utah Anti-discrimination Act, Utah Code §§34a-5-101 - 112 , and Titles VI and VII of the Civil Rights Act of 1964 (42 USC §§ 2000e – 2000e-17), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Orders 11375 and 13665 and as supplemented in Department of Labor Regulations (41 CFR Part 60), which prohibits discrimination on the basis of age; 29 USCA § 794, which prohibits discrimination on the basis of handicap; and Executive Order 13672, Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity.

The CONSULTANT agrees to abide by Utah's Executive Order, dated June 30, 1989, which prohibits sexual harassment in the work place. Sections 49 CFR 21 through Appendix C (2016) and 23 CFR 710.405(b) (2016) are applicable by reference in all contracts and subcontracts financed in whole or in part with Federal-aid highway funds. The CONSULTANT further agrees to furnish reports to the DEPARTMENT upon request for the purpose of determining compliance with these statutes identified in this section. The CONSULTANT shall comply with the Americans with Disabilities Act (ADA).

The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 (2016) in the award and administration of federal-aid contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the DEPARTMENT deems appropriate. During the performance of this contract, the CONSULTANT, for itself, its assignees and successors in interest agrees as follows:

- (a) **Compliance with Regulations:** The CONSULTANT shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of 49 CFR Part 21, and 23 CFR Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (b) **Nondiscrimination:** The CONSULTANT, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, gender identity or sexual orientation, age, disability/handicap, and low income status in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR § 21.5 (2016) of the Regulations, including employment practices when the contract covers a program set forth in 49 CFR § 21, Appendix B of the Regulations.
- (c) **Solicitations for Subconsultants, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, gender identity or sexual orientation, age, disability/handicap, and low income status.
- (d) **Information and Reports:** The CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the DEPARTMENT to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the DEPARTMENT, and shall set forth what efforts it has made to obtain the information.

- (e) **Sanctions for Noncompliance:** In the event of the CONSULTANT's noncompliance with the nondiscrimination provisions of this contract, the DEPARTMENT shall impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
- (1) Withholding of payments to the CONSULTANT under the contract until the CONSULTANT complies, or
 - (2) Cancellation, termination or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The CONSULTANT shall include the provisions of paragraphs (a) through (f) of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CONSULTANT shall take such action with respect to any subcontract, or procurement as the DEPARTMENT may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the CONSULTANT may request the DEPARTMENT to enter into such litigation to protect the interests of the DEPARTMENT, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. *(Provision revised June 22, 2016.)*

13. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS: The CONSULTANT agrees to abide by the requirements of 49 CFR Part 29, Government wide Debarment and Suspension (Nonprocurement). By signing this contract the CONSULTANT certifies that to the best of their knowledge and belief that it or its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had civil judgment against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in subparagraph 14(b) of this certification; and
- (d) Have not within a three-year period preceding this contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

Where the CONSULTANT is unable to certify to any of the statements in this certification, the CONSULTANT shall attach an explanation to this contract. Exceptions will not necessarily result in denial of award, but will be considered in determining CONSULTANT'S responsibility. Any exceptions noted shall identify to whom it applies, the initiating agency, and dates of the action. Providing false information may result in criminal prosecution or administrative sanctions.

14. BACKGROUND CHECKS: The DEPARTMENT may require the CONSULTANT and all employees of the CONSULTANT to undergo a background investigation, to be conducted by the Attorney General or the Bureau of Criminal Investigation, to the satisfaction of the DEPARTMENT. The background investigation will consist of a review of, but may not limited to, criminal conduct including the use of controlled substances. The Consultant represents that its employees assigned to work under this Agreement are competent in their respective fields, licensed as required by the State of Utah, and are legally able to fulfill their work obligations. *(Provision added June 22, 2016.)*

15. CERTIFICATION OF COMPLIANCE ON LOBBYING RESTRICTIONS: The CONSULTANT agrees to conform to the lobbying restrictions established by the Byrd Amendment, 31 USCA § 1352, for contracts

exceeding \$100,000 in Federal Funds. The CONSULTANT certifies, by signing this contract, to the best of their knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USCA § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The CONSULTANT also agrees by signing this contract that they shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

- 16. **CERTIFICATION OF COMPLIANCE ON DRUG AND ALCOHOL TESTING:** The CONSULTANT hereby certifies by executing this Contract that the CONSULTANT shall comply with all applicable provisions of Utah Admin. Code Rule 916-6 - Drug and Alcohol Testing in State Construction Contracts and Utah Code Ann. § 63G-6a-1303 throughout the term of this Contract. The CONSULTANT shall provide this requirement in its contracts with subconsultants.
- 17. **CERTIFICATION OF REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The CONSULTANT certifies as to its own organization, under penalty of perjury, that the CONSULTANT has registered with and uses a "Status Verification System" to determine the work eligibility status of an employee hired on or after July 1, 2009, pursuant to Utah Code Ann. Section 63G-12-302. *(This section was added 1/25/12.)*
- 18. **OWNERSHIP OF WORK PRODUCTS PROCURED OR DEVELOPED UNDER THIS CONTRACT:** Unless specifically designated hereinafter or preexisting information and know-how of the CONSULTANT, the DEPARTMENT retains ownership of all materials, products, devices, equipment, facilities, data, test results, reports, graphics, presentations, visual aids, computer elements, software (including source code), software license agreements, testing apparatus, services, etc., that are developed, procured, constructed, installed or performed under this contract and that become an integral part of or that are intended to facilitate or enhance the use, operation, maintenance, documentation or understanding of the deliverables of this contract. In addition, the DEPARTMENT shall retain ownership of all non-expendable items procured under this contract that have a salvage value at the end of this contract of \$5,000.00 or more unless the DEPARTMENT specifically authorizes exclusions listed in the Deliverables and Partial Payments in Attachment C of this contract. Notwithstanding the foregoing, ownership of any and all CONSULTANT work product shall remain with CONSULTANT unless and until the payment by the DEPARTMENT to CONSULTANT of all undisputed invoiced amounts.

The DEPARTMENT grants to the CONSULTANT a non-exclusive license for non-commercial, internal, educational and research use of work products developed or produced by the CONSULTANT under this contract, subject to the provisions of this contract. The use of physical products is subject to availability. Physical products will be transported and maintained at the expense of the CONSULTANT, should transportation and maintenance be necessary in conjunction with this use.

The CONSULTANT may secure through patents or trademarks, the right, title, or interest throughout the world of any invention that may be created or developed under this contract, as provided in 37 CFR 401.14, except for Section 401.14(g). The DEPARTMENT shall be entitled to the same rights granted to the Federal Government under 37 CFR 401.14 and adopts that regulation for that purpose. The CONSULTANT will retain all rights provided for the DEPARTMENT in this clause, and the DEPARTMENT will not, as part of the consideration for awarding this contract, obtain rights in the CONSULTANT'S subject inventions. The DEPARTMENT shall be granted a non-exclusive, irrevocable, royalty-free license to use, practice, employ, or have practiced for or on behalf of the DEPARTMENT the subject invention throughout the world. These license provisions shall be considered one of the deliverables due under this contract. When federal transportation funds make up all or part of the remuneration under this contract (as documented elsewhere in these Special Provisions), the United States Department of Transportation shall also be named as a grantee, along with the DEPARTMENT, in the license provisions described above.

The CONSULTANT may secure copyrights on information, designs, analyses, processes, reports, and the intellectual innovations that may be created or developed under this contract, subject to the provisions of this contract, including the provisions of the "Publication or Use of Work Product Outside of This Agreement" clause.

The DEPARTMENT reserves a non-exclusive, irrevocable, royalty-free license to reproduce, publish, distribute, disclose, modify, implement, or otherwise use, and to authorize others to use, the copyright in any work developed as deliverables under this contract, and any rights of copyright to which the CONSULTANT purchases ownership with the support of this contract.

The right of the CONSULTANT to apply for patents, copyrights or trademarks shall be limited to the statutory period defined by United States Code and other applicable Federal regulations.

It is further specifically agreed between the parties executing this contract that the above provisions shall be interpreted and administered in accordance with State and Federal non-disclosure and disclosure laws, rules, regulations and policies governing patents, copyrights, trademarks, rights of privacy and freedom of public information. *(Provision added June 22, 2016.)*

- 19. RIGHT OF FUTURE DEVELOPMENT:** Both parties agree that the DEPARTMENT and third parties that may be under separate contract to the DEPARTMENT may perform future additional developments or enhancements to information, designs, analyses, computer elements, devices, data, test results, reports, graphics, presentations, visual aids, intellectual innovations that are derived from the work products developed and delivered under this contract. The DEPARTMENT shall not be obligated to obtain the services of the CONSULTANT to perform these additional developments or enhancements. Likewise, the CONSULTANT, after completion of this contract, may perform future additional developments or enhancements to the work products produced and delivered under this contract without the necessity of granting the DEPARTMENT a license of use for these additional developments or enhancements. Any reuse, misuse, or use of modified or incomplete deliverables will be at the sole risk of the DEPARTMENT or the third party in possession of CONSULTANT'S deliverable and the CONSULTANT makes no representation to any third party with respect to any good or service performed under this contract and shall not be liable for any reuse, misuse, or use of modified or incomplete deliverables under any theory of recovery. *(Provision added June 22, 2016.)*
- 20. PUBLICATION OR USE OF WORK PRODUCT OUTSIDE OF THIS AGREEMENT:** During the entire term of this contract the CONSULTANT shall not issue, offer, publish, or submit for publication any document, report, paper, technical notes, documentation, specification, graphic, or other media products produced in connection with the work of this contract without first submitting the deliverables required by this contract to the DEPARTMENT for their review, and notifying the DEPARTMENT of the intent to publish.

In the event CONSULTANT wishes to publish research results prior to the submission of contract deliverables, CONSULTANT shall first provide to DEPARTMENT written notice of CONSULTANT'S intent to publish and a draft of such publication. DEPARTMENT shall have thirty (30) days after receipt of the draft publication to request in writing the removal of portions deemed by DEPARTMENT to contain confidential or patentable material owned by DEPARTMENT, or to request a delay in submission of the draft for publication pending CONSULTANT'S submission of overdue contract deliverables or

DEPARTMENT's application for patent protection. If CONSULTANT does not receive DEPARTMENT'S written response to the notice of intent to publish within the thirty (30) day period, then DEPARTMENT shall be deemed to have consented to such publication. If DEPARTMENT requests a delay in submission of publication for patent protection, CONSULTANT shall have no obligation to delay publication for longer than three (3) months following delivery of CONSULTANT'S notice of intent to publish. If DEPARTMENT requests a delay in submission of publication due to overdue deliverables, submission of publication by the CONSULTANT prior to completing those contract deliverables shall be grounds for termination of this Agreement. Student reports, theses, and dissertations, published internally by the CONSULTANT shall not be subject to these delay provisions.

If this Agreement is terminated by the DEPARTMENT for non-performance or failure to meet project deliverable dates, the CONSULTANT agrees to the publication restrictions stated above for a period of six (6) months following the date of termination.

Information supplied by DEPARTMENT to CONSULTANT and identified by DEPARTMENT as proprietary, confidential, protected or security-sensitive information shall not be included in any material published by CONSULTANT without prior written consent of DEPARTMENT.

All documents resulting from the work of this contract by the CONSULTANT, regardless of the time when they are created, produced, or released, shall contain acknowledgement and disclaimer statements as stipulated in the "Acknowledgements and Disclaimers" clause in this contract.

The restrictions and procedures described above shall apply to the release of any information or documents to the media. The CONSULTANT shall inform the UDOT Public Affairs Office of all media inquiries.

Requests from the media or other members of the public for records that have not already been issued, published, or submitted for publication shall be made in accordance with the Governmental Records Access and Management Act (GRAMA), Utah Code Title 63G, Chapter 2. *(Provision added June 22, 2016.)*

- 21. ACKNOWLEDGEMENTS AND DISCLAIMERS:** Any document, report, paper, technical notes, documentation, specification, computer element, graphic, media element, or other deliverable that is prepared or released by the CONSULTANT shall contain an acknowledgement of support by the DEPARTMENT. When federal transportation funds make up all or part of the remuneration under this contract (as documented elsewhere in these Special Provisions), the United States Department of Transportation shall also be acknowledged as a supporter of the work. In addition, any of these deliverables shall contain the following disclaimer:

"The authors alone are responsible for the preparation and accuracy of the information, data, analysis, discussions, recommendations, and conclusions presented herein. The contents do not necessarily reflect the views, opinions, endorsements, or policies of the Utah Department of Transportation or the US Department of Transportation. The Utah Department of Transportation makes no representation or warranty of any kind, and assumes no liability therefore." *(Provision added June 22, 2016.)*

- 22. USE OF PATENTED, COPYRIGHTED OR TRADEMARKED ITEMS:** The CONSULTANT shall be fully responsible for the legal use and the related payment of any royalties or fees for any materials, products, devices, processes, computer elements, designs, specifications, publications, graphics, visual media, etc., that are protected by patents, copyrights or trademarks, or that are owned by third parties to this contract, in conjunction with the execution of the work in this agreement. In the event that any of the above items are to be incorporated into the deliverables or products which will be provided to the DEPARTMENT as a result of the work of this agreement, whether owned by the CONSULTANT before entering into this agreement or not, such use shall be specifically authorized in this contract or by prior written approval from the DEPARTMENT. When such authorization is provided, the CONSULTANT shall secure the rights of use of these patented, copyrighted or trademarked items for the DEPARTMENT. An original executed copy of the right-to-use agreement shall be delivered to and approved by the DEPARTMENT prior to commencing use of these item(s). The CONSULTANT shall be responsible for payment of all royalties and fees for said use during the entire term of this contract. To the extent that these royalties and fees are incurred exclusively and specifically for this contract and are shown in Attachment C of this contract, these costs are allowable expenses to the contract. The CONSULTANT

shall indemnify, save harmless and release the DEPARTMENT from claims of patent, copyright or trademark infringement, or for costs, expenses, penalties and damages that may be obligated by reason of an infringement related to the work performed, services rendered or deliverables furnished under this contract which are caused by the negligence of the CONSULTANT. When Federal funds make up all or part of the remuneration under this contract, the United States Department of Transportation shall be named along with the DEPARTMENT in all legal agreements covering use of patented, copyrighted or trademarked items. *(Provision added June 22, 2016.)*

- 23. CONFIDENTIALITY:** If, in order to perform the work under this contract, the CONSULTANT is given access to confidential, protected, security-sensitive or proprietary business, technical or financial information regarding persons, materials, products, devices, processes, plans, designs, computer elements, analyses, data, etc., the CONSULTANT agrees to treat such information as confidential and shall not appropriate such information to its own use or disclose it to third parties at any time, neither during the term of this contract nor after contract termination, without specific written authorization by the DEPARTMENT to do so. The DEPARTMENT shall clearly identify those items as confidential at the time they are transmitted or disclosed to the CONSULTANT and they may be listed in Attachment C of this contract if known at the time of contract execution. The CONSULTANT shall require adherence by its officers, agents, volunteers, employees and subcontractors to these confidentiality provisions.

The foregoing obligations shall not apply if the said confidential, security-sensitive or proprietary information:

- (a) Is found to be in the public domain at the time of receipt by the CONSULTANT;
- (b) Is published or otherwise becomes part of the public domain after receipt by and through no fault of the CONSULTANT;
- (c) Was in possession of the CONSULTANT at the time of receipt, which the CONSULTANT can demonstrate, as well as that it was not acquired directly or indirectly from the DEPARTMENT or an agency of the State of Utah; or
- (d) Was received by the CONSULTANT from a third party other than an agency of the State of Utah, which the CONSULTANT can demonstrate did not require the CONSULTANT to hold such information in confidence. *(Provision added June 22, 2016.)*

- 24. ASSIGNMENT AND SUBCONTRACTING:** The CONSULTANT shall not subcontract any of the work required by this contract, or assign monies to be paid to the CONSULTANT hereunder, without the prior written approval of the DEPARTMENT. The amount billed to the DEPARTMENT for subconsultant costs shall be the same amount the CONSULTANT actually pays the subconsultant for services required by this contract. All payments made by the CONSULTANT to the subconsultant for services required by this contract shall be subject to audit by the DEPARTMENT. All subcontracts must include all the same terms and conditions and provisions included in this contract. However, the prime CONSULTANT is responsible for ensuring that all work performed by sub-consultants is insured under their insurance policy, or they require that the sub-consultants meet the insurance provisions required under this contract.

The CONSULTANT must perform work valued at not less than [Percentage](#) of the total contract amount, excluding specialized services, with its own staff. Specialized services are those services or items that are not usually furnished by a consultant performing the particular type of service contained in this contract.

- 25. PERSONNEL/STAFFING PLAN:** Any change in personnel from that specifically identified in Attachment C of this contract, must be approved by the DEPARTMENT through a modification to this contract or a Contract Management System (CMS) Alternative Staff Transaction prior to any work being performed by new personnel. Invoices submitted for payment with unauthorized personnel will not be paid. *(Provision revised July 29, 2013.)*
- 26. DISPUTES:** Claims for services, materials, or damages not clearly authorized by the contract, or not ordered by the DEPARTMENT by prior written authorization, will not be paid. The CONSULTANT shall notify the DEPARTMENT in writing, and wait for written approval, before it begins work not previously authorized. If such notification and approval is not given or the claim is not properly documented, the

CONSULTANT shall not be paid the extra compensation. Proper documentation alone shall not prove the validity of the claim. The parties agree to use arbitration or mediation after exhausting applicable administrative reviews to resolve disputes arising out of this contract where the sole relief sought is monetary damages \$100,000 or less, exclusive of interest and costs.

- 27. CLAIMS - DELAYS AND EXTENSIONS:** The CONSULTANT agrees to proceed with the work previously authorized by the contract, or in writing, continually and diligently, and will make no charges or claims for extra compensation for delays or hindrances within its control during the progress of this contract. The DEPARTMENT may allow an extension of time for the contract, for a reasonable period as agreed by the parties, should a delay or hindrance occur. The DEPARTMENT shall not waive any of its rights under the contract by permitting the CONSULTANT to proceed with the contract after the established completion date. The CONSULTANT shall not be responsible for delays due to causes beyond CONSULTANT's reasonable control. *(Provision revised June 22, 2016.)*
- 28. CONTRACT MODIFICATIONS:** This contract may be amended, modified, or supplemented, as it is mutually agreed to by the parties by written contract modification, executed by the parties hereto and attached to the original signed contract.

Claims for services furnished by CONSULTANT, not specifically authorized by this contract or by appropriate modification, shall not be paid by the DEPARTMENT. When a contract modification has been agreed to by the parties no claim for the extra work done or material furnished shall be made by the CONSULTANT until the written modification has been fully executed. Any verbal agreements not confirmed in writing are non-binding. *(Provision revised June 22, 2016.)*

- 29. TERMINATION:** This contract may be terminated as follows:
- (a) Mutual agreement of the parties; in writing and signed by the parties.
 - (b) By either party for failure of the other party to fulfill its obligations, as set forth with the provisions of this contract and in particular with Attachment C, "Services Provided by the CONSULTANT" or Section 42, "Duties of the DEPARTMENT". Reasonable allowances will be made for circumstances beyond the control of the CONSULTANT and the DEPARTMENT. Written notice of intent to terminate is required and shall specify the reasons supporting termination.
 - (c) By the DEPARTMENT for the convenience of the State upon written notice to the CONSULTANT.
 - (d) If the DEPARTMENT determines that the performance of the CONSULTANT is not satisfactory, the DEPARTMENT may notify the CONSULTANT of the deficiency with the requirement that the deficiency be corrected within a specified time; but not less than 10 days. Otherwise the Agreement will be terminated at the end of such time or thirty (30) days whichever is sooner.
 - (e) If the DEPARTMENT requires termination of the Agreement for reasons other than unsatisfactory performance of the CONSULTANT, the DEPARTMENT will notify the CONSULTANT of such termination, with instructions as to the effective date of work stoppage or specify the stage of work at which the Agreement is to be terminated.
 - (f) If the Agreement is terminated before performance is completed, the CONSULTANT will be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by the Agreement.
 - (g) The DEPARTMENT reserves the right to cancel and terminate this Agreement in the event the CONSULTANT or any employee or agent of the CONSULTANT is convicted for any crime arising out of or in conjunction with any work being performed by the CONSULTANT for or on behalf of the DEPARTMENT, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement will immediately be turned over to the DEPARTMENT. The DEPARTMENT reserves the right to terminate or cancel this Agreement in the event the CONSULTANT will be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. The DEPARTMENT further reserves the right to suspend the

qualifications of the CONSULTANT to do business with the DEPARTMENT upon any such conviction.

- (h) Upon satisfactory completion of required contract services.
- (i) On termination of this contract all accounts and payments will be processed in accordance with contract terms. An appraisal of the value of work performed to the date of termination shall be made to establish the amount due to or from the CONSULTANT. If the contract fee type is Cost-Plus-Fixed-Fee-With-Fixed-Total-Additive-Rate and the contract is terminated for reasons other than paragraph 31(h), the final fixed fee amount will be paid in proportion to the percentage of work completed as reflected by the periodic invoices as of the date of termination of the contract. Upon determining the final amount due the CONSULTANT, or to be reimbursed by the CONSULTANT, in the manner stated above, the final payment will be processed in order to close out the contract. *(Provision revised June 22, 2016.)*

30. REMEDIES: Any of the following events will constitute cause for the State Entity to declare CONSULTANT in default of this Contract: (i) CONSULTANT'S non-performance of its contractual requirements and obligations under this Contract; or (ii) CONSULTANT'S material breach of any term or condition of this Contract. The DEPARTMENT may issue a written notice of default providing a ten (10) day period in which CONSULTANT will have an opportunity to cure. Time allowed for cure will not diminish or eliminate CONSULTANT'S liability for damages. If the default remains after CONSULTANT has been provided the opportunity to cure, the DEPARTMENT may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend CONSULTANT from receiving future contracts from the DEPARTMENT or the State of Utah; or (v) demand a full refund of any payment that the DEPARTMENT has made to CONSULTANT under this Contract for Services that do not conform to this Contract. *(Provision added June 22, 2016.)*

31. POLLUTION CONTROL: The CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671g) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). The DEPARTMENT shall report violations to the applicable Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). *(Provision added June 22, 2016.)*

32. REQUIREMENTS FOR COMPUTER ELEMENTS:

Hardware, firmware and/or software elements that the CONSULTANT procures, furnishes, licenses, sells, integrates, creates and/or enhances for the DEPARTMENT under this contract shall achieve the specific objectives specified in the work plan. These elements shall be free of defects, or "bugs," that would prevent them from achieving the objectives specified in the work plan.

Computer software and applications created and/or enhanced under this contract shall include as deliverables; user instructions, program documentation, program listings, source code and executables in specified compiled formatted files. The program documentation shall include flow charts and detailed treatment of decision algorithms and their technical basis. Appropriate DEPARTMENT individuals will review "user instructions" and "program documentation" for acceptability. Formal sign-offs will record such events and be part of the project repository. Software development and operating system platforms shall be approved by the DEPARTMENT and specified in the work plan. Changes to these platforms shall only be allowed by written authorization by the DEPARTMENT.

33. COST PRINCIPLES: Regardless of the funding source, the costs allowable for reimbursement will be governed by the 2 CFR Part 200 Subpart E, as modified by Utah State law, administrative rules, and regulations on contract provisions.

34. GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT: Pursuant to the Government Records Access and Management Act, Utah Code §§ 63G-2-101 through 63G-2-901, CONSULTANT understands that if it believes that any records it submits to the DEPARTMENT should be considered confidential for business purposes under Utah Code § 63G-2-309, it must attach written notice of that opinion that satisfies the requirements of §§ 63G-2-305 and 309 to the record when it first submits it. The CONSULTANT understands that the DEPARTMENT will not treat any such record as confidential absent

such written notification. Additionally, the CONSULTANT agrees that neither the State of Utah, the DEPARTMENT, nor any of their agents or employees are responsible for disclosure of any record that the CONSULTANT considers confidential if either the State Records Committee or a court orders it released.

- 35. WORK ACCEPTANCE:** All work performed under this contract shall be performed in accordance with Standards, Specifications, Manuals of Instruction, Policies and Procedures established by the DEPARTMENT. All work shall be subject to the approval of the DEPARTMENT through its designated representatives. When the work is federally funded, the DEPARTMENT will coordinate with the Federal Highway Administration (FHWA) to obtain concurrence in the work.
- 36. GENERAL CONTROL AND INSPECTIONS:** The CONSULTANT shall be represented at progress review meetings as may be scheduled by the DEPARTMENT. The CONSULTANT shall accompany DEPARTMENT personnel and other representatives on field inspections and at conferences as may be required.
- 37. NO THIRD PARTY BENEFICIARIES:** The parties enter in to this contract for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of this contract.
- 38. COORDINATION WITH DEPARTMENT FUNCTIONAL MANAGERS:** In order to ensure programmatic consistency, if the project requires, the CONSULTANT will coordinate decisions with the Region and/or Central Functional Managers in addition to the DEPARTMENT Project Manager. It is important for consultants to seek input into decisions from the technical experts within the DEPARTMENT.
- 39. COORDINATION WITH UTAH DEPARTMENT OF TECHNOLOGY SERVICES (DTS):** The CONSULTANT will comply with the Utah Technology Governance Act, Utah Code §§ 63F-1-101 through 63F-2-103.

After execution of the contract, and prior to commencing any information technology (IT) related activities as defined in Utah Code § 63F-1-102, the CONSULTANT will:

- (a) Coordinate with and receive written approval from the DEPARTMENT and the DTS IT Director assigned to the DEPARTMENT, or
- (b) Have previously obtained written approval from the DTS IT Director assigned to the DEPARTMENT for the IT related activities which must be detailed in the Scope of Work and included in the terms of this base contract.

In addition, the DEPARTMENT will not consider modifying this contract to include or alter IT elements without coordination and written approval from the DTS IT Director assigned to the DEPARTMENT.

- 40. USE OF STATE SEAL AND DEPARTMENT LOGO:** The CONSULTANT will not misrepresent their employees as State of Utah employees. The CONSULTANT will not use the Utah State Seal or the DEPARTMENT logo on business cards for their employees nor use Utah or the DEPARTMENT letterhead on correspondence signed by their employees with the following exception: the CONSULTANT may incorporate the DEPARTMENT logo on their business cards stating, "In partnership with the DEPARTMENT" in addition to the CONSULTANT'S own logo. The CONSULTANT may prepare correspondence for the approval and signature of appropriate State of Utah employees.
- 41. ASSIGNMENT OF ANTITRUST CLAIMS:** The CONSULTANT and the DEPARTMENT recognize that in actual economic practice, overcharges by the CONSULTANT'S suppliers resulting from violations of state or federal antitrust laws are in fact borne by the DEPARTMENT. As part of the consideration for the award of the Contract, and intending to be legally bound, the CONSULTANT assigns to the DEPARTMENT and the state of Utah all right, title and interest in and to any claims the CONSULTANT now has, or may acquire, under state or federal antitrust laws relating to the products and services which are the subject of this Contract. *(Provision added June 22, 2016.)*

42. DUTIES OF THE DEPARTMENT:

- (a) **Guarantee Access:** The DEPARTMENT shall guarantee access to and make all provisions for the CONSULTANT to enter upon all lands, both public and private which in the judgment of the parties hereto are necessary to carry out such work as may be required.
- (b) **Prompt Consideration:** The DEPARTMENT shall give prompt consideration to all reports, plans, proposals and other documents presented by the CONSULTANT.
- (c) **Documents:** The DEPARTMENT shall furnish Standards, Specifications, Manuals of Instruction, Policies and Procedures, and other available information, including any material previously prepared for this work. Specific materials related to this contract that will be furnished by the DEPARTMENT.
- (d) **Services:** The DEPARTMENT will perform standard services relating to this contract.

SERVICES PROVIDED BY THE CONSULTANT**1. SCOPE SUMMARY:**

[Scope Summary](#)

2. SCOPE DOCUMENTS:

Following are the scope items contained in this attachment:

(a) Approval Memo

(b) Executive Summary

(c) Detailed Work Plan

(d) Personnel/Staffing Plan

(e) Schedule

(1) Completion: All work shall begin within seven (7) days of notice to proceed and shall be completed by [Date](#).

(2) Project/Contract Period: The project/contract will terminate [Date](#), unless otherwise extended or canceled in accordance with the terms and conditions of this contract. If additional time is required beyond the project completion date, the CONSULTANT shall submit a "Contract Time Extension Modification" to the DEPARTMENT'S Project Manager for approval and processing.

FEES

LUMP SUM

1. **LUMP SUM:** For all services and materials pertinent hereto and/or specifically described herein, except as otherwise explicitly cited, the DEPARTMENT agrees to pay the CONSULTANT the sum of **Contract Amount**. In developing the Lump Sum amount, the actual allowable costs will be limited to the costs which are allowable under the 2 CFR Part 200 Subpart E Cost Principles, as modified by Utah State law, administrative rules, regulations, or contract provisions.
2. **MODIFICATIONS:** In the event the DEPARTMENT requires changes of services which materially affect the scope of work or work plan, with a resulting material increase in cost to the CONSULTANT, a contract modification for additional compensation and time for completion shall be entered into by the parties hereto prior to making such change. Any such work done without prior DEPARTMENT agreement shall be deemed **ineligible** for reimbursement for additional compensation.
3. **PROGRESS PAYMENTS:** Progress payments are based upon the approved percentage of work completed and are made pursuant to certified invoices received.
4. **INVOICES:** The CONSULTANT will submit monthly payment requests promptly and no later than 45 calendar days after each monthly billing cycle. Invoices are to reflect charges as they apply to the appropriate contract, project and account number, and must be certified and executed by an official legally authorized to bind the firm. The invoice must be substantiated with supporting documentation that is reviewed and approved by the DEPARTMENT'S Project Manager and subject to a final review by the DEPARTMENT'S Comptroller's Office. The DEPARTMENT will make undisputed payments no later than 30-days after receiving CONSULTANT's invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, the DEPARTMENT will notify CONSULTANT within 15 days of discovering the error(s). After the DEPARTMENT receives the corrected invoice, the DEPARTMENT will pay CONSULTANT within 30-days of receiving such invoice.

Payment requests for services performed on or before the last day of the Utah fiscal year (June 30), must be submitted no later than 30 calendar days after the billing cycle, see Utah Code Ann. § 63J-1-601.

The CONSULTANT acknowledges untimely billing may adversely affect the DEPARTMENT due to federal funding requirements in 41 CFR § 105 – 71.123, and/or the state fiscal constraints imposed upon it as a department of state government by the Budgetary Procedures Act, Utah Code Ann. § 63J-1-101 et seq. The CONSULTANT waives payment, and waives the right to bring action in law or in equity to recover payment for services, for any and all payment requests the DEPARTMENT does not receive from the CONSULTANT within the timeframe provided under this contract. *(Provision revised June 22, 2016.)*

5. **FINAL PAYMENT:** Final invoice payment will be released only after all materials and services associated with this contract have been reviewed and approved by the DEPARTMENT'S Project Manager and subject to final review by the DEPARTMENT'S Comptroller's Office. The final invoice payment will not be released until a project evaluation form has been completed by a DEPARTMENT Project Manager and submitted to Consultant Services and the DEPARTMENT'S Comptroller's Office.

The DEPARTMENT'S Project Managers and the Comptroller's Office have the right to hold the final retention payment on certain projects when design and construction are performed by two separate Consultants or if there is a potential possibility of a design or construction error. The DEPARTMENT Comptroller's Office also has the right to hold the final invoice payment until the final audit is complete upon the request of the DEPARTMENT Project Manager.

6. **FINANCIAL SUMMARY:** The total maximum amount of disbursement pertinent to this contract is **Contract Amount**. The Overhead and Fixed Fee rates have already been reviewed and determined and are included as part of the total maximum amount of this contract. Contract overruns will not be paid.
7. **COST PROPOSAL:** Prepared by the CONSULTANT and/or sub-consultant, if applicable, and reviewed and approved by the DEPARTMENT is found in the following pages of Attachment D of this contract.

FEES

UNIT PRICE

1. **UNIT PRICE:** For all services and materials pertinent hereto and/or specifically described herein, except as otherwise explicitly cited, the DEPARTMENT agrees to pay the CONSULTANT for the work performed at the unit prices reviewed and approved by the DEPARTMENT'S Project Manager. Unit Prices include Direct Labor Expenses, Payroll Additives, Indirect Expenses, and Direct Non-salary Expenses and Profit.

The costs included in the Unit Price have been reviewed and limited to the costs which are allowable under the 2 CFR Part 200 Subpart E, as modified by Utah State law, administrative rules, regulations, or contract provisions.

Guest meals (meals paid by a Consultant or Consultant's employee for someone other than his/her self shall NOT be reimbursed unless previously approved in writing by the DEPARTMENT'S Project Manager.

2. **MODIFICATIONS:** In the event the DEPARTMENT requires changes of services which materially affect the scope of work or work plan, with a resulting material increase in cost to the CONSULTANT, a contract modification for additional compensation and time for completion shall be entered into by the parties hereto prior to making such change. Any such work done without prior agreement shall be deemed **not** covered in the compensation and time herein provided.
3. **PROGRESS PAYMENTS:** Progress payments are based upon the approved completed units and are made pursuant to certified invoices received.
4. **INVOICES:** The CONSULTANT will submit monthly payment requests promptly and no later than 45 calendar days after each monthly billing cycle. Invoices are to reflect charges as they apply to the appropriate contract, project, and account number, and must be properly certified and executed by an official legally authorized to bind the firm. The invoice must be substantiated with appropriate supporting documentation such as time sheets, labor reports, or cost accounting system print-out of employee time, receipts for direct expenses, and subconsultant invoices and supporting documentation that is reviewed and approved by the DEPARTMENT'S Project Manager and subject to final approval by the DEPARTMENT'S Comptroller's Office. The DEPARTMENT will make undisputed payments no later than 30-days after receiving CONSULTANT's invoices and progress reports for services performed. If an invoice is incorrect, defective or otherwise improper, the DEPARTMENT will notify CONSULTANT within 15 days of discovering the error(s). After the DEPARTMENT receives the corrected invoice, the DEPARTMENT will pay CONSULTANT within 30-days of receiving such invoice.

Payment requests for services performed on or before the last day of the Utah fiscal year (June 30), must be submitted no later than 30 calendar days after the billing cycle, see Utah Code Ann. § 63J-1-601.

The CONSULTANT acknowledges untimely billing may adversely affect the DEPARTMENT due to federal funding requirements in 41 CFR § 105 – 71.123, and/or the state fiscal constraints imposed upon it as a department of state government by the Budgetary Procedures Act, Utah Code Ann. § 63J-1-101 et seq. The CONSULTANT waives payment, and waives the right to bring action in law or in equity to recover payment for services, for any and all payment requests the DEPARTMENT does not receive from the CONSULTANT within the timeframe provided under this contract. *(Provision revised June 22, 2016.)*

5. **FINAL PAYMENT:** Final invoice payment will be released only after a project evaluation form has been completed, all materials and services associated with this contract have been reviewed and approved by the DEPARTMENT'S Project Manager and finalized by the DEPARTMENT'S Comptroller's Office.

The DEPARTMENT'S Project Managers and the DEPARTMENT'S Comptroller's Office have the right to hold the final invoice payment on certain projects when design and construction are performed by two separate Consultants or if there is a potential possibility of a design or construction error. The DEPARTMENT Comptroller's Office also has the right to hold the final invoice payment until the final audit is complete upon the request of the DEPARTMENT Project Manager.

6. **FINANCIAL SUMMARY:** The total maximum amount of disbursement pertinent to this contract is [Contract Amount](#). Contract overruns will **not** be paid.
7. **COST PROPOSAL:** The Cost Proposal prepared by the CONSULTANT and reviewed and approved by the DEPARTMENT'S Project Manager can be found in the following pages of Attachment D of this contract.

The Unit Price rates shown in the CONSULTANT'S Cost Proposal were negotiated and agreed upon by both parties of this contract. The CONSULTANT will invoice the DEPARTMENT using the negotiated unit price rates agreed upon and shown in the CONSULTANT Cost Proposal. These unit rates will be fixed for the period of this contract. Any changes must be approved by the DEPARTMENT and by written contract modification.

INSURANCE

As stated in Attachment B - Standard Terms and Conditions, services to be provided by the CONSULTANT under this contract are required to be covered by insurance. Insurance shall be maintained in force until all activities which are required by this contract or as changed by contract modification are completed and accepted by the DEPARTMENT.

Insurance	Waived	Expiration Date	Insurance Carrier	Policy Number	Each Occurrence Limit	General Aggregate Limit	Additional Endorsement
General Liability Insurance Coverage							
Automobile Liability Insurance Coverage							
Workers Compensation Insurance Coverage							
Qualified Health Insurance Coverage							
Valuable Papers Insurance Coverage							