



**REQUEST FOR PROPOSALS**

**for**

**Urine Drug Screen Laboratory Services**

**RFP # 2019-15**

**CLOSING DATE**  
**FOR RECEIPT OF PROPOSALS:** October 31, 2019

**TIME:** 3:00 p.m. (Mountain Time)

**PLACE:** Utah County Purchasing Manager  
100 East Center Street  
Suite 3600  
Provo, UT 84606

**TABLE OF CONTENTS**

**Section 1 – Administrative Overview**

1.1 Purpose ..... 3

1.2 Services Sought..... 3

1.3 Warranty and Maintenance Services ..... 5

1.4 Data Management System Guidelines ..... 5

1.5 Pricing..... 6

1.6 Facilities..... 6

1.7 Warranty ..... 7

1.8 Service Contract..... 7

**Section 2 – Procedure Rules and Procedures** ..... 7

2.1 Procedure ..... 7

2.2 Rules of Procurement..... 8

2.3 Procurement Timetable..... 8

2.4 Questions and Clarification ..... 8

2.5 Evaluation Criteria..... 8

**Section 3 – Instructions for Proposal Preparation** ..... 9

3.1 Proposal Submission..... 9

3.2 Proposal Organization..... 9

**Section 4 - Disqualification of Proposal** ..... 10

**Section 5 - Terms and Conditions**..... 10

5.1 General Requirements ..... 10

5.2 Inspection and Acceptance..... 11

5.3 Insurance..... 11

5.4 Independent Contractor ..... 11

5.5 Indemnification..... 12

5.6 Proprietary Information... .. 12

5.7 Public Information..... 12

SIGNATURE SHEET..... Attachment A

CERTIFICATE OF NON-COLLUSION..... Attachment B

STANDARD CONTRACT TERMS ..... Appendix

## SECTION 1 ADMINISTRATIVE OVERVIEW

### 1.1 PURPOSE

Utah County Department of Drug and Alcohol Prevention and Treatment (UCDDAPT) administers comprehensive drug and alcohol treatment for the Utah County Government. A component of those services is performing urine drug screens. UCDDAPT is accepting proposals to provide drug testing equipment, software and supplies for our on-site urinalysis substance abuse testing facility.

### 1.2 SERVICES SOUGHT

1. UCDDAPT is accepting proposals to provide drug testing equipment, software and supplies for on-site urinalysis substance abuse testing facilities and reserves the right to reject any or all proposals and to waive minor irregularities when to do so would be in the best interests of Utah County.
2. Vendors are to respond prior to the October 31<sup>th</sup>, 2019 at 3:00 p.m. Mountain Time. Late proposals will not be accepted except as set forth in Utah County Procurement Rules and Regulations.
3. UCDDAPT intends to award this contract as a sole contract. Vendor's pricing is dependent upon acceptance of this bid as a whole. If UCDDAPT prefers to accept only some portion of this bid, Vendor will only be bound by terms and conditions that are mutually agreeable to both parties.
4. UCDDAPT agrees to the following responsibilities: (a) AGREES NOT TO SELL, TRANSFER, LEASE, OR DISPOSE OF THE EQUIPMENT OR TO PERMIT ANY OTHER PERSON TO HAVE ANY INTEREST IN IT. Shall keep the Equipment free of all liens and encumbrances. Shall not move the Equipment from the Equipment location without Vendor's prior written consent. (b) Agrees to use the Equipment solely for business purposes in the manner for which it was intended. (c) Shall keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. Shall perform all maintenance requirements described in the manuals provided by the manufacturer and keep the Equipment safe from hazards. All replacement parts and attachments shall become part of the Equipment. (d) Shall maintain primary insurance on the Equipment upon delivery at your own cost with an insurance company acceptable to Vendor. (e) Shall give Vendor reasonable access to inspect the Equipment.
5. Vendor shall include pricing terms in proposal response. Vendors may lower the award prices or increase any discounts applicable to the purchase of the products at any time.
6. Non-appropriation: If UCDDAPT has insufficient funds during any fiscal year, UCDDAPT may elect to discontinue this contract for which the needed appropriations are unavailable. UCDDAPT will notify the vendor, in writing, of the non-appropriation of funds within ten (10) days of the date upon which UCDDAPT becomes aware that insufficient funds will be available. UCDDAPT will provide a certified statement of an authorized official to the effect that conditions permitting discontinuance of the contract have occurred.
7. The vendor will be responsible for any damage to the UCDDAPT property, to the extent such as damage inflicted by their employees, or agents of the vendor, or any sub-contractor of the vendor.
8. In the event that the vendor quotes pricing under a bundled lease agreement which includes equipment and reagents, vendor will retain title to the Equipment. UCDDAPT is to clearly

indicate that the Equipment is the sole property of the vendor. UCDDAPT also agrees that to the extent required by law the vendor may file a UCC financing statement, or any other document or instrument required by law, to give public notice of vendor's interest in the equipment.

- 9. New products can be added to the agreement and counted towards our overall purchases.

**The instrument guidelines are:**

- 1. Drug Testing Assays must use a widely accepted immunoassay methodology (i.e. EMIT, ELISA, CEDIA) and have the testing capabilities for the following drugs and/or their metabolites:-

6-Acetylmorphine (Heroin)	Amphetamines
Barbiturates	Benzodiazepines
Cannabinoids (THC)	Cocaine
Ecstasy	Ethyl Glucuronide (ETG)
Fentanyl	Opiates
Phencyclidine (PCP)	Propoxyphene
Methadone	

Testing of the following to determine adulteration and/or dilution:

Creatinine	Oxidants
PH	Specific Gravity

- 2. The drug testing system must use methods and output results that conform to federal and state guidelines and/or laws or industry practices as well as HIPAA and 42 CFR Part 2 should that become an issue in UCDDAPT business practices.
- 3. The drug testing system must be restored to normal operations within three business days or in a reasonable and timely manner.
- 4. The proposal must include installation of all equipment by the Instrument Manufacturer.
- 5. The vendor must provide on-site training for employees of UCDDAPT or at the corporate training facility of the Vendor. Training to include proper operation of laboratory equipment and software provided for data management.
- 6. Acceptance occurs upon delivery of equipment. However, if UCDDAPT identifies an issue specifically related to the installation of the equipment within 45 days of delivery, Vendor agrees to resolve the issue at Vendor's sole expense. If Vendor does not resolve the issue to UCDDAPT 's satisfaction within the 45-day time frame, Vendor will nullify acceptance of the instrument and agree to a mutually acceptable resolution with the UCDDAPT.
- 7. All products must be in good working order. Any product must not be previously used or have been refurbished. All requests should be supplied complete, ready to be installed, including all cabling and connectors where applicable.
- 8. Instrument and Data Management Software system MUST be serviced by the instrument manufacturer, not by a third party. Service representatives must be local for instrument service. The data management system can be serviced by online technical support.
- 9. The unit must be easy to use and have walk-away capabilities.
- 10. The analyzer must be serviced by the instrument manufacturer and the servicers must be trained at the manufacturer corporate training facility.

11. Testing instrumentation must include all computer equipment, printers, and software necessary to run and analyze samples and capture workload data as well as maintain quality control information.
12. Equipment must be high quality and low maintenance with high precision optics.
13. One of the main scoring issues is the reliability of contractor to respond to any equipment problems or malfunctions. Please indicate how you will respond to any such situations if they arise so the UCDDAPT can avoid any significant disruption of service.
  - Analyzer must be able to be set up to have unique and individual log-ins for each operator. This information must be saved and accessible either on the analyzer itself or in the results software.
  - Fit in the space of 65" W X 48" D and be comfortable to operate from a standing position.
  - All reagents, calibrations, and controls must be produced and provided by the manufacturer specifically for the analyzer. Cross reactivity information specific to each reagent must also be provided.

### **1.3 WARRANTY AND MAINTENANCE SERVICES**

All warranty or maintenance services to be performed on the items specified in this bid as well as any associated hardware or software shall be performed by the instrument manufacturer technicians. The county reserves the right to require proof of certification prior to the award and at any time during the term of the contract.

### **1.4 DRUG TESTING RESULTS SOFTWARE**

The drug testing software and any supporting software must be able to save, print, and email reports directly from the computer system. Reports must also be available via online reporting capabilities.

The Drug Testing Results Software must be customizable to meet the needs of our laboratory. The Lab's reporting needs will be carefully designed to provide efficient viewing, reporting, printing, archiving and transmission/delivery of reports.

The Vendor shall be responsible for the service of the data and system software.

Default order data and standing orders must be configurable in system preferences, donor setup, and order entry. This enables the user to navigate through entering orders into the lab system. User can build multiple conditions to add, delete, or re-run assays and profiles.

System is set up to automatically reorder duplicate tests on positive results and provide a barcode for re-aliquoting the sample.

User can select the reporting method per assay to print a qualitative text message or the numeric result with or without the flag.

Seamless interface between analyzer and software with automatic crossover of test results.

Ability to access result reports by client, agency, and assay.

Must be capable of integrating HL7 files into the EMR used by UCDDAPT, Credible Behavioral Health Software. The software provider must be involved in the integration process to ensure smooth interface

Must use a bar code identification system that uses unique client accession numbers

User-friendly set up

Must have data encryption capabilities in compliance with HIPAA and 42 CFR Part 2 standards. Proper firewalls and security features to maintain the integrity of ePHI.

Must have a function that logs authorized personnel off the device they are using to access or communicate ePHI after a pre-defined period of time.

## 1.5 PRICING

1. Pricing supplied by the vendor will include kit cost, delivery or freight charge, and cost per assay.
2. Calibrators and supplies are to be included in the cost per assay stated in vendor's proposal response.
3. Pricing will not be the sole determination of the bid award.
4. With proposal submit a clear pricing structure of reagents and other equipment as outlined in this RFP.
5. Consumables for analyzer need to be provided by manufacture at greatly reduced or at no cost. Example of consumables are cuvettes, reagent bottles, washing solution, sample cups, tubing maintenance solution (cleaner), test tubes, nesting cups.

## 1.6 FACILITIES

Included in this request for proposal is the following location and an estimated 25,000 annual collections with running multiple assays of test volume at the facility. Specific Drug Testing System or an equivalent is required in vendor's response.

**Location:**

UCDDAPT  
151 S University Ave. Ste 1200  
Provo, Utah, 84601

**Instrumentation:**

Immunoassay Chemistry Analyzer

**Contact:**

Pat Bird  
(801) 851-7126

**Lab Equipment:**

Web-Based Drug Testing Results System

## 1.7 WARRANTY

1. The vendor is required to provide a warranty for the equipment and data management system.
2. Vendor warrants that the Consumables are free from defects in material and workmanship and conform to the labeling claims which accompany them. Vendor promises that if UCDDAPT uses the Equipment as would be normally expected, and it fails to meet the claims made for it in its labeling, Vendor will repair or replace the Equipment in accordance with the service arrangement set forth in this Agreement. Vendor also promises that the use of the Equipment and the Consumables in the

form delivered to UCDDAPT and in accordance with their instructions will not infringe the U.S. patent of any third party. This promise does not cover the use of the Equipment or Consumables in combination with any other product or equipment. Vendor Equipment and Consumables are designed and certified with applicable regulatory authorities as an integrated instrument/reagent/consumable system. Use of unapproved parts or consumables with UCDDAPT 's Vendor Equipment and consumables will void any service contract UCDDAPT may have with Vendor. If any services are performed on the instrument other than through Vendor's Service Representative, such service would also void any service contract or warranty UCDDAPT may have with Vendor. Vendor is not required to add any design, engineering, or performance change or development into the Equipment after it is delivered to UCDDAPT. In no event will Vendor's obligations herein require it to pay more than the aggregate purchase price of the Consumables UCDDAPT have purchased during the term of this Agreement. **VENDOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, MERCHANTABILITY, OR FITNESS FOR ANY PURPOSE IN CONNECTION WITH THE EQUIPMENT OR CONSUMABLES.** UCDDAPT will not make any claim against Vendor for any special consequential or incidental damages. No oral or written promises as to the Equipment or Consumables which conflict with the statements in this Paragraph will bind Vendor unless signed by an authorized representative of the party to be bound.

**1.8 SERVICE CONTRACT**

1. The vendor must supply UCDDAPT with service for the analyzer and the software throughout the contract period. Service **MUST** be completed by instrument manufacturer or drug testing results software manufacturer. The Vendor will be responsible for service on both systems.
2. The vendor will have 24-hour technical assistance. All service equipment will be provided by the vendor.

**Nature of Engagement: Important Notes to all Bidders:**

**Please feel free to provide additional services you believe to be necessary in** carrying out this function. The county is focused on appropriately staffing this engagement and is open to the professional opinion of bidders on where this RFP is missing key elements to an effective communication strategy.

**SECTION 2            PROCUREMENT RULES AND PROCEDURES**

**2.1            PROCEDURE**

The procedure for response to this RFP, evaluation of proposals, and selection of a vendor is as follows:

- 1. Interested entities will prepare and submit their proposals prior to the specified Closing Date for Receipt of Proposals.
- 2. Utah County and/or its representatives will evaluate all submitted proposals as described herein.
- 3. The selected vendor will enter into contract negotiations with the County.

**2.2            RULES OF PROCUREMENT**

A. This procurement shall conform to and is governed by The Utah County Division of Purchasing Procurement Rules and Regulations.

B. For this procurement, all proposals must be submitted in the proposal format outlined herein. All proposals become the property of Utah County and will not be returned. Vendor is responsible for all costs of the proposal submitted, and Vendor will bear full costs of the proposal.

C. All prospective Proposers must meet the required criteria as of the date of submission.

D. Utah County has established certain requirements with respect to proposals to be submitted by respondents. The use of "shall", "must", or "will", in this RFP indicates a requirement or condition from which a material deviation will not be approved by Utah County.

**2.3            PROCUREMENT TIMETABLE**

Below is the Procurement Timetable that has been established for this RFP.

<b>REQUIRED ACTIVITY</b>	<b>SCHEDULED DATE</b>
RFP Issue Date	September 24, 2019
Closing Date for Bidding Provider Questions	October 22, 2019
Closing Date for Receipt of Proposals	October 31, 2019 (3:00 pm MT)
Anticipated Final Decision	November 12, 2019



## 2.4 QUESTIONS AND CLARIFICATIONS

Questions regarding this RFP must be submitted by October 22, 2019.

The point of contact for this RFP is the Utah County Purchasing Manager, Robert Baxter:

RobertB@utahcounty.gov

## 2.5 EVALUATION CRITERIA

All proposals will be evaluated by authorized representatives of Utah County (the Evaluation Committee). 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 member of the Evaluation Committee. If any proposal receives a majority of first place votes, that proposal will be recommended as the #1 ranked proposal. The same process will be repeated to rank the #2 and #3 ranking proposals. The Board of County Commissioners shall award the contract to one of the top three ranked proposals or may elect to reject all proposals. After the Board of County Commissioners has selected a proposal, the vendor will enter into negotiations for a contract. The contract will become final and binding only with the approval and signing of the Utah County Commission and vendor.

The following weighted average criteria will be used by the Evaluation Committee in creating a score for each of the proposals:

- **40%** Cost, relative to value given
- **25%** Vendor's Qualifications and Relevant Experience
- **25%** Drug Testing Results Software
- **10%** Quality, Clarity, and Responsiveness of the Submitted Proposal

## SECTION 3 INSTRUCTIONS FOR PROPOSAL PREPARATION

### 3.1 PROPOSAL SUBMISSION

Each respondent must submit its proposal to the Utah County Purchasing Manager via email at [RobertB@utahcounty.gov](mailto:RobertB@utahcounty.gov)

Each respondent has the option, but not the requirement of submitting hard copies per the following instructions: The envelope containing the proposal must be clearly labeled "SEALED PROPOSAL URINE DRUG SCREEN LABATORY SERVICES # 2019-15". The proposal must be delivered to:

Utah County Purchasing Manager  
100 East Center, Suite 3600  
Provo, Utah 84606

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

### **3.2 PROPOSAL ORGANIZATION**

The proposal must include:

1. Cover Letter
2. Vendor's Qualifications – Provide a description of the firm and appropriate individuals' and subcontractors' historical background.
3. Cost/Fee Proposal (Limited Scope Track, Full Scope Track, or both)
4. Signed Signature Sheet – Signed by individual with authority to make commitments on behalf of the company (Attachment A)
5. Completed Certificate of Non-Collusion (Attachment B)

## **SECTION 4 DISQUALIFICATION OF PROPOSAL**

The occurrence of any of the following may result in disqualification of a proposal:

- A. Failure to respond within the established timetable.
- B. Failure to completely answer all questions presented in the RFP.
- D. Failure to provide requested documentation at the time of proposal submission.
- E. Illegible responses.
- G. If the Proposer is unable to evidence a satisfactory record of integrity.
- H. If the Proposer is not qualified legally to contract.
- I. If the proposal at the opening does not contain a signed proposal, and a signed certificate of non-collusion.
- J. Utah County reserves the right to reject any or all proposals.

## **SECTION 5 TERMS AND CONDITIONS**

### **5.1 GENERAL REQUIREMENTS**

Utah County will negotiate an agreement in reliance upon the information contained in Proposals submitted in response to the RFP. The Appendix of this RFP contains Utah County's standard terms which shall form the basis of an agreement covering the subject matter of this RFP between the selected service provider and Utah County. Exceptions or deviations from Utah County's standard terms must be clearly identified in the response to the RFP, together with any accompanying reasons for the exceptions or deviations, and any proposed modifications offered by the service provider. Exceptions or deviations from Utah County's standard terms will be taken into consideration when evaluating proposals submitted and may result in the Proposal being rejected in whole or part by Utah County. Utah County specifically reserves the right to reject any or all of the proposed modifications. Utah County will be legally bound only when and if there is a definitive signed agreement with the awarded Service Provider ("Contractor"). It is vitally important that any person who signs a Proposal or agreement on behalf of a Contractor's firm certifies that he or she

has the authority to so act. The successful Contractor who has its Proposal accepted may be required to answer further questions and provide further clarification regarding its 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 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; the RFP 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 posted to SciQuest for all interested providers to review.

## **5.2 INSPECTION AND ACCEPTANCE**

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

## **5.3 INSURANCE**

Contractor agrees to carry errors and omissions insurance prior to the final execution of a contract with a minimum limit of \$2,500,000 per occurrence, or such amount as modified by the County Risk Manager pursuant to Utah State statute, during the term of an agreement with Utah County. This coverage shall provide liability insurance to cover the activities of Contractor including Contractor's agents and employees, and for all equipment and vehicles, public or private, used in the performance of an agreement with Utah County. Contractor shall furnish, with the Proposal submission, a certificate of insurance evidencing that Contractor has insurance coverage equal to or greater than the above-stated amounts.

## **5.4 INDEPENDENT CONTRACTOR**

Contractor 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. Prior to final execution of a contract, Contractor shall provide a copy of the Contractor's business license.

The parties intend that an independent contractor relationship will be created by an 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 Contractor. Contractor is not to be considered an agent or employee of Utah County for any purpose, and the employees of Contractor are not entitled to any of the benefits that Utah County provides for County's employees. It is understood that Contractor 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.

Both parties agree that Contractor shall be deemed an independent contractor in the performance of any agreement with Utah County resulting from this RFP, and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation. As such, Contractor shall have no authorization, express or implied, to bind Utah County to any other agreement, or any settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for Utah County.

#### **5.5 INDEMNIFICATION**

Contractor shall be required to 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 Contractor's performance of an agreement with Utah County which is caused by any act or omission of Contractor's officers, employees, agents or volunteers. Contractor shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of an agreement with Utah County.

#### **5.6 PROPRIETARY INFORMATION**

Contractor is required to mark any specific information contained in its Proposal which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any Proposal will not be considered proprietary.

#### **5.7 PUBLIC INFORMATION**

Contractor agrees that the agreement, related sales orders, and invoices will be public documents, and may be available for distribution. Contractor gives the County express permission to make copies of the agreement, related sales orders and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the Utah County Purchasing Agent, Contractor also agrees that the permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

**ATTACHMENT A**  
**SIGNATURE SHEET**

I hereby certify that the information submitted by me/my company in response to this RFP, including the pricing and all written and electronic information in this RFP response is true and accurate.

I understand that Utah County has the right to reject any or all proposals or to waive minor irregularities when to do so would be in the best interests of Utah County.

Name of Firm \_\_\_\_\_

Address \_\_\_\_\_

Phone Number \_\_\_\_\_ Fax \_\_\_\_\_

Email Address \_\_\_\_\_

Print Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_



## **APPENDIX**

### **UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR PRODUCTS AND SERVICES**

1. **DEFINITIONS.** The following terms shall have the meanings set forth below:

(A) The “Agreement” consists of the following documents:

- (i) The Utah County Agreement cover page, which contains the signatures of Utah County and Contractor;
- (ii) This Attachment A: Utah County Standard Terms and Conditions for Products and Services; and
- (iii) Any other express written attachments that are incorporated by reference on the Utah County Agreement cover page.

(B) “Contractor” means the individual or entity delivering the Products and Services identified in the Agreement. The term “Contractor” shall include the individual’s or entities’ agents, officers, employees, and partners.

(C) The “County” means Utah County, a political subdivision of the State of Utah, as directed and managed by a majority vote of the Board of County Commissioners of Utah County.

(D) “Products” means any products to be delivered to the County by Contractor as described in the Utah County Agreement cover page.

(E) “Services” means any services to be performed for the County by Contractor as described in the Utah County Agreement cover page.

(F) “Subcontractors” mean subcontractors or subconsultants that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or authorized resellers.

2. **EXTRA WORK.**

(A) Extra work shall be undertaken only when previously authorized in writing by the County and is defined as additional work which is neither shown nor defined in the Agreement or the attached Contractor’s proposal (if any) but determined by the County to be necessary to the project. Extra work is also defined as that additional effort necessary by reason of changed conditions which are radical and unforeseeable.

(B) Miscellaneous items normally associated with the major work items included in the Agreement, but which may not be specifically identified, shall be furnished by Contractor as if they had been included in the Agreement, without additional cost to the County. After written prior authorization of the Board of County Commissioners of Utah County, payment for authorized extra work will be made in the previously authorized amount only.

3. **PAYMENT.** Payments from the County are normally made by the end of the month following the date an order is delivered, service is performed, or the date a correct invoice is received, whichever is later. All payments for the Agreement will be remitted electronically, by mail, or as otherwise determined by the County. Contractor shall accept payment by check or by Purchasing Card without any additional fees.
4. **OWNERSHIP IN INTELLECTUAL PROPERTY.** The County and Contractor each recognize that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. The County will have all rights, title, and ownership of all websites and social media accounts, including any passwords, usernames, or other pertinent login information; advertising materials, including any content or work product; images; newsletters; and intellectual property created, or arising out of the performance of the Agreement, unless otherwise indicated in the Agreement. Contractor will give the County a list of all current passwords, usernames, and any other relevant information necessary for access and control of any property under the Agreement upon completion of the Agreement or upon the County's request.
5. **INSURANCE.**
  - (A) Contractor agrees to carry Commercial General Liability insurance coverage equal to or greater than three million dollars (\$3,000,000) per occurrence. This coverage shall provide liability insurance to cover the activities of Contractor and its subcontractors, all equipment and vehicles, public or private, used in the performance of the Agreement, and to add the County as an additional insured for any Services in the contract. Prior to commencement of work, Contractor shall furnish a Certificate of Insurance to the County evidencing that Contractor has this insurance in place and that the County is an additional insured. An umbrella policy may be used to supplement the Commercial General Liability insurance coverage if needed to reach the three million-dollar coverage requirement.
  - (B) Prior to commencement of Services, Contractor shall furnish a Certificate of Insurance to the County evidencing that Contractor has Workers Compensation Insurance for the Contractor and Subcontractors.
6. **GOVERNING LAW AND VENUE.** The Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Utah and Utah County. Any action or proceeding arising from the Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Provo, in the Fourth Judicial District Court for Utah County.
7. **LAWS AND REGULATIONS.** At all times during the Agreement, Contractor and all Products and Services performed under the Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
8. **EMPLOYMENT STATUS VERIFICATION.** Contractor shall register and participate in the Status Verification System and comply with Utah Code section 63G-12-302 of the Identity Documents and Verification Act. Contractor shall require an affidavit verifying compliance with Utah Code section 63-G-12-302 from each of its contractors and subcontractors.



9. **INDEPENDENT CONTRACTOR.** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the County, and therefore is not entitled to any of the benefits associated with such employment. As an independent contractor, Contractor shall have no express or implied authority to bind the County to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the County. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgments, losses, risks of loss, damages, expenses, and liabilities arising out of or related to the Agreement. Contractor shall also pay any litigation expenses that the County incurs, including attorney's fees, arising out of or related to the Agreement. Contractor shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of the Agreement. The County reserves the right to conduct, control, and direct its own defense for any claims, demands, causes of action, orders, decrees, judgments, losses, damages, expenses, and liabilities arising out of or related to the Agreement.
11. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY.** Contractor shall indemnify and hold the County harmless from and against any and all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities, and costs in any action or claim brought against the County for infringement of a third party's copyright, trademark, trade secret, or other proprietary right.
12. **GOVERNMENTAL IMMUNITY.** The County is a corporate and political subdivision of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"). The County does not waive any procedural or substantive defense or benefit provided or to be provided by the Act or any comparable legislative enactment. The parties agree that the County shall only be liable within the parameters of the Act. Nothing contained in the 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.
13. **NON-FUNDING CLAUSE.** The County intends to request the appropriation of funds to be paid for the services provided by Contractor under the Agreement. The Agreement shall create no obligation on the County as to succeeding annual budget cycles and if funds are not available beyond December 31 of any effective annual budget cycle of the Agreement, or if the budget is amended and such funds are no longer available, the County's obligation for performance of the Agreement shall be null and void. This termination shall not be construed as a breach of the Agreement or any event of default under the Agreement and the termination shall be without penalty, and no right of action for damages or other relief shall accrue to the benefit of Contractor, its successors, or its assigns, as to the Agreement. If funds are not appropriated for a succeeding annual budget cycle to fund performance by the County under the Agreement, or if the budget is amended to make such funds no longer available, the County shall attempt to notify Contractor of non-funding and the termination of the Agreement.
14. **SALES TAX EXEMPTION.** The County's sales and use tax exemption number is 11748944 002 STC. The tangible personal property or services being purchased are to be paid from the County's 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 Agreement. As such, Contractor shall not charge the County any sales tax for the product(s) purchased under the Agreement.

15. **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 the Agreement. Any violation by Contractor of applicable law shall constitute an event of default under the Agreement and Contractor shall indemnify 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 all necessary permits and licenses required for its lawful performance of its duties and obligations under the Agreement during the term of the Agreement.
16. **CONFIDENTIALITY.** Materials, information, data, reports, plans, analyses, budgets, and similar documentation provided to or prepared by Contractor in performance of the Agreement shall be owned by the County and shall be held confidential by Contractor. In addition, all information provided to Contractor by the County for the purposes of Contractor's performance of the Products or Services, whether provided in writing or any other form, shall be held in confidence by Contractor and Contractor shall not release any of the information to any third party, any member of Contractor's firm who is not involved in the performance of Products or Services, or to any representative of the news media without prior written consent of the County. The County shall have the sole obligation or privilege of releasing such information as required by law.
17. **TERMINATION.** Unless otherwise stated in Attachment C: Special Provisions, the Agreement may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. If the violation is reasonably subject to cure, the party in violation will be given 10 working days after notification to correct and cease the violation, after which the Agreement may be terminated for cause. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. The Agreement may be terminated without cause, in advance of the specified expiration date, by the County upon 30 days prior written notice being given to Contractor. On termination of the Agreement, all accounts and payments will be processed according to the financial arrangements in the Agreement for approved services rendered prior to the date of termination, subject to any offsetting claims by the County.
18. **FORCE MAJEURE.** Neither party to the Agreement will be held liable for delay or default caused by fire, riot, acts of God, or war. The County may terminate the Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.
19. **SEVERABILITY OF AGREEMENT.** The invalidity of any portion of the Agreement shall not prevent the remainder from being carried into effect.
20. **LEGAL SUPPORT.** Contractor shall be responsible to provide all legal support for the project including but not limited to the preparation of contracts with subcontractors.
21. **NO PRESUMPTION.** Should any provision of the Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms in the Agreement 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.
22. **WARRANTY.** Contractor warrants to the County that all services and materials furnished under the Agreement will be of the 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.

Contractor warrants and assumes responsibility for all products (including hardware, firmware, and software products) that it licenses, contracts, or sells to the County under the Agreement for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in the Agreement or Contractor's proposal, attached hereto (if any). Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to the Agreement. Product liability disclaimers and warranty disclaimers from the seller are not applicable to the Agreement unless otherwise specified and mutually agreed upon elsewhere in the Agreement. In general, 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 County has relied upon Contractor's skill or judgment to consider when it advised the County about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of defects or unusual problems about which the County has not been warned in writing prior to entering into the Agreement. Remedies available to the County include the following: Contractor will repair or replace (at no charge to the County) the product whose nonconformance is discovered and made known to Contractor in writing. If the repaired or replaced product proves to be inadequate, or fails of its essential purpose, 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 County may otherwise have under the Agreement.

23. **TIME IS OF THE ESSENCE.** The County and Contractor recognize that time is of the essence here and the County will suffer financial loss if any Products or Services are not delivered and performed within the time specified in the Agreement, plus any extensions approved in writing by the County. Contractor shall be liable for all reasonable damages to the County and to anyone whom the County may be liable to as a result of Contractor's failure to timely deliver and perform the Products and Services.
24. **DELIVERY.** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the County except as to latent defects, fraud, and Contractor's warranty obligations.
25. **COUNTERPARTS AND FACSIMILE SIGNATURES.** The Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which together constitute one and the same instrument. Original, facsimile, emailed, texted, electronic, or power of attorney signatures shall be binding upon the executing party.
26. **AMENDMENTS.** No oral modifications or amendments to the Agreement shall be effective. The Agreement may be modified or amended by a written agreement signed by the parties.
27. **ASSIGNMENT.** The parties to the Agreement shall not assign the Agreement without the prior written consent of the other party to the Agreement. No assignment shall relieve the original parties from any liability arising out of or related to the Agreement.
28. **SUCCESSORS IN INTEREST.** The Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties.
29. **WAIVER.** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege. Any waiver must be in writing and signed by the party making the waiver.

30. **SURVIVAL.** The provisions of this Agreement which by their terms call for performance subsequent to termination of the Agreement shall so survive such expiration or termination, such as but not limited to: Section 4. Ownership of Intellectual Property, Section 10. Indemnification, Section 11. Indemnification Relating to Intellectual Property, and Section 16. Confidentiality.
31. **ENTIRE AGREEMENT.** The Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon either party except to the extent incorporated in the Agreement.

Revised September 2019