



SUPPLEMENTAL GENERAL CONDITIONS

August 31, 2012

ARTICLE 1. SENATE BILL 220 - 2008

The 2008 Utah Legislature passed Senate Bill 220 entitled "Cause of Action for Defective Construction" which law became effective on May 5, 2008. There are rulings from the Utah Supreme Court that apply to the rights of cause of action for construction defects. Also, the Constitution of the State of Utah provides the following:

Sec. 11. [Courts open - Redress of injuries.]

"All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party. "

To the fullest extent permitted by law, and for the consideration stated for the work and/or services required under this Agreement (Contract), the following shall apply:

ARTICLE 2. CONSTRUCTION CONTRACTS

2.1 "Entities under the Contractor" shall mean any and all agents, independent contractors, subcontractors, suppliers, manufacturers and providers at every tier under the Contractor.

2.1.1 In addition to all other remedies allowed by law and under this Contract, the Owner may recover damages to property or personal injury against the Contractor and all Entities under the Contractor for failure to perform in accordance with the Contract Documents, whether intentionally or through negligence, and such damages may include, along with all other damages allowed by law and

under this Contract, damages related to the diminution in value of the constructed property because of the defective construction. The Owner shall be entitled to all such damages for such negligent or intentional defective construction even if it is due to the failure of the construction to function as designed.

2.1.2 Every Entity under the Contractor has an obligation to comply with the requirements of this Contract, including the indemnification of the Owner for negligent or intentional construction defects and to provide materials and construction that meets all expressed or implied warranties under the Uniform Commercial Code, including fitness for a particular purpose, merchantability, workmanlike construction (work completed in a skillful manner and is non-defective) and habitability, and is performed with the reasonable care to protect persons and property. In regard to toxic, hazardous materials and other matters of construction where applicable statutory and case law allows, strict liability shall apply.

2.1.3 The Contractor shall make these requirements applicable to every Entity under the Contractor. The Contractor hereby assigns to the Owner all rights the Contractor has or shall acquire against each and every Entity under the Contractor. The Contractor shall require said assignment from each and every Entity under the Contractor, and if the Contractor or any of said Entities under the Contractor fails to provide such assignment, then Contractor and the Entity under the Contractor that failed to obtain the assignment shall be responsible for any liability or damages to the Owner that the Owner would have been entitled to had such assignment been in place.

2.1.4 The Owner may recover damages, including but not limited to, damages to person(s) or

property, economic damages, including but not limited to the cost of repairs and/or diminution in value of property, directly for any negligent, intentional or willful breach of a duty allowed by law against any of the agents, independent contractors, subcontractors, suppliers, manufacturers and providers at any tier under the Contractor directly, regardless whether the Owner has privity of contract with any of said entities and without having to bring the action against the Contractor, or any entity at a higher tier than the entity from which the Owner seeks recovery.

2.1.5 The Contractor and/or every Entity under the Contractor shall be liable to the Owner for any breach of an independent duty of care under tort law, even if: the Owner has suffered only economic losses; there is no privity of contract with the Contractor or Entity under the Contractor at fault; and/or even if such duty would not otherwise arise out of a written contract. [Note: *Hermansen v. Tasulis*, 48 P.3rd 2335, (Utah 2002)].

2.1.6 In addition to all other remedies allowed by law and under this Contract, the Contractor and/or its agents, independent contractors, subcontractors, suppliers, manufacturers and providers at any tier shall be liable for fraudulent concealment whenever: (1) there is a legal duty to communicate information, including, but not limited to, the duty to disclose information which the entity at any tier knows or should know makes the land or facility unsuitable for the intended Project under this Contract; (2) the nondisclosed information is known to the party failing to disclose; and (3) the nondisclosed information is material. This liability for fraudulent concealment shall entitle the Owner to an action against any such entity at any tier even if the Owner has only suffered economic losses and even if such duty would not otherwise arise out of a written contract. [NOTE: *Yazd v. Woodside Homes Corporation*, 143 P.3rd 283 (Utah 2006),

2.1.7 To the extent any of the above provisions are inconsistent with any defenses of the Contractor and/or any Entity under the Contractor, the Contractor has waived the exercise of such rights by entering into this Contract and being entitled to the consideration of this Contract and the Contractor shall require such waiver for Entity under the Contractor.

2.1.8 These Supplemental General Conditions, or any provision herein, shall not be construed in any manner which would create a contract between the Owner and any Entity under the Contractor, except for the assignment of rights provided by the any Entity under the Contractor and the ability of the Owner to seek remedies against such Entity under the Contractor as provided for in these Supplemental General Conditions.

ARTICLE 3. PROFESSIONAL SERVICES AND DESIGN AGREEMENTS RELATED TO DESIGN OF CONSTRUCTION PROJECTS

3.1 **Entities under the Designer”** shall mean any and all agents, independent contractors, subcontractors, consultants, subconsultants, suppliers, manufacturers and providers at every tier under the Designer.

3.1.1 In addition to all other remedies allowed by law and under this Agreement, the Owner may recover damages to property or personal injury against the Designer (or Consultant, etc. whatever is applicable to the agreement) for failure to perform in accordance with this Agreement, whether intentionally or through negligence, and such damages may include, along with all other damages allowed by law and under this Agreement, damages related to the diminution in value of the resulting constructed property because of negligence or fault in performance under this Agreement. The Owner shall be entitled to all such damages for such negligent or intentional defective construction even if it is due to the failure of the construction to function as designed, when such is related to the negligent or intentional act of the Designer or Entity under the Designer.

3.1.2 Every Entity under the Designer has an obligation to comply with the requirements of this Agreement including the indemnification of the Owner for negligent or intentional performance under this Agreement including, but not limited to any resulting design or construction defects, and the provision of materials or construction related to any or all implied or express warranties under the Uniform Commercial Code, including fitness for a particular purpose, merchantability, design that can result in workmanlike construction (work completed in a skillful manner and is non-defective) and habitability, and is performed with the reasonable

care to protect persons and property. In regard to toxic or hazardous materials, and other matters of construction where applicable statutory and case law allows, strict liability shall apply.

3.1.3 The Designer shall make these requirements applicable to every Entity under the Designer. The Designer hereby assigns to the Owner all rights the Designer has or shall acquire against each and every Entity under the Designer. The Designer shall require said assignment from each and every Entity under the Designer, and if the Designer or any of said Entities under the Designer fails to provide such assignment, then Designer and the Entity under the Designer that failed to obtain the assignment shall be responsible for any liability or damages to the Owner that the Owner would have been entitled to had such assignment been in place.

3.1.4 The Owner may recover damages, including but not limited to, damages to person(s) or property, economic damages, including but not limited to the cost of repairs and/or diminution in value of property, directly for any negligent, intentional or willful breach of a duty allowed by law against any of the agents, independent contractors, subcontractors, consultants, subconsultants, suppliers, manufacturers and providers at any tier under the Designer directly, regardless whether the Owner has privity of contract with any of said entities and without having to bring the action against the Designer, or any entity at a higher tier than the entity from which the Owner seeks recovery.

3.1.5 The Designer and/or every Entity under the Designer shall be liable to the Owner for any breach of an independent duty of care under tort law, even if the Owner has suffered only economic losses; there is no privity of contract with the Designer or Entity under the Designer at fault; and/or even if such duty would not otherwise arise out of a written contract. [Note: *Hermansen v. Tasulis*, 48 P.3rd 2335, (Utah 2002)].

3.1.6 In addition to all other remedies allowed by law and under this Agreement, the Designer and/or its agents, independent contractors, subcontractors, consultants, subconsultants, suppliers, manufacturers and providers at any tier shall be liable for fraudulent concealment whenever: (1) there is a legal duty to communicate information, including, but not limited to, the duty to disclose information which the entity at any tier knows or should know

makes the land or facility unsuitable for the intended Project under this Agreement; (2) the nondisclosed information is known to the party failing to disclose; and (3) the nondisclosed information is material. This liability for fraudulent concealment shall entitle the Owner to an action against any such entity at any tier even if the Owner has only suffered economic losses and even if such duty would not otherwise arise out of a written contract. [NOTE: *Yazd v. Woodside Homes Corporation*, 143 P.3rd 283 (Utah 2006),

3.1.7 To the extent any of the above provisions are inconsistent with any defenses of the Designer and/or any Entity under the Designer, the Designer has waived the exercise of such rights by entering into this Agreement and being entitled to the consideration of this Agreement and the Designer shall require such waiver for every Entity under the Designer.

3.1.8 These Supplemental General Conditions, or any provision herein, shall not be construed in any manner which would create a contract between the Owner and any Entity under the Designer, except for the assignment of rights provided by the any Entity under the Designer and the ability of the Owner to seek remedies against such Entity under the Designer as provided for in this these Supplemental General Conditions.



SUPPLEMENTAL GENERAL CONDITIONS FOR CONSTRUCTION AGREEMENTS

Article 1. Intent and Purpose: Senate Bill 220 – 2008.

The 2008 Utah Legislature passed Senate Bill 220 entitled “Cause of Action for Defective Construction” which law became effective May 5, 2008 (hereinafter “SB220”). The intent purpose of Article 1 through 3 of these Supplement General Conditions is to provide the necessary provisions to the General Conditions as a result of such Bill.

Article 2. “Entities under the Contractor” shall mean any and all agents, independent contractors, subcontractors, suppliers, manufacturers and providers at every tier under the General Contractor.

Article 3. General Provisions

- 31 Conditions.** The General Conditions impose duties and performance obligations on the parties. This includes, but is not limited to, the provisions of Article 5.2.1 (regarding subcontractor’s compliance with Contract Documents), Article 4.13 (indemnification which discusses acts, omissions, and negligence responsibility) and other provisions of the General Conditions which list many performance obligations of the General Contractor and those under the General Contractor.
- 32 Third Party Beneficiary.** Utah Valley University shall be an intended third party beneficiary to all contracts entered into with Entities under the Contractor. Upon written request by Utah Valley University, Utah Valley University shall be entitled to obtain copies of all such contracts. The General Contractor shall be responsible for assuring that all such third party beneficiary agreements are in place and shall bear the responsibility for any lack of required language in any contracts with an Entity under the Contractor which does not contain this required provision.
- 33 “Economic Loss Rule.”** The “Economic Loss Rule” as it has been referred to in Utah law shall be deemed to be interpreted in accordance with prevailing Utah law.

- 34 Toxic Torts.** “Defective Construction” for purposes of any limitation of any cause of action or right as contemplated by SB220 does not, under these Supplemental General Conditions and for purposes of any Entities under the Contractor, include the use or installing of a defective or inherently dangerous, hazardous or toxic product, substance, or material. Utah Valley University has third party beneficiary rights and other rights allowed by law to pursue a direct cause of action against the manufacturer and/or distributor of such defective or inherently dangerous, hazardous or toxic product, substance or material, except that the General Contractor and other subcontractors, exclusive of manufacturers and distributors, under the General Contractor shall not be responsible to Utah Valley University for said “product, substance or material” unless the General Contractor or such subcontractor knew or should reasonably have known that the product, substance or material was defective or inherently dangerous, hazardous or toxic at the time it was provided or installed on the Project.
- 35 Subsection 3 of SB 220.** For purposes of Subsection (3) of SB 220, the phrase “property damage” shall be deemed to refer to damage to “other property” meaning property that is other than the exact specific construction defect itself.
- 36 “Failure of the Construction to Function as Designed.”** The language “failure to function as designed” as used in SB 220 shall not be deemed to refer to the failure of the construction to be constructed in accordance with the Contract Documents.
- 37 Independent Duty.** Utah Valley University maintains the right to pursue a cause of action against the General Contractor and directly against any Entities under the Contractor, for violation of any independent duty owed to Utah Valley University.
- 38 Not create Contract Right by Entity under the Contractor with Utah Valley University.** These Supplemental General Conditions shall not be construed in any manner which would create a contract between Utah Valley University and any Entity under the Contractor, except for the Third Party Beneficiary rights of Utah Valley University provided herein. Any pursuit of a claim by an Entity under the Contractor, including payment claims, shall be maintained either against the payment bond or the upper tier Contractor in accordance with Utah law.

Article 4. Warranties and Obligations

Every Entity under the Contractor has an obligation to comply with the requirements of this Contract, including the indemnification of the Owner for negligent or intentional construction defects and to provide materials and construction that meets all express or implied warranties under the Uniform Commercial Code, including fitness for a particular purpose, merchantability, workmanlike construction (work completed in a skillful manner and is non-defective) and habitability, and is performed with the reasonable care to protect persons and property. In regard to toxic, hazardous materials and other matters of construction where applicable statutory and case law allows, strict liability shall apply.



SUPPLEMENTAL GENERAL CONDITIONS FOR DESIGN AGREEMENTS

Article 1. Intent and Purpose: Senate Bill 220 – 2008.

The 2008 Utah Legislature passed Senate Bill 220 entitled “Cause of Action for Defective Construction” which law became effective May 5, 2008 (hereinafter “SB220”). The intent purpose of these Supplement General Conditions is to provide the necessary provisions to the General Conditions as a result of such Bill.

Article 2. “Entities under the Designer” shall mean any and all agents, independent contractors, consultants, sub-consultants, subcontractors, suppliers, manufacturers and providers at every tier under the Designer.

Article 3. General Provisions

3.1 Design Agreement. The Design Agreement for the subject Project imposes duties and performance obligations on the parties. This includes, but is not limited to, the standard of care provisions provided in said Design Agreement.

3.2 Third Party Beneficiary. Utah Valley University shall be a third party beneficiary to all contracts entered into with Entities under the Designer. Upon written request by Utah Valley University, Utah Valley University shall be entitled to obtain copies of all such contracts. The Designer shall be responsible for assuring that all such third party beneficiary agreements are in place and shall bear the responsibility for any lack of required language in any contracts with an Entity under the Designer which does not contain this required provision.

3.3. “Economic Loss Rule.” The “Economic Loss Rule” as it has been referred to in Utah law shall be deemed to be interpreted in accordance with prevailing Utah law.

- 34 Toxic Torts.** “Defective Construction” for purposes of any limitation of any cause of action or right as contemplated by SB220 does not, under these Supplemental General Conditions and for purposes of any Entities under the Designer, include the use or installing of a defective or inherently dangerous, hazardous or toxic product, substance, or material. Utah Valley University has third party beneficiary rights and other rights allowed by law to pursue a direct cause of action against the manufacturer and/or distributor of such defective or inherently dangerous, hazardous or toxic product, substance or material, except that the Designer and other consultants/sub-consultants under the Designer, exclusive of manufacturers and distributors, shall not be responsible to Utah Valley University for said “product, substance or material” unless the Designer or such consultants/sub-consultants knew or should reasonably have known that the product, substance or material was defective or inherently dangerous, hazardous or toxic at the time it was made a part of the Contract Documents by the Designer.
- 35 Subsection 3 of SB 220.** For purposes of Subsection (3) of SB 220, the phrase “property damage” shall be deemed to refer to damage to “other property” meaning property that is other than the exact specific construction defect itself.
- 36 “Failure of the Construction to Function as Designed.”** The language “failure to function as designed” as used in SB 220 shall not be deemed to refer to the failure of the construction to be constructed in accordance with the Contract Documents.
- 37 Independent Duty.** Utah Valley University maintains the right to pursue a cause of action against the Designer and directly against any Entities under the Designer, for violation of any independent duty owed to Utah Valley University.
- 38 Not create Contract Right by Entity under the Designer with Utah Valley University.** These Supplemental General Conditions shall not be construed in any manner which would create a contract between Utah Valley University and any Entity under the Designer, except for the Third Party Beneficiary rights of Utah Valley University provided herein. Any pursuit of a claim by an Entity under the Designer, including payment claims, shall be maintained against the upper tier entity in accordance with Utah law.



SUPPLEMENTAL GENERAL CONDITIONS FOR HEALTH INSURANCE

Article 1. Intent and Purpose.

Current law: House Bill 282, 2016 Utah Legislative Session. Legislative History: The 2009 Utah Legislature passed House Bill 331 entitled “Health Reform – Health Insurance Coverage in State Contracts” which law became effective July 1, 2009. This bill has been amended by HB20 of the 2010 Utah Legislative Session, HB 128 of the 2011 Utah Legislative Session as well as HB 282 of the 2016 Utah.

These laws require certain state entities, including Utah Valley University, to require a contractor who contracts with the state entity to offer the contractor’s employees qualified health insurance coverage as defined in Utah Code Annotated (UCA) 26-40-115, and in accordance with the commercially equivalent benchmark provided by the Department of Health, the CHIP commercial benchmark for FY 2016 and posted on the following URL:

<http://www.health.utah.gov/chip/PDF/2016Benchmark.pdf>, in accordance with UCA 26- 40-115(2), during the duration of the contract if the contract is over a certain amount, and if the contract is a construction and/or or design contract. The intent of the Articles of these Supplemental General Conditions is to provide the necessary provisions to the General Conditions as a result of such Bills. The purpose of this Supplemental General Conditions for Health Insurance is to comply with UCA 63A-5-205 as well as Utah Code Administrative Rule R23-23 which are both hereby incorporated by reference herein. In case of conflict between UCA 63A-5-205 and Rule R23-23, UCA 63A-5-205 shall control.

Article 2. Applicability of these Supplemental General Conditions.

This Supplemental General Conditions for Health Insurance only applies to those contracts as required by UCA 63A-5-205.

As stated in UCA 63A- 5-205:

- (1) Except as provided in UCA 63A-5-205(4) below, UCA 63A-5- 205(3) applies to all design or construction contracts entered into by Utah Valley University on or after November 1, 2017, and
 - (a) applies to a prime contractor if the prime contract is in the amount of 2,000,000 or greater at the original execution of the contract; and
 - (b) applies to a subcontractor if the subcontract is in the amount of \$1,000,000 or greater at the original execution of the contract.
- (2) UCA 63A-5-205(3) does not apply if:

- (a) the application of UCA 63A-5-205(3) jeopardizes the receipt of federal funds;
- (b) the contract is a sole source contract;
- (c) the contract is an emergency procurement;
- (d) to a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the threshold required by UCA 63A-5-205(3).

(3) A person who intentionally uses change order or contract modifications to circumvent the requirements of UCA 63A-5-205(3) is guilty of an infraction.

Article 3. Definitions.

The following definitions apply to this Supplemental General Conditions for Health Insurance:

3.1 "Contractor" means the person/entity under direct contract with Utah Valley University herein. If the direct contract includes a Design Professional, then the Design Professional is a "Contractor" for purposes of this Supplemental General Conditions for Health Insurance.

3.2 "Design Professional" means the Architect or Engineer, its Sub-consultants or Subcontractors at any tier, or any of their agents, employees, including those employed directly or indirectly, or other persons or entities for whose acts the Design Professional or its Sub-consultants/Subcontractors at any tier may be liable.

3.3 "Employee(s)" means an "employee," "worker" or "operative" as defined in UCA 34A-2-104 who:

- (i) works at least 30 hours per calendar week; and
- (ii) Meets employer eligibility waiting requirements for health care insurance which may not exceed the first day of the calendar month following 60 days from the date of hire.

3.4 "Health benefit plan" means the same as that term is defined in UCA 31A-1-301.

3.5 "Qualified health insurance coverage" means the same as that term is defined in UCA 26-40-115.

3.6 "Subcontractor" means the same as that term is defined in Section 63A-5-208.

3.7 "State" means the State of Utah.

3.8 "UVU" means Utah Valley University

3.9 "Director" includes an authorized designee of the Director of Procurement and Contracts of Utah Valley University.

Article 4. Health Insurance Certification.

4.1 A Contractor (including Design Professional) shall demonstrate compliance with UCA 63A-5-205 (6) (a) or (b) at the time of execution of each initial contract described in UCA 63A-5-205(3). The compliance is subject to an audit by DAS, UVU or the Office of the Legislative Auditor General. A Contractor (including Design Professional) subject to UCA Section 63A-5-205(3) shall demonstrate to the director that the Contractor has and will maintain an offer of qualified health insurance coverage for the Contractor's employees and employees' dependents. Such Certification shall be on the form provided by Utah Valley University.

4.2 If a subcontractor of the contractor is subject to Subsection (3) of UCA 63A-5-205, the contractor shall:

- (a) place a requirement in the subcontract that the subcontractor shall obtain and maintain an offer of qualified health insurance coverage for the subcontractor's employees and the

employees' dependents during the duration of the subcontract; and

(b) certify to the director that the subcontractor has and will maintain an offer of qualified health insurance coverage for the subcontractor's employees and the employees' dependents during the duration of the prime contract.

4.3 The actuarially equivalent determination required for the qualified health insurance coverage is met by the Contractor if the Contractor provides UVU with a written statement of actuarial equivalency, which is no more than one year old, regarding the contractor's offer of qualified health coverage from an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates;

Rule R-23-23. (this will be updated by the Building Board to comply with HB 282).



CERTIFICATION OF COMPLIANCE WITH EMPLOYEE/ SUBCONTRACTOR QUALIFIED HEALTH INSURANCE COVERAGE

November 1, 2017

UTAH VALLEY UNIVERSITY PROJECT NAME: _____

UTAH VALLEY UNIVERSITY CONTRACT NO: _____

The undersigned Prime Contractor/Prime Designer for the above-referenced project, hereby certifies to the Director of Utah Valley University that the Prime Contractor/ Prime Designer that has a contract of \$2,000,000 or greater at the original execution of the contract and any Subcontractor/Design Sub-consultant that has a subcontract of \$1,000,000 or greater at the original execution of the contract, will maintain an offer of qualified health insurance coverage for their respective employees and the employee's dependents as required by Utah Code Annotated (UCA) 63A-5-205 and Utah Administrative Code Rule R23-23, throughout the contract period for the Project specified above. In case of conflict between UCA 63A-5-205 and Rule R23-23, UCA 63A-5-205 shall control.

Attached is a written statement of actuarial equivalency, which is not more than one year old, from either an actuary selected by the contractor or the contractor's insurer, or an underwriter who is responsible for developing the employer group's premium rates. I will be responsible for collecting the statements as required by law from any of my subcontractors at any tier that must do so.

Penalties for noncompliance are provided in UCA 63A-5-205 and Utah Administrative Code Rule R23-23.

That the contractor's compliance is subject to an audit by Utah Valley University or the Office of the Legislative Auditor General.

Actuary equivalency must be in accordance with the commercially equivalent benchmark provided by the Department of Health, the CHIP commercial benchmark for FY 2016, and posted on the following URL: <http://www.health.utah.gov/chip/PDF/2016Benchmark.pdf>, in accordance with UCA 26-40-115(2), which is also posted for convenience on UTAH VALLEY UNIVERSITY's website. The health insurance must be available upon the first day of the calendar month following sixty (60) days from the date of hire.

The Supplemental General Conditions for Health Insurance, posted on the UTAH VALLEY UNIVERSITY website at <https://www.uvu.edu/procurement/terms/index.html> are hereby incorporated by reference herein.

PRIME CONTRACTOR/PRIME DESIGN FIRM: _____

Authorized Signature: _____ Title: _____

Date: _____

Please type/print name clearly

ATTACHMENT: Written Statement of Actuarial Equivalency

NOTE:

Applies to a prime contractor (and design professional) if the prime contract is in the amount of \$2,000,000 or greater; and

(ii) Applies to a subcontractor (and sub-consultant of design professional) if the subcontract is in the amount of \$1,000,000 or greater.

Does not apply:

(i) if the application of this jeopardizes the receipt of federal funds;

(ii) if the contract is a sole source contract;

(iii) if the contract is an emergency procurement; or

(iv) a change order as defined in Section 63G-6a-103, or a modification to a contract, when the contract does not meet the threshold required by Subsection (3) of UCA 63A-5-205 (a).

INFRACTION NOTICE: UCA 63A-5-205(5): A person who intentionally uses change order or contract modifications to circumvent the requirements of Subsection (3) of UCA 63A-5-205 is guilty of an infraction.



SUPPLEMENTAL GENERAL CONDITIONS FOR DRUG AND ALCOHOL TESTING DESIGN AND/OR CONSTRUCTION CONTRACTS

1. These Supplemental General Conditions shall only apply to design or construction contracts in compliance with UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7. (Note: the Administrative Rule is anticipated to have an effective date in early July, 2010 and will upon its being effective apply to those design and construction contracts issued on or after July 1, 2010, and the Statute itself is effective on July 1, 2010.) All applicable provisions of UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7 are incorporated herein by reference as if fully set forth herein. The provisions below provide some, but not all of the provisions of said statute and administrative rule. The absence of the recitation of a provision of UCA Section 63G-6-604 or Utah Administrative Code Rule R23-7 below, shall not lessen its importance. Contractors and Designers are encouraged to read the complete UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7 in order to assure compliance with all the applicable provisions.

2. Definitions. For the purpose of these Supplemental General Conditions, the definitions in UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7 shall apply. For convenience, the following definitions are provided below:

a. **“Contractor” for purposes of these Supplemental General Conditions includes the Prime Contractor, a Designer (Architect/Engineer), and any of their subcontractors, consultants or sub-consultants at any tier involved in design and/or construction. “Contractor” for purposes of these Supplemental General Conditions does not include a supplier who provide only materials, equipment or supplies to a Contractor, Designer or any of their subcontractors, consultants or sub-consultants at any tier.**

b. "Covered Individual" means an individual who: (i) on behalf of the Contractor provides services directly related to design or construction under the contract; and (ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract

3. Contractor shall have a drug and alcohol testing policy in accordance with UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7 during the period of the contract that applies to the “Covered Individuals” hired by the Contractor. Contractor shall post in one or more conspicuous places notice

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to “Covered Individuals” hired by the Contractor that the Contractor has the drug and alcohol testing policy described in UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7-4(1)(a)(i). Said “Covered Individuals” shall be subject to random drug and alcohol testing under said policy if at any time during the period of the contract there are ten (10) or more “Covered Individuals” hired by the Contractor.

4. Contractor hereby certifies the following:

a. By executing this Contract, that the Contractor, including all entities included in the definition of Contractor in paragraph 2.a. above, shall comply with all provisions of Utah Administrative Code Rule R23-7 as well as UCA 63G-6-604, including having and maintaining a drug and alcohol testing policy, the posting and random testing requirements during the period of the contract that applies to Covered Individuals hired by the Contractor, including all entities included in the definition of Contractor in paragraph 2.a. above;

b. That the Contractor, including all entities included in the definition of Contractor in paragraph 2.a. above, shall have these requirements placed in all subcontracts for design or construction at any tier, in order that all such subcontractors, consultants and sub-consultants at any tier have notice of these requirements and understand the need for compliance with these requirements;

c. That the subcontractors, consultants and sub-consultants at any tier referred to in paragraph 4.b. above shall comply with the same requirements as the Contractor for having and maintaining a drug and alcohol testing policy, the posting and random testing requirements during the period of their contract;

d. That the Contractor, or any entity included in the definition of Contractor in paragraph 2.a. above may be suspended or debarred in accordance with the Utah Procurement Code for failure to comply as provided in UCA Section 63G-6-604(3)(a) and Code Rule Utah Administrative R23-7-4(3)(b); and

e. That the prime contractor or prime designer shall on a semi-annual basis throughout the term of this Contract, report to Utah Valley University in writing, information that indicates compliance with the provisions of UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7.

5. Reasonable notice and an opportunity to cure any violation of UCA 63G-6-604 shall be provided to the Contractor before any suspension or debarment may be undertaken by Utah Valley University against the Contractor in light of the circumstances of the Contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

6. If a Contractor meets the requirements of UCA Section 63G-6-604 and Utah Administrative Code Rule R23-7, said statute and rule may not be construed to restrict the Contractor’s ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.