Contract # 069015

STATE OF UTAH CONTRACT

1. **CONTRACTING PARTIES**: This contract is between the following agency of the State of Utah: Department of Transportation Agency Code: 810 Traffic Management, Division referred to as (STATE), and the following CONTRACTOR:

Deighton Associates Limited
Name

112 King Street East
Address

Ontario Canada LIC 1N5
City State Zip

LEGAL STATUS CONTRACTOR
[ ] Sole Proprietor
[ ] Non-Profit Corporation
[X] For-Profit Corporation
[ ] Partnership
[ ] Government Agency

Contact Person Vicki Deighton, Phone (905)-697 -2644 Email : vicki@deighton.com.
Federal Tax ID# 980182727 Vendor # 01452B Commodity Code # 91829000000 & 92045000000

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this contract is to provide:

Enhancements to the Asset Management System, Implement Maintenance Features in dTIMS CT, Develop work on the strategic level,, Develop Work (AM) - development work on the strategic level , Development Work (Structures_ As UDOT develops the key performance indexes for structures at the strategic level Follow Up Development Work (Safety and Mobility) - As UDOT develops the key performance indexes for safety and mobility .

3. PROCUREMENT: This contract is entered into as a result of the procurement process on Bid# SS05265.

4. CONTRACT PERIOD: Effective date 18 July 2005 Termination date 31 August 2007 unless terminated early or extended in accordance with the terms and conditions of this contract.

5. CONTRACT COSTS: CONTRACTOR will be paid a maximum of $ 250,000.00 for costs authorized by this contract.

6. **ATTACHMENT A**: Division of Purchasing's Standard Terms and Conditions
ATTACHMENT B: Scope of Work and Pricing
ATTACHMENT C: Special Terms and Conditions
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.

7. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED**:
a. All other governmental laws, regulations, or actions applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, and CONTRACTOR'S response to Bid #SS05265 dated 07/07/05.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR [signature] July 22, 2005
Contractor's signature Date

ROBERT PIANE, P.ENG., V.PRES.
Type or Print Name and Title

STATE [signature] 19 July 05
Kelvin G. Thacker, Procurement Services Manager Date

[signature] AUG 12 2005
Director, Division of Purchasing Date

CONTRACT RECEIVED AND PROCESSED BY DIVISION OF FINANCE AUG 15 2005
Director, Division of Finance Date

Denice McCarthy	(801) 965- 4761	(801) 965-4073	dmccarthy@utah.gov
Agency Contact Person	Telephone Number	Fax Number	Email Address

(Revision 08/26/2003)

SEP 16 2005 Entered

ATTACHMENT A

STANDARD TERMS AND CONDITIONS

1. **AUTHORITY:** Provisions of this contract are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the State to purchase certain specified services, and other approved purchases for the State.

2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this contract shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

4. **RECORDS ADMINISTRATION:** The Contractor shall maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records shall be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years, have been completed, whichever is later. The Contractor agrees to allow State and Federal auditors, and State Agency Staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made in accordance with 67-16-8, Utah Code Annotated, 1953, as amended.

6. **CONTRACTOR, AN INDEPENDENT CONTRACTOR:** The Contractor shall be an independent contractor, and as such, shall have no authorization, express or implied, to bind the State to any agreements, settlements, liability, or understanding whatsoever, and agrees not to perform any acts as agent for the State, except as herein expressly set forth. Compensation stated herein shall be the total amount payable to the Contractor by the State. The Contractor shall be responsible for the payment of all income tax and social security amounts due as a result of payments received from the State for these contract services. Persons employed by the State and acting under the direction of the State shall not be deemed to be employees or agents of the Contractor.

7. **INDEMNITY CLAUSE:** The Contractor agrees to indemnify, save harmless, and release the State of Utah, and all its officers, agents, volunteers, and employees third party, damages, injury, liability, suits, and proceedings arising out of the performance of this contract which are caused in whole or in part by the negligence of the Contractor's officers, agents, volunteers, or employees, but not for claims arising from the State's sole negligence.

8. **EQUAL OPPORTUNITY CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) 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, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment in the work place.

9. **SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of this contract is illegal and void shall not affect the legality and enforceability of any other provision of this contract, unless the provisions are mutually dependent.

10. **RENEGOTIATION OR MODIFICATIONS:** This contract may be amended, modified, or supplemented only by written amendment to the contract, executed by the same persons or by persons holding the same position as persons who signed the original agreement on behalf of the parties hereto, and attached to the original signed copy of the contract.

11. **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the State. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

12. **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given thirty (30) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

13. **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations and the amount due from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

14. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is E33399. The tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract.

15. **WARRANTY:** The contractor agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the State of Utah under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty

disclaimers from the seller are not app le to this contract unless otherwise specified and ally agreed upon elsewhere in this contract. In general, the contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the State has relied on the contractor's skill or judgment to consider when it advised the State about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the State has not been warned. Remedies available to the State include the following: The contractor will repair or replace (at no charge to the State) the product whose nonconformance is discovered and made known to the contractor in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the State of Utah may otherwise have under this contract.

16. **PUBLIC INFORMATION:** Contractor agrees that the contract will be a public document, and may be available for distribution. and Contractor gives the State express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

17. **DELIVERY:** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State except as to latent defects, fraud and Contractor's warranty obligations.

18. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. The Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the State. The State contract number and/or the agency purchase order number shall be listed on all invoices, freight tickets, and correspondence relating to the contract order. The prices paid by the State will be those prices listed in the contract. The State has the right to adjust or return any invoice reflecting incorrect pricing.

19. **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the Contractor will be remitted by mail unless paid by the State of Utah's Purchasing Card.

20. **PATENTS, COPYRIGHTS, ETC.:** The Contractor will release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this contract.

21. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the State.

22. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the State to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract. The State will issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages, if liquidated damages are listed in the contract; 4. Suspend Contractor from receiving future solicitations.

23. **FORCE MAJEURE:** Neither party to this contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

24. **PROCUREMENT ETHICS**: The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63-56-73, Utah Code Annotated, 1953, as amended).

25. **CONFLICT OF TERMS:** Contractor Terms and Conditions that apply must be in writing and attached to the contract. No other Terms and Conditions will apply to this contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: 1. State Standard Terms and Conditions; 2. State Special Terms and Conditions; 3. Contractor Terms and Conditions.

(Revision date: Nov 21, 2003)

Attachment B- Scope of work 3/1/2005

2005 - 2006 Asset Management Implementation

Task	Description	On - Stie	DAL	Cost	Travel	Total
5.1	Implement Maintenance Features in dTIMS CT	10	15	$35,475.00	$5,172.00	$40,647.00
5.2	Follow Up Development Work - AM	15	25	$56,375.00	$7,758.00	$64,133.00
5.3	Follow Up Development Work - Pavements	10	5	$22,825.00	$5,172.00	$27,997.00
5.4	Follow Up Development Work - Structures	10	5	$22,825.00	$5,172.00	$27,997.00
5.5	Follow Up Development Work - Safety and Mobility	10	5	$22,825.00	$5,172.00	$27,997.00
5.6	Upgrade to dTIMS CT Enterprise - 5 Users*				$0.00	$20,000.00
5.7	Upgrade to dTIMS CT Enterprise - 5 Users	5	10	$20,900.00	$2,586.00	$23,486.00
						$232,257.00

*dTIMS CT Enterprise Maintenance Fees are $3000 per licence

Task	Description
5.1	Implement Maintenance Features in dTIMS CT - include maintenance features from the new system. Need to determine which features are to be inlucded.
5.2	Follow Up Development Work (AM) - development work on the strategic level asset management system. Includes different optimizations based on developing performance measures and refinement of system condition indicators and performance goals.
5.3	Follow Up Development Work (Pavements) - As UDOT develops the key performance indexes for pavements at the strategic level to be used during cross asset optimization, the analysis configuration in the "stove pipe" (individual) systems within dTIMS CT and the individual systems need to be modified.
5.4	Follow Up Development Work (Structures_ As UDOT develops the key performance indexes for structures at the strategic level to be used during cross asset optimization, the analysis configuration in the "stove pipe" (individual) systems within dTIMS CT and the individual systems need to be modified.
5.5	Follow Up Development Work (Safety and Mobility) - As UDOT develops the key performance indexes for safety and mobility at the strategic level to be used during cross asset optimization, the analysis configuration in the "stove pipe" (individual) systems within dTIMS CT and the individual systems need to be modified.

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ATTACHMENT C
SPECIAL TERMS AND CONDITIONS

1. Payment Schedule: Payments to the Contractor shall be made bi-weekly after the submission of a detailed invoice.

2. Invoicing: The Contractor shall submit invoices for authorization to pay to:

   Utah Department of Transportation
   Attention : Michelle Verucchi
   Box 140100
   4501 South 2700 West
   Salt Lake City, Utah 84114-0100

   Payment of invoices will be sent via mail. The State reserves the right to correct invoices.

   THE CONTRACT NUMBER SHALL APPEAR ON ALL INVOICES FOR PAYMENTS

3. Wages: The Contractor shall be responsible for all applicable company wages in accordance with the Federal, State and local laws and ordinances.

4. Non-Assignment: The Contractor shall not sublet, assign or transfer any part of this contract without prior written approval from the Procurement Supervisor or the Procurement Manager of Utah Department of Transportation. The provision of monies due under this contract shall not be assignable without prior written approval from the Procurement Supervisor or the Procurement Manager of the Utah Department of Transportation.

   Complete Contract: This contract is intended by the parties as a final expression of their agreement, and supersedes all prior communications, representations and agreement, oral and written, between the parties with respect to the subject matter contained herein. The parties also intend this contract to be a complete and exclusive statement of the terms of their agreement. This contract may not be modified or terminated orally, and no claimed modification, rescission or waiver shall be binding on the STATE unless in writing, signed by a duly authorized representative of the STATE.

5. PRICE GUARANTEES The CONTRACTOR agrees the prices bid on services in this contract shall be guaranteed through completion of the project.

6. NOTIFICATION Notice given under this Contract shall be written, or sent by facsimile or other electronic means. Written notice shall be sent by registered or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination and provides proof of delivery to the sender. Facsimile or other

   electronic notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

If to CONTRACTOR:

Deighton Associates Limited
Vicki Deighton
112 King Street East
Ontario, Canada LIC1N5
905-697-2644
vicki@deighton.com

If to STATE:

Utah Department of Transportation
Attention: Michelle Verucchi
Box 140100
4501 South 2700 West
Salt Lake City, UT 84114-0100
mverucchi@utah.gov
Fax 801-965-4604

Also copies to:

also copies to:

Utah Department of Transportation
Attention: Denice McCarthy
Box 148260
4501 South 2700 West
Salt Lake City, UT 84114-8260
dmccarthy@utah.gov
Fax 801-965-4073

7. CHANGE IN PERSONNEL OR RESOURCES No change in personnel or resources assigned to this project will be permitted without prior written approval of STATE Project Manager.

8. RESPONSIBILITY FOR WAGES The CONTRACTOR is responsible for all applicable company wages in accordance with the federal, state and local laws and ordinances.

9. EMPLOYMENT OF STATE EMPLOYEES The CONTRACTOR agrees not engage in any way the services on this contract of any present or former STATE employee who was involved as a decision maker in the selection or approval process or who negotiated and/or approved billings or contract modification for this contract.

10. NON-COMPETE AGREEMENTS The CONTRACTOR represents that its officers and employees are free to contract with the STATE and are not subject to restrictions by the terms of their present or past employment including, but not limited to, an agreement not to compete for a period of time, unless disclosure has been made. CONTRACTOR must disclose to the STATE any possible conflicts, in writing, before the contract is signed, and

    the STATE will evaluate whether to continue with contract execution. The STATE may elect to terminate a contract immediately with CONTRACTOR who is subsequently determined to be subject to such restrictions, without liability to the STATE. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.

11. CONFIDENTIAL INFORMATION To the extent work under this contract requires the CONTRACTOR may be given access to confidential or proprietary business, technical, or financial information belonging to the STATE. The CONTRACTOR shall, after receipt thereof, treat such information as confidential. Both parties shall maintain, as confidential,

and shall not disclose to any person outside its employ, nor use for purposes other than performance of this Contract, any specifications, drawings, blueprints, data, business information, or other confidential information which is learned by virtue of this Contract, except where required by law. CONTRACTOR agrees not to appropriate such information to their own use or disclose such information to other parties unless specifically authorized by the STATE in writing. The foregoing obligations, however, shall not apply to:

a. Information, which, at the time of receipt by the CONTRACTOR, is in public domain.

b. Information, which is published after receipt by the CONTRACTOR, or otherwise becomes part of the public domain through no fault of the CONTRACTOR.

c. Information which the CONTRACTOR can demonstrate was already in its possession at
the time of receipt, and was not acquired directly or indirectly from the STATE.

d. Information which the CONTRACTOR can demonstrate was received from a third party who did not require the CONTRACTOR to hold such information in confidence.

12. QUALITY OF SERVICES CONTRACTOR represents to STATE that it is experienced in and thoroughly familiar with all aspects of the services required hereunder and is properly qualified as applicable and is equipped, organized, and financially able to perform the services.

    No changes in the services to be provided by CONTRACTOR under this Contract shall be made without STATE prior written approval.

13. DEVELOPMENT STANDARDS CONTRACTOR agrees that all software development tools used for design, development, source code control and programs, will follow STATE standard. All software development tools must receive prior approval by the Project Manager before being used in the development/design phase of the project.

14. PROGRESS REPORTS The CONTRACTOR will submit progress reports at a minimum bi-monthly at a maximum monthly, following the format established by the STATE in sufficient detail to document the progress of the work and support the monthly claim for payment (time sheets listing the hours worked on per task). The report is to be submitted at the same time as an invoice. Payments will not be made without a supporting progress report.

15. CONFERENCES The CONTRACTOR will prepare and present written information and studies to the STATE so it may evaluate the features and progress of the work. Either party may request a conference at a place designated by the STATE. The conferences shall also include inspection of the CONTRACTOR services and work products when requested by the STATE.

    In regard to consultative work performed hereunder, the CONTRACTOR may be required to perform such additional work, during the warranty period, as is necessary to ensure any deliverable product hereunder meets the functional specifications as proposed by

CONTRACTOR and approved by the STATE, or as otherwise agreed in writing as a part of this contract, without undue delays and without additional cost to the STATE.

16. PROJECT REVIEWS It is understood and agreed authorized representatives of STATE and, when federal Funds are used, the Federal Highway Administration, shall have the right to review and inspect the work in process, and the CONTRACTOR facilities, at any time during normal business hours or by appointment.

17. RIGHT OF FUTURE DEVELOPMENT The STATE reserves all rights to future development of this system, and is in no way required to obtain the services of the CONTRACTOR for these developments or release these developments to the CONTRACTOR.

18. SIMILAR PRODUCTS Should the STATE independently design, develop, or acquire ideas and concepts identical or similar to those provided by or contained in the CONTRACTOR product. CONTRACTOR agrees this Contract shall not prevent STATE from using such ideas or concepts to design, develop, or acquire hardware or software for its use, provided STATE does not copy the CONTRACTOR product.

19. OWNERSHIP OF WORK PRODUCT CONTRACTOR agrees that any and all work product shall be the sole and exclusive property of STATE.

20. CONTRACTOR further agrees that STATE is and shall be vested with all rights, title, and interests, including patent, copyright, trade secret, and trademark rights in CONTRACTOR work product produced under this Contract. CONTRACTOR shall not encumber said work product in any way or act(s) inconsistent with STATE title thereto.

21. CONTRACTOR is required to execute all papers including patent applications, inventing assignments, and copyright assignments, and otherwise shall assist STATE at STATE expense to perfect in STATE rights, and other interests in CONTRACTOR work product expressly granted to STATE under this Contract. All services, information, computer elements, programs, reports and other deliverables, which may be created and patented or copyrighted under any resulting contract, are the property of STATE, and shall not be used or released by the CONTRACTOR or any other person, except with prior written permission of STATE. If any material including hardware or software, which is currently held, patented, or copyrighted becomes a functioning part of the product delivered, STATE must be notified in advance in writing. STATE will give written approval to proceed.

22. All documents and data pertaining to work required by this contract will be the property of he STATE and must be delivered to the STATE within 10 working days after termination of the contract, regardless of the reason for termination; and without restriction or limitation to their further use. Cost to all the above items will be considered as included in the basic contract compensation of the work as described.

23. INTELLECTUAL PROPERTY INDEMNITY Upon STATE written notification to CONTRACTOR, CONTRACTOR shall defend, at its expense, any claim against STATE alleging the Services, or any part thereof, infringe on any patent, copyright, trademark, trade secret, mask work, or other intellectual property interest in any country, and shall pay all costs and damages awarded. If an injunction against STATE use, sale, lease, license, other distribution of the Services or Product, or any part thereof, results from such a claim

(or, if STATE reasonably believes such an injunction is likely), CONTRACTOR shall, at its expense, (and in addition to the CONTRACTOR other obligations hereunder) and as STATE requests, obtain for STATE the right to continue using, selling, leasing, licensing, or otherwise non-infringing but functionally equivalent. The provisions of this section shall not apply to any claim for infringement resulting solely from CONTRACTOR compliance with STATE detailed design specifications, where provided.

24. FACILITIES AND MATERIALS The CONTRACTOR and all personnel working under this contract shall not acquire, borrow, copy, or use in any manner software, documentation, or data on any STATE data processing facility for use other than as required to complete this contract.

25. SUSPENSION OF WORK Should the STATE desire to suspend the work, but not terminate the contract, this will be done by written confirmation. The work may be reinstated upon two (2) weeks advance written notice from the STATE. The STATE understands any such suspension of the work may affect both the time of performance and price to complete the work when reinstated.

26. ASSIGNMENT OF CONTRACT The CONTRACTOR shall not sublet, assign or transfer any part of this contract without prior written approval from STATE. Neither shall the provision of monies due under this contract be assignable without prior written approval of STATE.

27. FAILURE TO COMPLETE At any time the CONTRACTOR determines the contract work cannot be completed within the specified time or budget, the CONTRACTOR must notified STATE in writing, immediately. The STATE may, at its sole discretion, extend the contract by written modification.

28. NON-PERFORMANCE If, at any time, CONTRACTOR fails to demonstrate the required expertise (as represented in the CONTRACTOR proposal) or fails to meet acceptable standards of performance, the STATE reserves the right to require the CONTRACTOR to replace individual(s) with a competent individual(s). The STATE Project Manager must approve this replacement. If the CONTRACTOR fails to accomplish project objectives or meet schedule commitments established in meetings with the STATE Project Manager, this contract may be canceled immediately. If the STATE elects to terminate the contract for this reason, the STATE will supersede paragraph #12 in Attachment A - Standard Terms and Conditions, and will not provide 30 days prior notice to the CONTRACTOR.

29. TERMINATION The occurrence of any of the following constitutes a breach by CONTRACTOR unless corrected by CONTRACTOR within two (2) weeks.

    CONTRACTOR failure to perform services and/or deliver product on time.

    Services performed and/or product delivered by CONTRACTOR does not conform to the terms set forth in this Contract.

    CONTRACTOR fails to perform any material provision of this Contract.

CONTRACTOR assigns this Contract, or any obligation or rights hereunder. (The term "assigns" to include, without limitation, a transfer of majority.)

CONTRACTOR sells or merges with a third-party (not a parent or subsidiary company) without the prior written consent of STATE.

CONTRACTOR becomes insolvent or makes an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of CONTRACTOR assets.

CONTRACTOR shall cure any of the above breaches and notify STATE of such cure within two (2) weeks from receipt of a notice to cure from STATE. If CONTRACTOR fails to cure, STATE may terminate this Contract by giving CONTRACTOR written notice. STATE shall have no liability to CONTRACTOR thereafter except for payment of any balance due for conforming services performed prior to the date of STATE notice to cure. STATE may, at its option and without regard to CONTRACTOR ability to cure, terminate this Contract for cause in the event of any second or subsequent instances of the above breaches by CONTRACTOR

30. TERMINATION FOR OTHER THAN NON-PERFORMANCE If the STATE terminates for reasons other than non-performance, the CONTRACTOR is relieved of any performance responsibilities on the project, and the withheld performance guarantee amount will be released by the STATE. The estimated completion of projects may

    overlap in new fiscal years. (STATE fiscal year is from July 1, to June 30). If funding is not allocated for individual projects, which overlap into the new fiscal year, the project will be automatically terminated on June 30th without written notice to contract.

31. FORUM FOR ENFORCEMENT Any controversy or claim arising out of, in connection with, or relating to this Contract or a breach thereof shall be settled by arbitration under the arbitration rules of the American Arbitration Association, Utah Board. The Statutes of the State of Utah shall govern the arbitration proceeding and the proceeding shall be held in Salt Lake City, Utah. Anything to the contrary contained in the above mentioned rules and statutes notwithstanding, the parties consent that any papers, notices, or process necessary or proper for the institution or continuance of, or relating to any arbitration proceeding, or for the confirmation of an award and entry of judgment on any award made, including appeals in connection with any judgment or award, may be served on each of the parties by registered mail addressed to the party at the principal office of the party or by personal

    service on the party in or without the above mentioned state. The parties hereby recognize and consent to the above mentioned arbitration association's jurisdiction over each and every one of them.

32. DISPUTES Any dispute arising under this Contract, which is not resolved, by the STATE and CONTRACTOR shall be decided by a court of law under the terms of Section 27. Forum for Enforcement. Pending settlement of the final decision by the court, CONTRACTOR shall proceed diligently with the performance of the Contract in accordance with STATE direction.