



**REQUEST FOR PROPOSALS**

**for**

**Public Information Manager**

**RFP # 2018-6**

CLOSING DATE  
FOR RECEIPT OF PROPOSALS: Friday, April 12, 2019

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

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

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## SECTION 1 ADMINISTRATIVE OVERVIEW

### 1.1 PURPOSE

Through this Request for Proposal (RFP), Utah County is accepting proposals from qualified vendors to serve as the Public Information Manager for the County. Prospective vendors should have the expertise, experience and capability to provide a full range of public information services.

### 1.2 SERVICES SOUGHT

The selected vendor will act, in the capacity as an outsourced independent contractor, as the Public Information Manager for the County. The services can be provided pursuant to either (or both) of the following tracks.

**Limited Scope Track:** The vendor will provide the services in connection with a year-round paid intern who is employed by the county and the vendor will be able to coordinate with existing staff of the County Commission.

**Full Scope Track:** The vendor will provide all of the services, and all staff associated with the services will be direct employees or subcontractors of the vendor.

Vendors must indicate in their bid which track they are bidding on, or they may include pricing for both tracks.

The services to be provided are:

- **Public Information** – Provide information through personal visits and email to the various segments of the public which have a vested interest in the progress, impact and reasoning behind decision making by County. Said public information will be provided to the general public, city officials, homeowners and businesses as necessary in the County through:
  - (A) Direct contact through face-to-face meetings.
  - (B) Mass media editorial content to newspapers, radio, web and other media outlets concerning changes, decisions and progress of County and its various departments through weekly press releases, photos, social media engagement and other pertinent information.
  - (C) Provide publishing resources and editorial content for County publications, and news releases to newspapers and media outlets.
  - (D) Regular meeting and coordination with County's officials and departments to answer questions, to discuss problems or concerns and keep County informed of public information progress, take suggestions and keep County up to date on public input.
  - (E) Provide regular web and social media content which outlines the County's progress, highlighting people, departments and services, and other notable events occurring within the county

(F) Establishment and maintenance of email list along with email blasts and database management and providing survey and information activities utilizing the survey tools such as Qualtrics made available by the county

(G) Design, refresh and update social media campaigns using Facebook, Twitter, YouTube and Instagram

(H) Generate and publish additional content such as e-detailing County events, accomplishments and activities.

(I) Produce an annual video for the State of the County event and assist in coordinating the venue, marketing and audio/visual needs.

(J) Available to provide crisis management communication services as needed and to be able to stage and manage a professional press conference when needed.

(K) Coordination and cross-marketing strategies with the public information officers of county departments such as the Sheriff, County Attorney, and Department of Health, as well as affiliated entities such as Explore Utah Valley or the Utah County Fair.

(L) Be designated as the media point of contact

(M) Provide other public information duties – as requested by County

#### **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.

- 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.

| REQUIRED ACTIVITY                           | SCHEDULED DATE |
|---------------------------------------------|----------------|
| RFP Issue Date                              | March 29, 2019 |
| Closing Date for Bidding Provider Questions | April 5 2019   |
| Closing Date for Receipt of Proposals       | April 12, 2019 |
| Anticipated Final Decision                  | April 26, 2019 |

### 2.4 QUESTIONS AND CLARIFICATIONS

Questions regarding this RFP must be submitted by April 5, 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 offerors, or may elect to reject all proposals. After the Board of County Commissioners has selected a proposal, the firm 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.

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

- **50%** Vendor's Qualifications and Relevant Experience
- **40%** Cost, relative to value given
- **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 - PUBLIC INFORMATION MANAGER RFP # 2019-6”. 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 \_\_\_\_\_

## ATTACHMENT B

## CERTIFICATE OF NON-COLLUSION

STATE OF UTAH        )       Request for Proposals  
                              )SS       for  
COUNTY OF UTAH    )       Public Information Manager

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 bid or potential agreement resulting therefrom.

Signature

By: \_\_\_\_\_

Title: \_\_\_\_\_

\*\*\*\*\*

Subscribed/sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 2018 A.D.

My Commission Expires \_\_\_\_\_

Residing at \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Seal

By: \_\_\_\_\_  
Notary Public

## 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 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, authorized resellers, or anyone else for whom Contractor may be liable for.

**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 this 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, unforeseen, and completely beyond the control of Contractor.

(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 by reimbursement for all direct and substantiated costs of labor, materials, and supplies used.

**3. 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 this Agreement upon completion of the Agreement or upon the County’s request.

**4. 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 this 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.

**5. LAWS AND REGULATIONS.** At all times during the Agreement, Contractor and all Services performed under this Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.

**6. 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.

**7. 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.

**8. INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall indemnify 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 and 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 this 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.

**9. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY.** Contractor will 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.

**10. 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 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.

**11. NON-FUNDING CLAUSE.** The County intends to request the appropriation of funds to be paid for the services provided by Contractor under the Agreement. If funds are not available beyond December 31 of any effective annual budget cycle of the Agreement, the County's obligation for performance of the Agreement beyond that date shall be null and void. The Agreement shall create no obligation on the County as to succeeding annual budget cycles and shall terminate and become null and void on the last day of the annual budget cycle for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. This termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and the 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 the Agreement. If funds are not appropriated for a succeeding annual budget cycle to fund performance by the County under this Agreement, the County shall promptly notify Contractor of non-funding and the termination of the Agreement no later than 30 days prior to the expiration of the annual budget cycle for which funds were appropriated.

**12. SALES TAX EXEMPTION.** The County sales and use tax exemption number is 11748944 002 STC. The tangible personal property or services being purchased are to be paid from County 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 county sales tax for the product(s) purchased by the Agreement.

**13. 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 be liable for and hold the County 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.

**14. CONFIDENTIALITY.** Contractor shall hold all information provided to it by the County for the purposes of its performance of the Agreement, whether provided in written or other form, in strict confidence, shall make no use other than for the performance of the Agreement, and 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 services under the Agreement, or to any representative of the news media without prior written consent of the County. Materials, information, data, reports, plans, analyses, budgets, and similar documentation provided to or prepared by Contractor in performance of the Agreement shall also

be held confidential by Contractor. The County shall have the sole obligation or privilege of releasing such information as required by law.

**15. PAYMENT.** Payments from the County are normally made within 30 days 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.

**16. TERMINATION.** Unless otherwise stated an Attachment C: Special Provisions, the Agreement may be terminated with cause by either party, in advances of the specified termination date, upon written notice being given by the other party. 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 either party, upon 45 days prior written notice being given the other party. 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.

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

**18. SEVERABILITY OF AGREEMENT.** The invalidity of any portion of the Agreement shall not prevent the remainder from being carried into effect.

**19. INSURANCE.**

(A) Contractor agrees to carry Commercial General Liability insurance coverage equal to or greater than three million dollars (\$3,000,000) per occurrence and per aggregate. 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 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 County evidencing that Contractor has Workers Compensation Insurance for the Contractor and Subcontractors.

**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 this 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 this 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 agrees to warrant and assume 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 this 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 significant defects or unusual problems about which the County has not been warned. 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 allowed 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 required under this Agreement.

**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.** This 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.

**30. 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.

Revised Nov. 2018