

UTAH COUNTY

RFP 2018-4

**REQUEST FOR PROPOSALS (“RFP”)
TO PROVIDE SPECIAL LEGAL
COUNSEL SERVICES RELATED TO
POTENTIAL OPIOID LITIGATION**

CLOSING DATE

FOR RECEIPT OF PROPOSALS: Friday, February 9, 2018

TIME: 12:00 Noon (Local Time)

PLACE: Office of the Utah County Purchasing Agent

100 East Center Street

Room 3600

Provo, Utah 84606

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Executive Summary

Utah County is issuing this Request for Proposals (“RFP”) to engage a law firm to act as Special Legal Counsel (“Special Legal Counsel”) representing Utah County in connection with an investigation and possible litigation involving the manufacture, marketing, sale, and distribution of prescription opioid products in the County, including claims arising out of the use and/or abuse of said opioid products.

Utah County anticipates that, after conducting interviews, it will select one firm, or a combination of firms, to act as Special Legal Counsel consistent with the scope of this RFP, but Utah County reserves the right to award multiple contracts if it determines that such an award is in the best interests of the County.

This RFP will define the scope of the work to be performed, the requirements an Applicant Law Firm (“Applicant”) must address, the method for response and the administrative requirements that must be followed. Utah County will advise potential Applicants of changes to any dates as may be necessary. Utah County also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

RFP Schedule

The timeline for RFP submission, review and selection process is as follows:

Written questions due	Monday, February 5, 2018
Proposals due to the County	Friday, February 9, 2018, 12:00 noon local

After the proposals have been received, selected proposers may be asked to present their proposals to the Evaluation Committee.

Each Proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP, which the applicant may have taken in presenting the Proposal. Utah County reserves the right to deny any and all exceptions taken to the RFP requirements. The cost of preparing Proposals will be borne solely by

Applicants. Proposals shall address all the questions posed by Utah County in the order in which they appear in this RFP.

RFP Designated Contact:

Questions regarding this RFP should be submitted through the SciQuest website or directed to the Utah County Purchasing Manager:

Robert Baxter
100 E Center Street Ste 3600
Provo, UT 84606
Phone: 801-851-8233
Email: RobertB@utahcounty.gov

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

Utah County seeks to retain the services of a law firm to act as Special Legal Counsel to provide advice and legal representation to the County in connection with an investigation and possible litigation involving the manufacture, marketing, sale, and distribution of prescription opioid products in the County, including claims arising out of the use and/or abuse of said opioid products (Opioid Litigation).

Special Legal Counsel will be retained pursuant to a contingent fee arrangement, and must therefore have resources sufficient to advance all costs, including the costs of any experts needed to perform or assist in the performance of the work contemplated by this RFP. Special Legal Counsel must also be free of any conflicts of interest. Current representation of an entity that manufactures or distributes prescription opioid products will present an insurmountable conflict.

Legal services will include, but may not be limited to:

1. Performing significant evaluative and investigative preparatory work related to Opioid Litigation and potential claims of Utah County against entities or individuals involved in the manufacturing, distribution and/or dispensing of prescription opioid products within Utah County, including their subsidiaries, partners, contractors, subcontractors, and other responsible parties.
2. Continuing investigation and litigation against potentially responsible parties.
3. Performing all phases of the investigation and litigation, including preparation of complaint(s), filing of complaint(s) and service of summons, responding to

motions, including motions to dismiss; drafting and answering discovery propounded upon Utah County or any of its agencies; tracking documents obtained in discovery; coordinating litigation with other counties, states and the federal government to promote, to the extent beneficial, a unified approach to litigation; taking depositions; defending depositions noticed by the defendants; preparing relevant witnesses for depositions; responding to motions for summary judgment or other pretrial dispositive motions; identification of experts to testify in favor of Utah County; preparation of expert witnesses for deposition or trial testimony; assessing the strength of legal arguments propounded by the litigants; preparation of legal arguments on motions; dealing with discovery disputes; representing Utah County in trial or in any settlement negotiations that may occur; representing Utah County in responding to post-trial motions; representing Utah County in the appeal(s) of any judgment or verdict rendered in any such action(s) and, if applicable, the remand from appeal(s); collection of judgments; and representation and defense of Utah County related to all counterclaims, crossclaims, or other claims related to or arising out of the Opioid Litigation.

4. Preserving and making available to Utah County all pertinent records. When the contract is completed or if the contract is completely or partially terminated for whatever reason, all records relating to the work shall be preserved and made available to Utah County for a period of at least five (5) years from the date of final statement or from the date that the litigation is completed, whichever occurs last.
5. Providing detailed information regarding hours worked, services performed and costs incurred in said litigation on a quarterly basis and upon request.

1.02 Procedures

Selected Special Legal Counsel will work closely with the Board of County Commissioners and the Utah County Attorney. The Board of County Commissioners shall control and direct the litigation and settlement of all claims associated with the Opioid Litigation. All legal advice provided related to the Opioid Litigation shall be provided as directed by the Utah County Attorney. Special Legal Counsel shall have the right to seek court protection for any alleged conflict with the Special Legal Counsel's ethical duties.

The decision to settle any matter shall be reserved exclusively to the Board of County Commissioners, subject to Special Legal Counsel's right to seek court protection for any alleged conflict with the Special Legal Counsel's ethical duties.

1.03 Proposal Submission

Each respondent must submit SIX (6) COPIES of its SEALED proposal to the Utah County Purchasing Manager. The envelope containing the proposal must be clearly labeled “SEALED PROPOSAL–SPECIAL LEGAL COUNSEL SERVICES RFP 2018-4”. The proposal must be delivered to:

Utah County Purchasing Manager
100 East Center St. Room 3600
Provo, UT 84606

LATE PROPOSALS WILL NOT BE ACCEPTED EXCEPT AS SET FORTH IN UTAH COUNTY PROCUREMENT RULES AND REGULATIONS.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The Applicant must have been in business at least five (5) years.
- B. The Applicant should present a team of attorneys that has significant experience in the area of complex commercial litigation, preferably complex consumer fraud and unfair or deceptive trade practices litigation, and/or complex fraud and regulatory-related investigations (“Subject Matter Areas”).
- C. The Applicant must designate, as a member of the team proposed for the representation, a lead attorney licensed to practice law with ten (10) or more years’ experience in the Subject Matter Areas. Applicant and all attorneys working for or at the direction of Applicant on this matter shall be in good standing with the Utah Bar Association or another bar association in the United States and shall maintain good standing throughout the pendency of performing the services hereunder.

2.02 Professional Liability Insurance

The Applicant shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate

amount of not less than \$10 million. In order to satisfy this requirement, the Applicant must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and
- B. Include in its Proposal either:
 - 1) A certificate of insurance or letter from its insurer demonstrating that the Applicant meets this requirement, or
 - 2) A commitment letter or other evidence, satisfactory to Utah County, that the Applicant will have such coverage as of the date the Contract commences.

2.03 Applicant's Capacity

Each Applicant must demonstrate the capacity to perform the type of services needed by the Utah County described in Section 1.01 and 2.01 above. The Applicant must be available at all times to render services required under the Contract.

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. An Applicant is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of Utah County.

3.01 General

All technical proposals shall be prepared with a concise description of the Applicant's capabilities to satisfy the minimum qualifications of Section 2.01 and 2.02 above and the information requested under Section 3.02 below. Applicants should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition. Proposals are generally within the definition of a "public record" as set forth in the Utah Government Records Access and Management Act (GRAMA). In the event that a proposal contains content that meets the definition of any exception to the definition of "public record" as set forth in GRAMA, applicants should separate such materials, place them in an envelope marked "confidential", and submit them with the remaining portion of the proposal. Any such envelope shall include a written

statement explaining the basis for designating such content not subject to disclosure pursuant to GRAMA.

3.02 Required Information

The Proposal shall contain the information described below.

A. Applicant's Experience

1. General Experience and Information:

- (a) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes within the next five (5) years? Please describe.
- (b) Describe the on-line services, publications and other resources maintained by your firm dealing with the Subject Matter Areas, including subscription services and periodicals.
- (c) Has your firm or an attorney in your firm's employ who will have any involvement with the provision of legal assistance, advice, or representation pursuant to this RFP ever been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (d) Within the last five (5) years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (e) Does your firm represent the Attorney General of any state? If so, list the full name, address and telephone number of each Attorney General and provide a contact and telephone number.

- (f) Does your firm represent any other states or governmental entities? If so, list each such state or governmental entity and provide the name, address and telephone number of a contact person for each such entity.
- (f) Please describe your firm's backup procedures in the event one or more attorneys assigned to a matter contemplated by this RFP leave the firm.
- (g) Describe your disaster recovery plan and facilities.

2. Subject Matter Experience

- (a) Provide a detailed description of the Applicant's experience in the Subject Matter Areas, including identification of the approximate number of engagements involving the Subject Matter Areas during the last five (5) years. Of those engagements, the Applicant should select no more than five (5) illustrative matters and provide the following information:
 - (1) Nature of the matter and the Applicant's role;
 - (2) The year and the approximate dollar amount of the claim;
 - (3) Status of case and range of responsibilities; and
 - (4) Disposition of case, and if relevant, a description of damages negotiated/awarded or other relief obtained.
- (b) Representation of Attorney General Offices and other governmental entities as listed above. List the approximate number of engagements for Attorney General Offices and other governmental entities during the last five (5) years. Of those engagements, the Applicant should select no more

than five (5) illustrative matters and provide the following information:

- (1) Nature of the litigation and the Applicant's role;
- (2) The year and the dollar amount (stated within a range of \$1 million increments) of the claim;
- (3) Status of case and range of responsibilities; and
- (4) Disposition of case, and if relevant, a description of damages negotiated/awarded, governance and/or process changes achieved.

(c) Representation in Opioid Litigation. List the number of current engagements with governmental entities related to Opioid Litigation. Of those engagements, the Applicant should provide the following information:

- (1) Name of the governmental entity and provide a contact person and telephone number;
- (2) The year and the dollar amount (stated within a range of \$1 million increments) of the claim;
- (3) Status of case and range of responsibilities; and
- (4) Disposition of case, and if relevant, a description of damages negotiated/awarded, governance and/or process changes achieved.

3. Related Legal Experience

Provide a brief description of areas of the law related to the purpose of this RFP in which the Applicant has an expertise and briefly describe the extent of the expertise.

B. Applicant's Team (Specific Individuals Responsible for Performance of Services)

Provide a detailed description of the team that would provide services identified in this RFP and include the following information:

1. The identity of the individuals, the areas of law in which each specializes and the type of related transactions and/or litigation which the attorney has handled, the number of years of experience in such areas, and the extent to which each has analyzed laws, provided advice, and conducted investigations and litigation on issues relevant to the purpose of this RFP.
2. Résumés of each member of the team, attached to the Proposal as Appendix A.
3. The courts in which each is admitted to practice, the year of admission, and the location of the principal place or places of business, if not included on a résumé.

C. Conflicts of Interest

1. In General

In general, if a conflict of interest arises, the Applicant should be willing to continue to represent the County and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. Utah County may entertain a request for a waiver of an Applicant's representation of a transactional nature, or if the matter relates to litigation involving a unit of government other than Utah County, and may waive any other conflicts when such waiver does not have the possibility of damaging the County's position in the litigation or other matters. Utah County reserves the right, in its sole discretion, to select another law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

Each Applicant shall identify any conflicts of interest that may arise if the Applicant serves as Special Legal Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys named on the contract but also from representation of parties involved in the transactions or other matters involving the County by any other member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

2. Conflict Check System

Applicant shall describe in detail its existing system for identifying conflicts of interest in undertaking new representations. Applicant must include information about who maintains the records, how often the information is updated and at what stage of representation the check is made. Applicant shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.

3. Potential Conflicts

Prior to entering into any contract, Applicant shall provide assurances that potential conflicts have been discussed with other existing clients of Applicant who might be requested to engage other counsel for a specific transaction, and that those existing clients are amenable to such an inconvenience.

4.0 PRICE PROPOSAL FORMAT

4.01 Contingent Fee Arrangement

Utah County will contract with Special Legal Counsel on a contingent fee basis. An Applicant must identify in the Proposal the contingent fee rate sought for the services contemplated by this RFP. Proposals suggesting tiered contingency arrangements, with differential recoveries depending upon the dollar amount of the claim, the dollar amount of the judgment and/or the point at which a final resolution is achieved, are encouraged. Applicant agrees to advance litigation costs incurred

by its own attorneys and staff, including but not limited to travel, meals, mileage, lodging, photocopying, postage, electronic legal research fees, etc. Additionally, Applicant agrees to advance costs of any, and all, expert witnesses, consultants, translation services, etc., as may be necessary in furtherance of the litigation. Applicant shall consult with the Utah County Attorney and the Board of County Commissioners before employing any expert witnesses, consultants or translators. The Board of County Commissioners shall have the final approval of the retention of any expert witnesses or consultants and any fee arrangements paid to those individuals. It is anticipated that the agreed upon contingency fee will be an “all in” rate, inclusive of all fees, expenses, and costs, including but not limited to expert witness fees and court costs. The Proposal shall detail how costs will be handled and paid.

4.02 Joinder of Additional Utah Governmental Entities.

An Applicant must describe the ability and the associated details of other Utah governmental entities joining in the Opioid Litigation and being represented by the successful Applicant, including any resulting changes to the proposed contingency fee arrangement.

5.0 EVALUATION OF PROPOSALS

5.01 Selection Process

The County Purchasing Manager will review all submissions and remove any that are non-conforming or non-responsive to the RFP. The Evaluation Committee may, at its sole discretion, limit the number of proposers who may be offered the opportunity to present their proposals to the County and associated project staff. Based on these interviews, information presented in the proposals, and any supplemental information requested, up to three finalists whose proposals best suit the needs of the County will be presented to the Board of County Commissioners to make the final selection. Selections made by the Evaluation Committee and the Board of County Commissioners will be based upon the Selection Criteria as set forth in the RFP. The final selection is subject to the consent of the Utah County Attorney. The Utah County Attorney may elect to consent to all three finalists, such that the final selection by the Board of County Commissioners shall constitute the final selection. The County will then enter into negotiations regarding an Agreement with the County.

The County reserves the right to:

- Revise or extend this schedule at its sole option.
- Conduct pre-award discussion and/or pre-award contract negotiations with any or all responsive and responsible proposers who submit proposals determined to be reasonably acceptable of being selected for award; conduct personal interviews or require presentations of any or all proposers prior to selection which could be open to the public; and make investigations of the qualifications of proposers as it deems appropriate, including, but not limited to, a background investigation conducted by law enforcement.
- Request that proposer(s) modify its proposal to more fully meet the needs of the County or to furnish additional information as the County may reasonably require.
- In its sole discretion, expand or reduce the criteria upon which it bases its final decisions regarding selection of a firm. The County reserves the right to reject any or all proposals or parts of proposals, to negotiate modifications of proposals submitted, and to negotiate specific proposal elements with a proposer into a project of lesser or greater magnitude than described in this RFP or the proposer's reply.
- Negotiate any modifications to a proposal that it deems acceptable, waive minor irregularities in the procedures, and reject any and all proposals.
- Process the selection of the successful Proposer without further discussion.
- Waive any irregularity in any proposal, or reject any and all proposals, should it be deemed in its best interest of the County to do so. The County shall be the sole judge of proposers' qualifications and reserves the right to verify all information submitted by the proposers. The proposal selected will be that proposal which is judged to be the most beneficial to the County.

5.02 Selection Criteria

The selection of the firm or firms to provide legal services will be based on an evaluation of the Proposals to determine which Proposals reflect the best value to Utah County.

All proposals will be evaluated by authorized representatives of Utah County (the Evaluation Committee). The following criteria will be used by the Evaluation Committee in creating a score for each of the proposals. Each member of the Evaluation Committee will ordinarily rank all proposals from highest to lowest evaluation score, and the Evaluation Committee will compile the rankings of all members of the Evaluation Committee. If any proposal receives a majority of first place votes, that proposal will represent the best value for the County and will be recommended as the #1 ranked proposal. If not, the proposal that received the

lowest average ranking will be removed from selection and the rankings will be recast. That process will be repeated until one proposal receives a majority of votes as the #1 ranking proposal. The same process will be repeated to rank the #2 and #3 ranking proposals. The Board of County Commissioners, with the consent of the Utah County Attorney, shall award the contract to one of the top three ranked offerors, or may elect to reject all proposals. The Utah County Attorney may elect to consent to all three finalists, such that the final selection by the Board of County Commissioners shall constitute the final selection. County will then enter into negotiations regarding an Agreement with the County.

The criteria are not listed in any priority order. The Evaluation Committee and the Board of County Commissioners will consider all criteria in performing a comprehensive evaluation of each proposal. Weights have been assigned to each of the criteria in the form of points. TOTAL POINTS POSSIBLE = 100.

- A. Experience of the firm and the individual attorneys in connection with investigations and litigation in the Subject Matter Areas and in Opioid Litigation; 60%
- B. Proposed contingent fee arrangement; 30%
- C. Administrative structure of the representation (*i.e.*, proposed staffing assignments), proposed work plan, soundness of approach and understanding of the needs of Utah County; 10%

5.03 Contract Negotiation

Utah County intends on opening negotiations with the Applicant that Utah County determines has a reasonable likelihood of being awarded a contract based on the Proposal, interview and, if any, supplemental submissions. Negotiations will focus on any weaknesses or deficiencies in the Proposal as well as cost and pricing issues.

A written contract with the law firm(s) selected will be required.

5.04 Contract Award

Utah County reserves the right to award all, part, or none of this contract and intends to award contracts to more than one law firm if deemed appropriate and desirable.

6.0 CONDITIONS, DISCLAIMERS AND DISCLOSURES

6.01 GENERAL REQUIREMENTS

Utah County will negotiate an agreement in reliance upon the information contained in proposals submitted in response to the RFP. Utah County will be legally bound only when and if there is a definitive signed agreement with the awarded proposer.

It is vitally important that any person who signs a proposal or agreement on behalf of an Applicant's organization certifies that he or she has the authority to so act. The successful Applicant who has his/her proposal accepted may be required to answer further questions and provide further clarification of his/her proposal and responses.

Receiving this RFP or responding to it does not entitle any entity to participate in services or transactions resulting from or arising in connection with this RFP. Utah County shall have no liability to any person or entity under or in connection with this RFP, unless and until Utah County and such person shall have executed and delivered a definitive written agreement.

By responding to this RFP each responding party acknowledges that neither Utah County nor any of its representatives is making or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any portion of the information contained in this RFP. The responding party further agrees that neither Utah County nor any of its representatives shall have any liability to the responding party or any of its representatives as a result of this RFP process or the use of the information contained in your response to this RFP. Only the terms and conditions contained in an agreement when, as, and if executed, and subject to such limitations and restrictions as may be specified therein, may be relied upon by the parties in any manner as having any legal effect whatsoever.

No oral modifications or amendments to this RFP or any resulting agreement shall be effective, but such may be modified or amended only by a written agreement signed by the parties. If it becomes necessary to revise any part of this RFP, an addendum will be provided to all who received an RFP.

6.02 INSPECTION AND ACCEPTANCE

Utah County or its authorized representatives shall have the right to enter the premises of the Applicant, or such other places where services under an agreement with Utah County are being performed, to inspect, audit, monitor or otherwise evaluate the services being provided and the financial records pertaining to the agreement. The Applicant must provide reasonable access to all facilities and assistance to Utah County or its authorized representatives.

6.03 INSURANCE

In addition to the required Professional Liability Insurance, the Applicant agrees to carry general liability insurance with a minimum limit of \$2,500,000 per occurrence, or as modified by the risk manager pursuant to state statute during the term of an agreement with Utah County. This coverage shall provide liability insurance to cover the activities of Applicant including Applicant's agents and employees, and for all equipment and vehicles, public or private, used in the performance of an agreement with Utah County. The Applicant shall furnish, with the proposal submission, a certificate of insurance evidencing that the Applicant has insurance coverage equal to or greater than the above stated amounts.

The Applicant shall be required to submit said certificate of insurance to Utah County in the minimum amounts indicted above before beginning work under an agreement with Utah County.

6.04 INDEPENDENT CONTRACTOR

Applicant states and affirms that it is acting as an independent contractor, holding itself out to the general public as an independent contractor for other work or contracts as it sees fit; that it advertises its services as it sees fit to the general public, maintains its office or place of employment separate from Utah County, and that any agreement resulting from this RFP is not exclusive of other agreements, contracts or opportunities, except as otherwise stated herein with regard to conflicts of interest.

The parties intend that an independent contractor relationship will be created by any agreement resulting from this RFP. Utah County is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Applicant. Applicant is not to be considered an employee of Utah County for any purpose, and the employees of Applicant are not entitled to any of the benefits that Utah County provides for County's employees. It is understood that Applicant is free to contract for similar services to be performed for others while working under the provisions of any agreement with Utah County resulting from this RFP, except as otherwise stated herein with regard to conflicts of interest.

Both parties agree that Applicant shall be deemed an independent contractor in the performance of any agreement resulting from this RFP and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation.

6.05 INDEMNIFICATION

The Applicant shall defend, indemnify, save and hold harmless Utah County, its officers, employees, and agents, from and against any and all claims, demands, causes of actions, orders, decrees, judgments, losses, damages, and liabilities (including all costs and attorney's fees incurred in defending any claim, demand, or cause of action) occasioned by, growing out of, or arising out of the performance of an agreement with County which is caused by any act or omission of Applicant's officers, employees, agents or volunteers. The Applicant shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of any agreement with County.

6.06 PROPRIETARY INFORMATION

The Applicant shall mark any specific information contained in the proposal which is not to be disclosed to the public or used for purposes other than the evaluation of the proposals. Pricing and service elements of the successful proposal will not be considered proprietary.

6.07 TERMINATION

Any agreement resulting from this RFP may be terminated, without cause, or for any reason, by Utah County upon thirty (30) days written notice to the Applicant, without prejudice to any other right or remedy Utah County may have.

Failure of the Applicant to adhere to any of the performance requirements of any agreement resulting from this RFP shall be cause for immediate termination.

ATTACHMENT B
CERTIFICATE OF NON-COLLUSION

STATE OF UTAH) Request for Proposals
)SS for
COUNTY OF UTAH) Special Legal Counsel

AFFIDAVIT

The undersigned of lawful age, being first duly sworn, disposes and says:

That as a condition precedent to the award of the Utah County project as above captioned,

I _____
(owner, partner, officer or delegate)

of _____ do
(company)

solemnly swear that neither I, nor to the best of my knowledge any member or members of my firm or company have either directly or indirectly restrained free and competitive bidding on this project by entering into any agreement, participating in any collusion, or otherwise taking any action unauthorized by Utah County, with regard to this proposal or potential agreement resulting therefrom.

Proposer's Signature

By: _____
Title: _____

Subscribed/sworn to before me this ____ day of _____ 2018

My Commission Expires _____

Residing at _____ Seal

By: _____
Notary Public

EXHIBIT A

UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR SERVICES

1. TERM

The term of this AGREEMENT shall commence upon execution hereof and shall terminate upon completion of the work specified herein, or until the date specified on the signature page of this AGREEMENT.

Termination of this AGREEMENT shall not terminate any warranty or other continuing obligation owed by CONTRACTOR as set forth herein.

2. EXTRA WORK

a. Extra work shall be undertaken only when previously authorized in writing by Utah County, and is defined as additional work which is neither shown nor defined in this AGREEMENT or the attached CONTRACTOR's proposal (if any), but determined by Utah County to be necessary to the project.

b. Miscellaneous items normally associated with the major work items included in this agreement, but which may not be specifically identified, shall be furnished by the CONTRACTOR as if they had been included in the agreement, without additional cost to COUNTY. After prior authorization of the County Commission in writing, payment for authorized extra work will be made by reimbursement for all direct and substantiated costs of labor, materials, and supplies used.

3. GOVERNING LAW

It is agreed that this AGREEMENT shall be governed by, construed and enforced in accordance with the laws of the State of Utah, and the ordinances of Utah County. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Agreement or the breach thereof. Venue shall be in Provo in the Fourth Judicial District Court for Utah County

4. EMPLOYMENT STATUS VERIFICATION

To the extent required by applicable law, CONTRACTOR shall register and participate in the Status Verification System and comply with Utah Code Annotated Section 63G-11-103 of the Identity Documents and Verification Act. CONTRACTOR shall by contract require its contractors, subcontractors, contract employees, staffing agencies, or any contractors regardless of their tier to register and participate in the Status Verification system and comply with Utah code Annotated Section 63G-11-103 of the Identity Documents and Verification Act.

5. AMENDMENTS

No oral modifications or amendments to this AGREEMENT shall be effective, but such may be modified or amended by a written agreement signed by the parties.

6. ASSIGNMENT

The parties to this AGREEMENT shall not assign said AGREEMENT, or any part thereof, without the prior written consent of the other party to the AGREEMENT. No assignment shall relieve the original parties from any liability hereunder.

7. SUCCESSORS IN INTEREST

This AGREEMENT shall be binding upon the heirs, successors, administrators, and assigns of each of the parties thereto.

8. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, save, hold harmless, and defend at CONTRACTOR's own expense COUNTY, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgements, losses, damages, expenses, and liabilities (including all costs and attorney's fees incurred in defending any claim, demand, or cause of action) occasioned by, growing out of, or arising or resulting from (a) CONTRACTOR'S, its subcontractors, agents or employees performance of this AGREEMENT or their provision of any services required herein to be performed by CONTRACTOR or its subcontractors, agents or employees, and (b) any act or omission of CONTRACTOR, or its subcontractors, agents or employees. CONTRACTOR shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of this AGREEMENT.

9. GOVERNMENTAL IMMUNITY

COUNTY is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann §§ 63G-7-101 to -904 (2011). COUNTY does not waive any procedural or substantive defense or benefit provided or to be provided by the Act or comparable legislation enactment. The parties agree that COUNTY shall only be liable within the parameters of the Governmental Immunity

Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits set forth in that Act or the basis for liability as established in the Act.

10. NON-FUNDING CLAUSE

To the extent that COUNTY has any financial obligation to CONTRACTOR, COUNTY intends to request the appropriation of funds to be paid for the services provided by CONTRACTOR under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the COUNTY's obligation for any financial obligation arising out of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the COUNTY as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of CONTRACTOR, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void. If funds are not appropriated for a succeeding fiscal year to fund performance by COUNTY under this Agreement, COUNTY shall attempt to notify CONTRACTOR of said non-funding and the termination of this Agreement.

11. COMPLIANCE WITH LAWS

Each party agrees to comply with all federal, state, and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Any violation by CONTRACTOR of applicable law shall constitute an event of default under this Agreement and CONTRACTOR shall be liable for and hold the COUNTY harmless and defend the COUNTY from and against any and all liability arising out of or connected with the violation, to include all attorney fees and costs incurred by the COUNTY as a result of the violation. CONTRACTOR is responsible, at its expense, to acquire, maintain and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.

12. CONFIDENTIALITY

Contractor shall hold all information provided to it by COUNTY for the purposes of its performance of this Agreement, whether provided in written or other form, in strict confidence, shall make no use thereof other than for the performance of the Agreement, and shall not release any of said information to any third party, any member of CONTRACTOR's firm who is not involved in the performance of services under the Agreement, or to any representative of the news media without prior written consent of COUNTY. Materials, information, data, reports, plans, analyses, budgets and similar documentation provided to or prepared by CONTRACTOR in performance of this Agreement shall also be held confidential by CONTRACTOR. COUNTY shall have the sole obligation or privilege of releasing such information as required by law.

13. 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.

14. TERMINATION

The Agreement may be terminated, without cause, or for any reason, by COUNTY upon thirty (30) days written notice to CONTRACTOR, without prejudice to any other right or remedy COUNTY may have. Failure of the CONTRACTOR to adhere to any of the performance requirements of this Agreement shall be cause for immediate termination. All indemnification obligations of CONTRACTOR shall continue, notwithstanding any termination of this Agreement.

15. FORCE MAJEURE

Neither party to this Agreement will be held liable for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The COUNTY may terminate this Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.

16. INDEPENDENT CONTRACTOR

a. CONTRACTOR states and affirms that he is acting as an independent contractor, holding himself out to the general public as an independent contractor for other work or contracts as he sees fit; that he advertises his services as he sees fit to the general public, maintains his office or place of employment separate from COUNTY, and that this AGREEMENT is not exclusive of other agreements, contracts or opportunities, except as otherwise stated herein with regard to conflicts of interest.

b. The parties intend that an independent contractor relationship will be created by this AGREEMENT. COUNTY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONTRACTOR. The employees of CONTRACTOR are not entitled to any of the benefits that COUNTY provides for COUNTY'S employees. It is understood that COUNTY does not agree to use CONTRACTOR exclusively. It is further understood that CONTRACTOR is free to contract for similar services to be performed for others while

working under the provisions of this AGREEMENT with COUNTY, except as otherwise stated herein with regard to conflicts of interest.

c. Both parties agree that CONTRACTOR shall be deemed an independent contractor in the performance of this AGREEMENT, and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation. The compensation provided for herein shall be the total compensation payable hereunder by COUNTY.

17. INTERPRETATION OF AGREEMENT

The invalidity of any portion of this AGREEMENT shall not prevent the remainder from being carried into effect. Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include all genders. The paragraph and section headings in this AGREEMENT are for convenience only and do not constitute a part of the provisions hereof.

18. INSURANCE

a. In addition to the required Professional Liability Insurance, CONTRACTOR agrees to carry Commercial General Liability insurance coverage equal to or greater than \$2,500,000 per occurrence. This coverage shall provide liability insurance to cover the activities of CONTRACTOR including CONTRACTOR'S agents, employees and subcontractors, and for all equipment and vehicles, public or private, used in the performance of this contract. Prior to commencement of work, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY evidencing that CONTRACTOR has all required insurance in place.

b. Prior to commencement of work, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY evidencing that CONTRACTOR has Workers Compensation Insurance for the CONTRACTOR, all subcontractors, and all employees of the CONTRACTOR and/or subcontractors.

19. LEGAL

CONTRACTOR shall be responsible to provide all legal support for the project including but not limited to the preparation of contracts with subcontractors. This AGREEMENT shall be interpreted pursuant to the laws of the State of Utah.

20. NO PRESUMPTION

Should any provision of this AGREEMENT require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.

21. WARRANTY

CONTRACTOR warrants to COUNTY that all services furnished under this AGREEMENT will be of highest quality, consistent with the degree of skill and care ordinarily exercised by similarly situated members of CONTRACTOR'S profession, and in conformance with the terms hereof.

22. ENTIRE AGREEMENT.

This AGREEMENT shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this AGREEMENT shall not be binding upon either party except to the extent incorporated in this AGREEMENT.