



UTAH COUNTY

REQUEST FOR PROPOSALS

AIR SPRAYING SERVICES FOR

MOSQUITO ABATEMENT

FOR UTAH COUNTY

RFP 2020-10

CLOSING DATE FOR
RECEIPT OF PROPOSALS: Thursday, October 29th, 2020

TIME: 3:00 pm MT

PLACE: Office of the Utah County Purchasing Manager
100 East Center Street
Room 3600
Provo, UT 84606

I. REQUEST FOR PROPOSAL

Utah County on behalf of the Utah County Health Department Mosquito Abatement Division, hereafter referred to as MAD, is soliciting competitive sealed proposals from licensed commercial aerial pesticide applicators to provide all required equipment and pilot(s) to apply mosquito adulticides for the control of adult mosquitoes. Once a spray decision is reached, MAD will authorize a seasonal minimum of 20,000 acres with adulticide to be sprayed. Usually, once spraying begins it occurs weekly for several weeks. Total seasonal acreage spraying has traditionally been between 60,000-90,000 acres.

II. BACKGROUND

The function of the MAD is to abate mosquitoes within the limits of Utah County boundaries. The goal of the MAD is to abate mosquitoes at their source to reduce their pestiferous and disease carrying potential to the public.

Because of the nature of the habitat in which mosquitoes breed, many sources of mosquito production are too large or inaccessible to be treated by conventional ground application methods. Therefore, the MAD requires differing degrees of aerial pesticide application.

The MAD is currently looking for proposals for ULV* applications over unpopulated or sparsely populated areas of pasture, marsh and slough habitat with fixed wing or rotary aircraft. The designated spray block or blocks will be a minimum of 1,000 acres but is usually 4,000-10,000 acres. Adulticide applications will typically be done from 9:00 pm until 1:00 am. Night flying capability is necessary. Spray nozzles must be able to produce standard ULV droplets used in mosquito control.

*(ULV refers to ultra-low volume application which is generally .5 to 3 liquid ounces per acre used to treat areas infested with adult mosquitoes. Droplets from aircraft usually range from 10-50 microns in size)

III. TERM OF AGREEMENT

The term of the resulting agreement will begin 1 June 2021, continuing through 29 September 2026.

IV. SCOPE OF WORK

The selected contractor will be required to perform the following services:

A. Provide aircraft either fixed wing or rotary, with equipment capable of applying ULV applications (as defined in #4).

1. Aircraft must be warranted by contractor to be maintained in an air worthy condition in accordance with maintenance procedures applicable to the type of aircraft.
2. Aircraft is to be fitted with a dry break-coupling device for the loading of pesticides.
3. Provide equipment to load pesticide into aircraft.
4. Aircraft must be capable of applying Dibrom mosquito adulticide at .5 – 1 oz per acre (chemical supplied by Utah County Mosquito Abatement) and be able to treat at least 10,000 acres in a three hour block of time starting at dusk (approximately 9:00 pm to midnight).
5. Written certification of calibration (both droplet size and application rate) must be supplied prior to signing of the contract.

B. Provide pilot(s) to operate above mentioned aircraft.

1. Pilot(s) must be licensed with the Utah Dept of Agriculture as commercial pesticide applicator(s) for aerial application in the State of Utah.
2. Pilot(s) must have a minimum of:
 - 1,000 hours as pilot in command of fixed wing aircraft or,
 - 500 hours as pilot in command of rotary aircraft;
 - 100 hours mosquito adulticiding, crop spraying, water bombing or similar low-level flight experience in the type of aircraft proposed for this agreement.

C. Supply accident insurance claims for the last 3 years.

D. Provide an example of a spray report with application map for a customer from 2020 season.

E. The selected contractor must be able to provide the necessary services within 72 hours of notification.

F. Must be available for services from 1 June 2021 until 29 September 2026.

G. Must have written permission from at least one airport that is to be used as the base of operations for the loading of pesticides into the aircraft.

V. CONTENT OF PROPOSAL

All proposals submitted in response to the solicitation must include but are not limited to the following:

- A. List type and number of aircraft and spray system that would be used;
- B. A statement indicating insurance coverage of \$3 million for liability, aircraft, pollution and workers compensation coverage;
- C. List numbers of pilots proposed and flight experience, and if co-pilots are used;
- D. Indicate the experience level with pesticide application for each pilot;
Include any Letters of Recommendation that you have from previous clients;
- E. Loading procedures to be used;
- F. Airport or runway facility to be used;
- G. Application cost per acre of adulticide ULV Dibrom;
- H. Guaranteed response time;
- I. Firm identification – name of firm, address, contact person, phone and fax numbers and e-mail address;
- J. Affirm that the contractor does not discriminate against any individual because of race, religion, sex, color, age, handicap or national origin, and that these shall not be a factor in consideration for employment, selection of training, promotion, transfer, recruitment, rates of pay, or other forms of compensation, demotion or separation;
- K. Signature Page – The proposal will be signed, in ink, by a principal of the business who is authorized to execute the contract. The name of the principal and his/her business title will be included in the signature element in either type or print. Penciled signatures or notations will not be accepted;
- J. Certificate of Non-Collusion (see pg. 18).

VI. EVALUATION OF PROPOSALS

Following the receipt of proposals, the Utah County Health Department, Purchasing Agent, and/or other Utah County staff may select the successful contractor based upon consideration of the following criteria:

- A. Availability of personnel and equipment, response time capabilities: 20%
- B. Experience and safety record of assigned pilot(s); 10%
- C. Quality of similar work performed for others, the ability to produce reports within 24 hours of doing the application and successful emergency mosquito spray application in the Western United States; 20%
- D. Required insurance \$3 million, airport approval, loading procedures and calibration; 10%
- E. Cost per acre of ULV application; 40%

Proposals containing information which suggests that the contractor does not understand the required scope of work will not be considered for award.

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 members 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 offers 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.

V. INQUIRIES

All inquiries relating to the proposal procedures should be directed to Robert Baxter, Utah County Purchasing Manager, (801-851-8233, email Robertb@utahcounty.gov).

VI. INSTRUCTIONS FOR PROPOSAL PREPARATION / PROPOSALS SUBMISSION

Five (5) copies of each proposal must be submitted to the Utah County Purchasing Manager by Thursday, 29 October 2020 at 3:00pm Mountain Time. The proposal must be delivered to:

Robert Baxter
Utah County Purchasing Manager
100 East Center St, Suite 3600
Provo, Utah 84606
(801) 851-8233

VII. ACCEPTANCE OF PROPOSAL

Pursuant to this RFP a contract may be executed based on the terms and parameters of the RFP and the offer presented by the proposer. The contract period will be for the time indicated in Term of Agreement.

VIII. DISQUALIFICATION OF PROPOSAL

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

- A. Failure to respond by the established submission deadline.
- B. Failure to completely answer all questions posed in the RFP.
- C. Failure to provide requested documentation at the time of proposal submission.
- D. Illegible responses.
- E. Failure to sign and return the Signature Page.
- F. Failure to evidence a satisfactory record of integrity.
- G. Failure to qualify legally to contract.

IX. PROCUREMENT RULES AND PROCEDURES

A. Procedure

The Procedure for the issuance of the RFP, evaluation of proposals, and selection of a Contractor.

1. Interested entities will prepare and submit their proposals according to the Procurement Timetable in (C) below.

2. Utah County and/or its representatives will evaluate all submitted proposals to determine acceptance or rejection of the proposals.
3. If the County chooses to select a contractor, that entity will be required to sign a Contract according to the terms found throughout this RFP.

B. Rules of Procurement

All materials submitted in response to this RFP becomes the property of Utah County and will not be returned. Proposals submitted may be reviewed and evaluated by any person at the discretion of Utah County.

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 requirements or condition from which a material deviation will not be approved by Utah County.

The County reserves the right to negotiate separately with any source whatsoever in any manner necessary to serve the best interest of the County.

Utah County reserves the right to reject any or all proposals or waive irregularities when to do so would be in the best interests of Utah County. Minor irregularities are those which will not have a significant adverse effect on overall competition or performance levels.

The County may not award a contract solely on the basis of this RFP and will not pay for the information solicited or obtained. The information obtained will be used in determining the proposal that best meets the County’s needs and is the most advantageous proposal received. No oral, telephonic or electronic proposals or modifications will be considered.

The responding party agrees that Utah County may terminate this procurement procedure at any time, and Utah County shall have no liability or responsibility to the responding party for any costs or expenses incurred in connection with this RFP, or such parties response.

C. PROCUREMENT TIMETABLE

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

REQUIRED ACTIVITY	SCHEDULED DATE
RFP Issue Date	Monday October 5th, 2020
Closing Date for Receipt of Proposals	Thursday, October 29th, 2020 at 3:00pm MT

X. TERMS AND CONDITION

A. General Requirements

Utah County will award a contract 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 Contractor.

It is vitally important that any person who signs a proposal or contract on behalf of a Contractor’s organization certifies that he or she has the authority to so act. The successful Contractor 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 the RFP process or the use of the information contained in this RFP. Only the terms and conditions contained in a contract 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 contract shall be effective, but such may be modified or amended by a written agreement signed by the parties. If it becomes necessary to revise any part of the RFP, an addendum will be provided to all who received an RFP.

B. Firm Pricing

All pricing, quotes or proposals are to remain firm for the contract period. Any proposals, which does not offer to remain firm for the required period, may be considered to be non-responsive.

C. Licensing

All applicable federal, state, and local licenses must be acquired prior to 1 June 2021 and must be maintained throughout the entire contract period. A copy of each license required to legally perform duties as described herein shall be supplied to Utah County prior to 1 June 2021 as well as any renewal of said licenses.

D. Inspection and Acceptance

Utah County or its authorized representatives shall have the right to enter the Premises of the Contractor, or such other places where contract services are being performed, to inspect, audit, monitor or otherwise evaluate the services being provided. Contractor agrees to allow reasonable access to all facilities and assistance to Utah County or its authorized representatives.

E. Insurance

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.

F. Indemnity

The Contractor shall defend, indemnify, save and hold harmless Utah County, its officers, employees, and agents, from and against any 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 any agreement resulting from this RFP, which is caused by any act or omission of Contractor's officers, employees, agents or volunteers.

G. Independent Contractor

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 Utah County, and that any agreement resulting from this RFP is not exclusive of other agreements, contracts or opportunities. 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 the 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, 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 agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for Utah County.

AIRCRAFT, PILOTS AND SPRAY EQUIPMENT

1. Type and number of aircraft/s available.

2.

2. Type of spray equipment available. (Include a copy of calibration from 2020)

ADULTICIDING ROTARY ATOMIZER TECHNOLOGY: PROVIDE BRIEF DESCRIPTION:

DROPLET SLIDE ANALYSIS CALIBRATION:

METHOD:

RESULTS:

FLOWRATE CALIBRATION:

METHOD: _____ RESULTS: _____

3. How many pilots do you have who are certified to pilot the aircraft for mosquito control aerial adulticide missions and are familiar using your global positioning system (GPS) equipment? Please include their duration of experience conducting this type of work. Do you use a co-pilot?

GLOBAL POSITIONING SYSTEM (GPS) EQUIPMENT

4. What type of GPS swath guidance equipment is used in your aircraft?

5. Does this GPS equipment allow you to fully “outline” the area(s) to be sprayed so that spray on-spray off spots are delineated? (Provide an example of a completed spray job with map from 2020)

6. Is the data from your GPS equipment able to generate “ESRI” shapefiles?

WEATHER MONITORING

7. Do you have ground-based weather monitoring equipment available (e.g., wind direction and speed, air temperature at spray altitude)? Provide brief description.

8. Do you have weather monitoring equipment available in the aircraft? Provide an example of this from a spray report for 2020.

9. Please explain your insurance coverage (including limits, carrier name, address, phone number and contact person). Required amount is \$3 million for Utah County. If you currently don't cover that much, provide insurance documentation that you will.

THE 'UTAH COUNTY, 100 EAST CENTER, PROVO, UTAH 84606' MUST BE IDENTIFIED AS AN ADDITIONAL "NAMED INSURED" ON THE POLICY!

PROPOSED LOCATION OF LOADING / CHEMICAL STORAGE / SECURE PARKING OF AIRCRAFT

10. AIRPORT TO BE USED _____

Please attach written documentation on permission to use the above facility to land and take off for aerial pesticide application events. A letter from the airport manager would be appropriate.

11. Chemical Storage:

The UCMAD will deliver the spray materials (excluding water) to the approved airport. The bidder is responsible for providing a safe and secure storage area for the pesticides and is responsible for the loading of the aircraft.

Describe proposed storage area:

12. Secure Area of Aircraft Storage:

Describe proposed storage area:

13. Describe proposed area to be used in loading aircraft for spray operations (include containment to be used):

EXPERIENCE

14. List past aerial pesticide application spray experience in the pastureland and wetland areas of Utah County (if none, list similar experience):

15. List references for past aerial pesticide applications in mosquito control (if none, list references for similar application experience):

Name of Company: _____
Contact Person: _____
Phone #: _____ Email: _____
Address: _____

Name of Company: _____
Contact Person: _____
Phone #: _____ Email: _____
Address: _____

Name of Company: _____
Contact Person: _____
Phone #: _____ Email: _____
Address: _____

KNOWLEDGE OF TYPE OF AREAS TO BE TREATED:

16. Briefly describe aerial spray experience in mosquito control:

PRICES

17. PRICE

PRICE PER ACRE

Price per acre is the only billable amount for this contracts service. Price per acre includes any loading, ferry time, fuel cost and other miscellaneous items:

A. Aerial Adulticide Application:

Application rate of .5-1 (one) ounce per acre of finished product.

(\$ _____) per acre

Spell out amount: _____

SAFETY RECORD

18. Safety Record:

List any insurance claims filed against the Bidder or any of its pilots resulting from aerial operations:

List any citations or reportable events from the Federal Aviation Administration or Utah State Department of Agriculture and Food in the past 10 years:

BIDDERS INFORMATION

BIDDERS COMPANY NAME:

ADDRESS:

PRINT NAME: _____

POSITION WITH COMPANY: _____

SIGNATURE: _____

PHONE #: _____

FAX #: _____

Email: _____

DATE: _____

CERTIFICATE OF NON-COLLUSION

STATE OF UTAH) Requests for Proposals
)§ for
COUNTY OF UTAH) Mosquito Abatement Air Spraying Services

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 _____ 2020 A.D.

My Commission Expires _____

Residing at _____

Seal

By: _____

Notary Public

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, judgements, 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, judgements, 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.