

UTAH COUNTY  
DEPARTMENT OF DRUG AND ALCOHOL  
PREVENTION AND TREATMENT  
151 S University Ave, suite 3200  
Provo, Utah 84606  
(801) 851-7127

**INVITATION TO BID**  
  
**for**  
  
**CHILDREN'S PLAYGROUND AND PLAY AREA**  
  
**ITB #2017-25**

CLOSING DATE  
FOR RECEIPT OF BIDS: November 16, 2017

TIME: 3:00 p.m. (Mountain Time)  
Bids will be opened at 3:15 p.m.

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

MANDATORY PRE-BID  
CONFERENCE: Wednesday, November 8th, 2017  
11:00 a.m. (Mountain Time)  
Building under construction  
1250 E 285 N  
Payson, Utah



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## **1. INVITATION TO BID**

### **1.1 INTENT**

Through this Invitation to Bid (ITB), Utah County intends to select a qualified contractor to furnish and install a children's playground and play area for The Promise of Women and Families Program Promise South located at 1250 East 285 North, Payson, Utah.

The Contractor shall furnish all labor, materials, equipment, tools, transportation and supplies required to complete the work in accordance with the terms hereof.

If a Contractor is selected pursuant to this ITB, an agreement will be executed with Utah County, a sample copy of which is attached as Exhibit C.

### **1.2 PROCEDURE**

- A. The procedure for response to this ITB, evaluation of bids, and selection of a Contractor is as follows:
  - 1. Interested entities will prepare and submit their bids prior to the specified Closing Date for Receipt of Bids.
  - 2. Utah County and/or its representatives will evaluate all submitted bids to determine acceptance or rejection of the bids.
  - 3. The selected Contractor will be required to sign an agreement with the County.

### **1.3 MANDATORY PRE-BID CONFERENCE**

- A. Bidders MUST attend the MANDATORY Pre-Bid Conference to be conducted at 11:00am, November 8th, 2017 at the building under construction located at 1250 East 285 North, Payson, Utah. The conference will last approximately one hour.
- B. Bids will not be accepted from bidders who were not represented at the Pre-Bid Conference. It is each Bidder's responsibility to sign the official attendance sheet.

### **1.4 BID ORGANIZATION**

- A. The bid must include:
  - 1. Completed Contractor's Cost Proposal (Attachment B)
  - 2. Completed Contractor Information Form (Exhibit A).
  - 3. Completed Certificate of Non-Collusion (Exhibit B).
  - 4. A copy of the bidder's current local business license.
  - 5. A copy of the bidder's current Contractor License.
  - 6. Proof of required insurance.

### **1.5 BID SUBMISSION**

- A. Each respondent must submit TWO (2) copies of its SEALED bid to the Utah County Purchasing Agent. The envelope containing the bid must be clearly labeled "SEALED BID – CHILDREN'S PLAYGROUND & PLAY AREA, ITB #2017-25. The bid must be delivered to



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

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

## **1.6 QUESTIONS AND CLARIFICATIONS**

All questions regarding this ITB must be submitted through the SciQuest web site. The deadline for submission of questions is specified on the SciQuest web site.

## **1.7 ACCEPTANCE OF BID**

- A. Utah County reserves the right to reject any or all bids or waive minor 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.
- B. 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 ITB, or such party's response.

## **1.8 DISPOSITION OF BIDS**

All bids (and the information contained therein) shall become the property of Utah County. No bid shall be returned to the respondent regardless of the outcome of the selection process.

## **1.9 DISQUALIFICATION OF BID**

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

- A. Failure to respond within the established timetable.
- B. Failure to completely answer all questions presented in the ITB.
- C. Use of any other type of form or format other than those indicated in the ITB.
- D. Failure to provide requested documentation at the time of bid submission.
- E. Illegible responses.
- F. If the bidder adds any provisions reserving the right to accept or reject an award or to enter into an agreement pursuant to an award, or any other unauthorized conditions, limitations or provisions.
- G. If the bidder is unable to evidence a satisfactory record of integrity.
- H. If the bidder is not qualified legally to contract.
- I. If the bid at the opening does not contain a signed bid, and a signed certificate of non-collusion.
- J. Utah County reserves the right to reject any or all bids.

## **1.10 EVALUATION CRITERIA**

All bids will be evaluated by authorized representatives of Utah County for compliance with the terms and conditions contained in this ITB and the resulting agreement awarded to the lowest responsive and responsible bidder.



### **1.11 GENERAL**

- A. Utah County will award a contract in reliance upon the information contained in bids submitted in response to the ITB. Utah County will be legally bound only when and if there is a signed agreement entered into between Utah County and the awarded bidder.
- B. It is vitally important that any person who signs a bid or agreement on behalf of a respondent certifies that he or she has the authority to so act. The bidder who has its bid accepted may be required to answer further questions and provide further clarification of its bid and responses.
- C. Receiving this ITB or responding to it does not entitle any entity to participate in services or transactions resulting from or arising in connection with this ITB. Utah County shall have no liability to any person or entity under or in connection with this ITB, unless and until Utah County and such person have executed and entered into an agreement pursuant to the terms of this ITB.
- D. By responding to this ITB 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 ITB. 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 ITB process or the use of the information contained in this ITB. 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 respondent in any manner as having any legal effect whatsoever.

### **1.12 INTERPRETATION OF ITB**

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

### **1.13 PROPRIETARY INFORMATION**

The Contractor shall mark proprietary information contained in the bid which is not to be disclosed to the public or used for purposes other than the evaluation of the bids. Pricing and service elements of the successful bid will not be considered proprietary.

### **1.14 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 bids must be submitted in the bid format outlined herein.
- C. All prospective bidders must meet the required criteria as of the date of submission. Respondents must provide all information requested in the Contractor Information Form.
- D. Utah County has established certain requirements with respect to bids to be submitted by respondents. The use of "shall", "must", or "will", in this ITB indicates a requirement or condition from which a material deviation will not be approved by Utah County.



## **SPECIFICATIONS CHILDREN'S PLAYGROUND AND PLAY AREA**

### **S.1 COMPLETION DEADLINE**

All work specified herein must be completed on or before April 30, 2018.

### **S.2 PROJECT SPECIFICATIONS**

A. **Project Identification:** Promise South Program Children's Playground and Play Area

**Project Location:** 1250 E 285 N, Payson, Utah

**Project Drawing:** Refer to attached drawing

B. **Owner:** Utah County

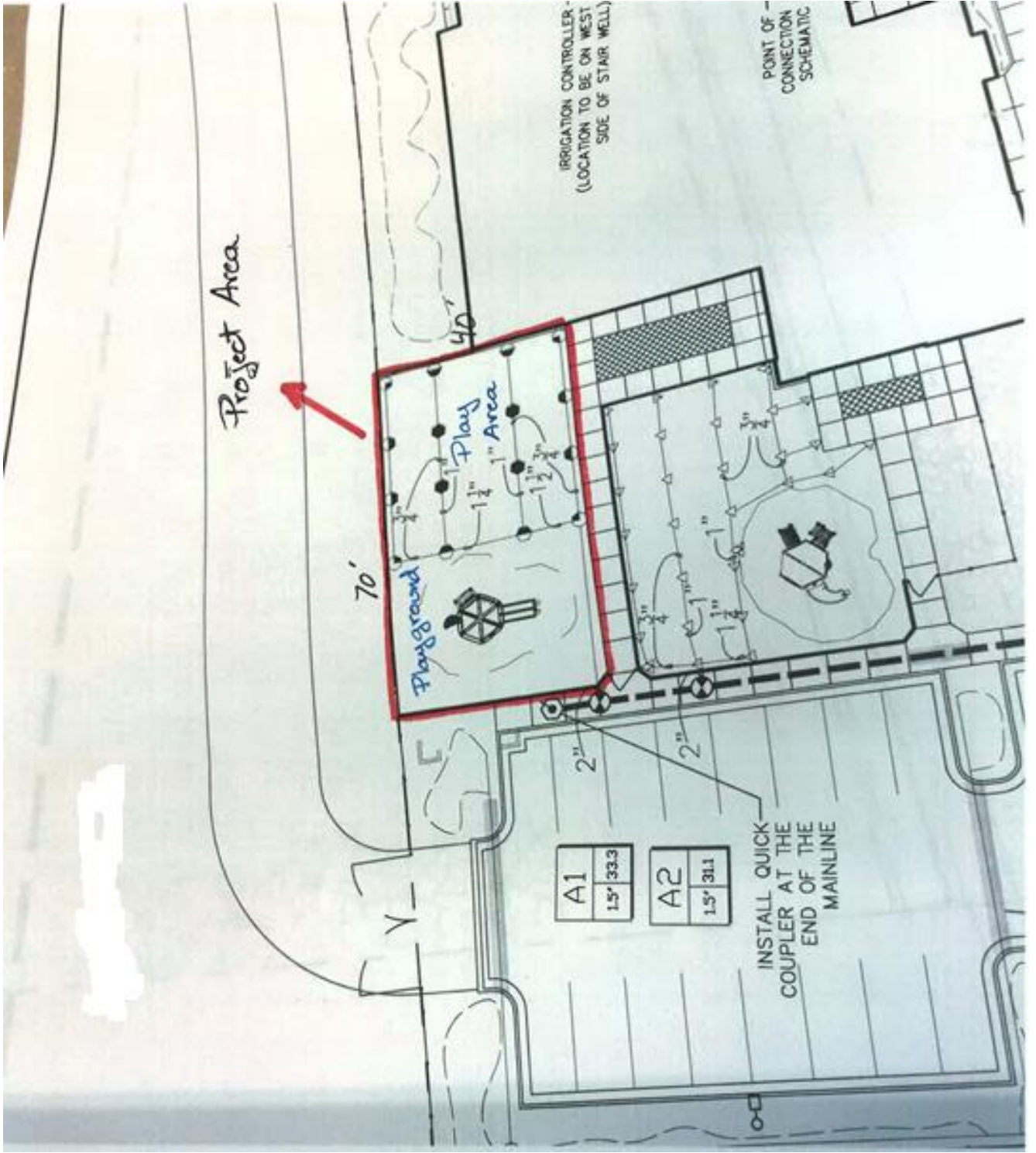
**Owner's Representative:** Pat Bird

**Consultant:** Raymond, Van Nosedol & Assoc., Inc.

C. The Work consists of the following:

1. Install a singular playground structure  
Refer to exact structure in attached drawing and photo
2. Provide wood chips for playground area (31' x 38', 6" deep)
3. Shade structure covering playground structure  
Refer to attached photo for possible shade structures
4. Concrete pad w/rebar for shed (8' x 10')
5. Provide and install shed (6' x 8') on concrete pad  
Refer to attached photo for suggested shed
5. 3 trees planted- Maple Autumn Blaze  
Refer to attached photo
6. Connect and install PVC sprinkler system for play area (39' x 32')
7. Position top soil and place sod for play area.
8. Provide tables, benches (park grade) and install.  
Refer to attached photos for exact tables and benches









Utah County  
Utah

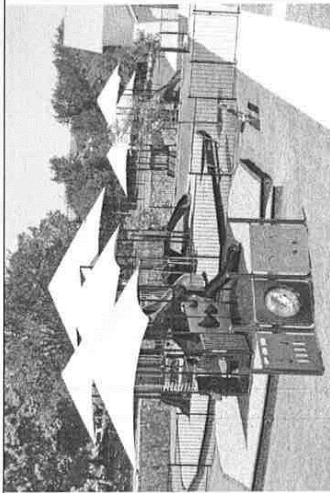
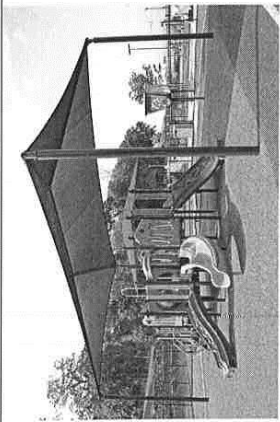
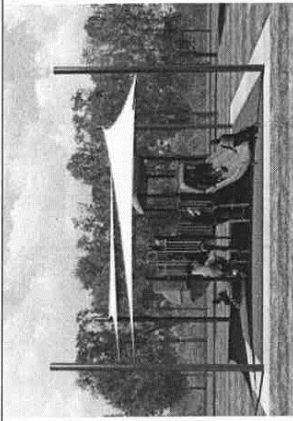
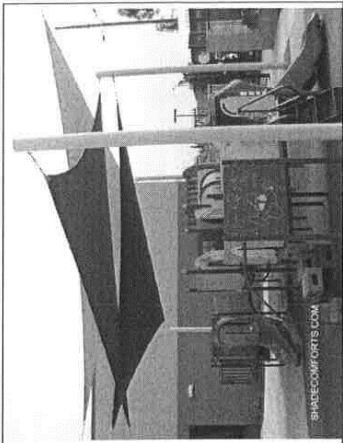
11/20/2018

Equipment Manufacturer  
**PLAYWORLD**  
The Quality Standard











# Keter Manor Large 6 x 8 ft. Resin Outdoor Backyard Garden Storage Shed



[166 customer reviews](#) | [100 answered questions](#)



VIDEO



- External dimensions: 73.1 in. W x 93.2 in. D x 89.4 in. H
- Internal dimensions: 66.5 in. W x 87.4 in. D x 86.5 in. H
- Storage capacity: 291 cu. ft.
- Made from polypropylene resin plastic & steel reinforcement to ensure its durability
- Stylish wood-like texture will complement any home



## ☑ **Maple–Autumn Blaze**

**Scientific Name:** acer freemanii 'geffers red'

**Mature Height:** 40–60 ft

**Mature Spread:** 40–60 ft

**Growth Rate:** Rapid

**Description:** Brilliant red fall color

**Sun Exposure:** Sun

**Flower Color:** Small Red

**Foliage Color:** Green

**Fall Color:** Red







2 tables (46"), Square Expanded Thermoplastic table with umbrella insert  
46" top, 36" seat of 9 gauge flattened expanded metal, color: purple



2- 6' Vinyl Plank Bench 2"x10", 130 lbs, Color: purple



**ATTACHMENT B**  
**CONTRACTOR'S COST PROPOSAL**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

**B.1 LUMP SUM BID: (used for bid evaluations)**

ITEM	TOTAL COST
Playground and Play Area	\$ _____

**B.3 CERTIFICATION**

I hereby certify that I have read, understand, and agree to all sections, Exhibits, and Attachments of this Invitation to Bid for children's playground and play area. I further certify that the information submitted by me/my company in response to this Invitation, including the pricing and other information, is true and accurate.

I understand that Utah County has the right to reject any or all bids, to waive minor irregularities when to do so would be in the best interests of Utah County, and to negotiate a price for the proposed services as determined to be in the best interest of Utah County.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## EXHIBIT A

### CONTRACTOR INFORMATION FORM

In order to receive consideration, submitted bids must contain responses to all questions.

Failure to respond to all questions may result in disqualification of the bid.

COMPANY NAME & ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is this an Office:\_\_\_\_\_, Home:\_\_\_\_\_, Shop:\_\_\_\_\_, Other:\_\_\_\_\_  
Telephone Number: (\_\_\_\_) \_\_\_\_\_, Emergency Number: (\_\_\_\_) \_\_\_\_\_  
Answering Machine: (\_\_\_\_) \_\_\_\_\_, Fax Number: (\_\_\_\_) \_\_\_\_\_

.  
Email Address:

COMPANY OWNER: \_\_\_\_\_  
COMPANY PRESIDENT: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ Phone: \_\_\_\_\_

Type of Company (Partnership, Corporation, Venture etc.): \_\_\_\_\_

If a Corporation, in what State Incorporated: \_\_\_\_\_

Business License Number: \_\_\_\_\_

State of Utah Contractor License Number: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

D&B D-U-N-S Number: \_\_\_\_\_

How long has this company been in business: \_\_\_\_\_ Years, and \_\_\_\_\_ Months.

Officers authorized to execute contracts: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What would happen to your company in the event of the owner's absence or death?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Brief History of the Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are there any judgments, suits or claims pending  
against your company? If Yes, attach a written explanation.

**YES NO**

☐ ☐

Has your company operated under any other name (s)?  
If Yes, attach a written explanation.

**YES NO**

☐ ☐



CONTRACTOR INFORMATION FORM Page 2

Has your firm failed to complete a contract within the last five years?  
If "yes" attach explanation. **YES NO**  
☐ ☐

Has your firm or any partner or officers ever been involved in any  
bankruptcy action? If "yes" attach explanation. **YES NO**  
☐ ☐

Has your firm ever been listed on the Excluded Parties List System? **YES NO**  
☐ ☐

Are any of your firm's owners, officers, employees, or agents also  
employees of Utah County or related to any employees of Utah County  
If "yes" attach explanation. **YES NO**  
☐ ☐

FINANCIAL REFERENCES

1. Bank Name & Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Manager \_\_\_\_\_ Phone \_\_\_\_\_

2. Bank Name & Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Manager \_\_\_\_\_ Phone \_\_\_\_\_

CLIENT REFERENCES

1. Name: \_\_\_\_\_, Contact: \_\_\_\_\_  
Address: \_\_\_\_\_, Phone: \_\_\_\_\_  
\_\_\_\_\_

2. Name: \_\_\_\_\_, Contact: \_\_\_\_\_  
Address: \_\_\_\_\_, Phone: \_\_\_\_\_  
\_\_\_\_\_

3. Name: \_\_\_\_\_, Contact: \_\_\_\_\_  
Address: \_\_\_\_\_, Phone: \_\_\_\_\_  
\_\_\_\_\_

4. Name: \_\_\_\_\_, Contact: \_\_\_\_\_  
Address: \_\_\_\_\_, Phone: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_







**EXHIBIT C**

**SAMPLE AGREEMENT**



# UTAH COUNTY AGREEMENT

**THIS AGREEMENT** is made and entered into by and between Utah County, a body corporate and politic of the State of Utah, located at 100 East Center Street, Provo, Utah 84606, hereinafter referred to as COUNTY, and the following hereinafter referred to as CONTRACTOR:

_____			Contact Person: _____
Name			
_____			Phone #: _____
Address			
_____			Email: _____
City	State	Zip	

**WHEREAS**, COUNTY desires to obtain Children's Playground and Play Area, and further to obtain said ☐ product(s) ☐ service(s) or ☒ product(s) and service(s) in accordance with Utah State Law; and

**WHEREAS**, CONTRACTOR is willing to provide such ☐ product(s) ☐ service(s) or ☒ product(s) and service(s) for COUNTY in consideration of receiving such fees and other consideration as herein provided;

**NOW, THEREFORE**, in consideration of such mutual promises set forth herein, the parties hereto agree as follows:

- DESCRIPTION OF PRODUCT(S) SERVICE(S) OR PRODUCT(S) AND SERVICE(S)**  
In consideration of the compensation set forth in Section 2, CONTRACTOR agrees to provide ☐ \_\_\_\_\_ or ☒ provide the ☐ product(s) ☐ service(s) or ☒ product(s) and service(s) as specified in CONTRACTOR's Proposal attached hereto as ATTACHMENT B, which attachment is incorporated herein by this reference.
- COMPENSATION**  
In exchange for services listed in Section 1, COUNTY will: ☐ pay CONTRACTOR \$\_\_\_\_\_ ☒ or compensate in accordance with the terms set forth in CONTRACTOR's Proposal attached hereto as ATTACHMENT B, or such other amount as modified in accordance with the terms hereof.
- TERM**  
The term of this AGREEMENT shall commence upon execution hereof and shall terminate upon completion of the work specified, or until the following date, ~~the~~ \_\_\_\_\_ of \_\_\_\_\_, 20\_\_.
- ATTACHMENTS**  
The following attachments are incorporated into this Agreement as if fully set forth herein: ☒ ATTACHMENT A: Utah County Standard Terms and Conditions  
☒ ATTACHMENT B: CONTRACTOR'S Proposal  
☒ ATTACHMENT C: Special Provisions  
☐ ATTACHMENT D: Utah County Procurement Compliance  
**Except as explicitly modified by Special Provisions as set forth in ATTACHMENT C, any ambiguities or conflicting terms shall be resolved by granting full deference to the terms of Utah County's Standard Terms and Conditions as set forth in ATTACHMENT A.**

**IN WITNESS WHEREOF**, the parties have caused this AGREEMENT to be duly executed on this, the \_\_\_\_\_ of \_\_\_\_\_, 2017.

BOARD OF COUNTY COMMISSIONERS, UTAH  
COUNTY, UTAH

\_\_\_\_\_  
WILLIAM C. LEE, Commission Chairman

ATTEST:  
BRYAN E. THOMPSON Utah  
County Clerk/Auditor

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

Deputy  
APPROVED AS TO FORM:  
JEFFREY R. BUHMAN  
Utah County Attorney

CONTRACTOR

By: \_\_\_\_\_  
Deputy Utah County Attorney

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



ATTACHMENT A: UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR  
CONSTRUCTION

**1. TERM**

The term of this AGREEMENT shall commence upon execution hereof and shall terminate upon final payment by COUNTY, or continue until the date specified on the signature page of this AGREEMENT. Termination of this AGREEMENT shall not terminate any warranty or other continuing obligation owed by CONTRACTOR as set forth herein.

**2. EXTRA WORK**

- a. Extra work shall be undertaken only when previously authorized in writing by Utah County, and is defined as additional work which is neither shown nor defined in this AGREEMENT or the attached CONTRACTOR's proposal (if any), but determined by Utah County to be necessary to the project. 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 the CONTRACTOR.
- b. Miscellaneous items normally associated with the major work items included in this agreement, but which may not be specifically identified, shall be furnished by the CONTRACTOR as if they had been included in the agreement, without additional cost to COUNTY. After prior authorization of the County Commission in writing, payment for authorized extra work will be made by reimbursement for all direct and substantiated costs of labor, materials, and supplies used.

**3. ALTERATION OF SPECIFICATIONS OR CHARACTER OF WORK**

The County Commission, after recommendation by the County Public Works Director, reserves the right to make, at any time during the term of this AGREEMENT, such increases or decreases in quantities and such alterations in the details of the work, and the elimination of one or more items as may be found necessary or desirable and to adjust the contract price accordingly by change order. Such alterations shall not be considered as a waiver of nor release of any surety. CONTRACTOR agrees to accept the specifications as altered the same as if it had been a part of the original AGREEMENT. CONTRACTOR shall proceed with the work alterations when ordered in writing. Financial increases to this AGREEMENT must be approved by the County Commission before additional work is authorized and constructed.

**4. AUTHORITY OF COUNTY COMMISSION AND THE COUNTY PUBLIC WORKS DIRECTOR**

- a. The County Commission and the County Public Works Director will decide all questions which may arise as to the quality, quantity and acceptability of materials furnished and work performed and as to the rate of progress of work. They will also decide all questions which may arise as to the acceptable fulfillment of this AGREEMENT on the part of CONTRACTOR.
- b. The County Commission or the County Public Works Director will have the authority by written order to suspend work wholly or in part due to the failure of CONTRACTOR to correct conditions unsafe for the workmen or general public, for failure to carry out provisions of this AGREEMENT, for failure to carry out orders, for such periods as deemed necessary due to unsuitable weather, for conditions considered unsuitable for the progress of the work, or for any other condition or reason deemed to be in the public interest. Written orders shall state the reason for suspension.

**5. EMPLOYMENT STATUS VERIFICATION**

CONTRACTOR shall register and participate in the Status Verification System and comply with Utah Code Annotated Section 63G-12-301 et seq. of the Identity Documents and Verification Act. CONTRACTOR shall by contract require its contractor, subcontractors, contract employees, staffing agencies, or any contractors regardless of their tier to register and participate in the Status Verification System and comply with Utah Code Annotated Section 63G-12-301 et seq. of the Identity Documents and Verification Act.

**6. WORKERS COMPENSATION**

Prior to commencement of work, CONTRACTOR shall provide to COUNTY a copy of CONTRACTOR's Workers Compensation Insurance and shall disclose to COUNTY any claims made against CONTRACTOR for Workers Compensation within the past five (5) years. CONTRACTOR shall maintain insurance coverage for Workers Compensation claims for the duration of the AGREEMENT.

**7. INDEPENDENT CONTRACTOR**

- a. 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 COUNTY, and that this AGREEMENT is not exclusive of other agreements, contracts or opportunities.
- b. The parties intend that an independent contractor relationship will be created by this AGREEMENT. COUNTY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONTRACTOR. CONTRACTOR is not to be considered an agent or employee of COUNTY for any purpose, and the employees of CONTRACTOR are



not entitled to any of the benefits that COUNTY provides for COUNTY'S employees. It is understood that COUNTY does not agree to use CONTRACTOR exclusively. It is further understood that CONTRACTOR is free to contract for similar services to be performed for others while working under the provisions of this AGREEMENT with COUNTY.

- c. Both parties agree that CONTRACTOR shall be deemed an independent contractor in the performance of this AGREEMENT, and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation. As such, CONTRACTOR shall have no authorization, express or implied, to bind COUNTY to any agreement, settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for COUNTY. The compensation provided for herein shall be the total compensation payable hereunder by COUNTY.

**8. INSURANCE**

- a. CONTRACTOR agrees to carry Commercial General Liability insurance coverage equal to or greater than \$2,500,000 per occurrence or as modified by the risk manager pursuant to state statute during the term of this AGREEMENT. This coverage shall provide liability insurance to cover the activities of CONTRACTOR including CONTRACTOR'S agents, employees and sub contractors, and for all equipment and vehicles, public or private, used in the performance of this AGREEMENT. CONTRACTOR shall provide a Certificate of Insurance to COUNTY evidencing that CONTRACTOR has this insurance in place and shall maintain said insurance for the duration of this AGREEMENT.
- b. CONTRACTOR shall furnish a Certificate of Insurance to COUNTY evidencing that CONTRACTOR has Workers Compensation Insurance for the CONTRACTOR, all sub contractors, all principals who will be present on site, and all employees of the CONTRACTOR and/or subcontractors.

**9. KEYS**

If it becomes necessary for COUNTY to issue CONTRACTOR a key to COUNTY locks, final payment to CONTRACTOR will be held until the key has been returned and documented. It is illegal to duplicate COUNTY keys.

**10. INSPECTION AND ACCEPTANCE**

COUNTY or its authorized representatives shall have the right to enter the premises of CONTRACTOR, or such other places where contract services are being performed, to inspect, audit, monitor or otherwise evaluate the services being provided and the financial records pertaining to this AGREEMENT. CONTRACTOR must provide reasonable access to all facilities and assistance to COUNTY or its authorized representatives.

**11. TERMINATION**

- a. This AGREEMENT may be terminated for any reason by COUNTY upon thirty (30) days written notice to CONTRACTOR, without prejudice to any other right or remedy COUNTY may have.
- b. Failure of CONTRACTOR to adhere to any of the performance requirements of this AGREEMENT shall be cause for termination without prior notice.
- c. This AGREEMENT may be terminated for any reason by CONTRACTOR upon sixty (60) days written notice to COUNTY.

**12. TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this AGREEMENT, COUNTY shall not be obligated for CONTRACTOR'S performance hereunder or by any provision of this AGREEMENT during any of COUNTY'S future fiscal years unless and until COUNTY'S Board of County Commissioners appropriates funds for this AGREEMENT in the COUNTY'S budget for each such future fiscal year. In the event that funds are not appropriated for this AGREEMENT, then this AGREEMENT shall terminate as of December 31 of the last fiscal year for which funds were appropriated. COUNTY shall notify CONTRACTOR in writing of any such non-appropriation of funds at the earliest possible date.

**13. GOVERNING LAW AND VENUE**

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

**14. AMENDMENTS**

Except as provided in Sections 3 and 4 of this AGREEMENT, no oral modifications or amendments to this AGREEMENT shall be effective, but such may only be modified or amended by a written agreement signed by the parties that identifies itself to be an amendment to this AGREEMENT.

**15. ASSIGNMENT**

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

**16. SUCCESSORS IN INTEREST**

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



parties thereto.

**17. INDEMNIFICATION**

To the fullest extent permitted by law, CONTRACTOR shall defend, indemnify, save, hold harmless, and defend at CONTRACTOR's own expense COUNTY, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgments, losses, damages, expenses, and liabilities (including all costs and attorney's fees incurred in defending any claim, demand, or cause of action) occasioned by, growing out of, or arising or resulting from (a) CONTRACTOR'S, its subcontractors, agents or employees performance of this AGREEMENT or product(s) purchased by COUNTY under this AGREEMENT that are defective, whether known or not known by COUNTY or CONTRACTOR, at the time of acceptance by COUNTY. CONTRACTOR shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of this AGREEMENT.

**18. SALES TAX EXEMPTION**

The COUNTY sales and use tax exemption number is \_\_\_\_\_. The tangible personal property or

services being purchases are being paid from County funds and used in the exercise of that entity's essential functions. If the items being purchases are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in this Agreement. As such, CONTRACTOR shall not charge COUNTY sales tax for the product(s) purchased by this agreement.

**19. COMPLIANCE WITH LAWS**

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

**20. PAYMENT**

- a. CONTRACTOR shall submit timely invoices for materials delivered to COUNTY. Upon verification of the validity of an invoice, COUNTY shall pay CONTRACTOR within 30 calendar day of receipt of the invoice.
- b. Payment will be based upon verification of the actual quantities accepted by COUNTY which comply with these specifications.
- c. Partial or progress payments shall not relieve CONTRACTOR of performance or obligations under this AGREEMENT, nor shall such payments be viewed as approval or acceptance of work performed.

**21. FORCE MAJEURE**

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

**22. INTERPRETATION OF AGREEMENT**

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

**23. LEGAL**

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

**24. NO PRESUMPTION**

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

**25. WARRANTY**

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

The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the COUNTY under this Agreement for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this



AGREEMENT or CONTRACTOR's proposal, attached hereto (if any). The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this Agreement unless otherwise specified and mutually agreed upon elsewhere in this Agreement. In general, the 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 the 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: The CONTRACTOR will repair or replace (at no charge to the COUNTY) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the 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 this Agreement.

CONTRACTOR warrants to COUNTY that all materials furnished under this AGREEMENT will be new unless otherwise specified, and that all services and materials will be of good quality, free from faults and defects and in conformance with this AGREEMENT. CONTRACTOR further warrants to COUNTY that if, within one year after the date of substantial completion of the work or designated portion thereof, any of the services or materials are found to be not in accordance with the requirements of this AGREEMENT, CONTRACTOR shall correct it promptly after receipt of written notice from COUNTY to do so unless COUNTY has previously given CONTRACTOR a written acceptance of such condition. All materials and work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by COUNTY, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**26. DELIVERY**

Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the 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.

**27. 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.