

UTAH COUNTY
PUBLIC WORKS DEPARTMENT
2855 South State Street
Provo, Utah 84606
(801) 851-8600

INVITATION TO BID

For

HIGH DENSITY MINERAL BOND SEAL

ITB # 2023-13

CLOSING DATE
FOR RECEIPT OF BIDS: Tuesday, March 28, 2023

TIME: 2:00 p.m.(Mountain Time)
Bids will be opened at 2:30 p.m.

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

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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 high density mineral bond seal treatment on various roadways, parking lots, parkways, and trails located in Utah County.

The County intends for this to be a multi-year award with work to be performed during Contractor's production seasons for up to three (3) years. The specific list of roadways, parking lots, parkways and trails shall be determined after the bid is awarded and at the beginning of each subsequent year. Costs for additional areas to be sealed in subsequent years shall be based on the Unit Prices set forth in Contractor's Cost Proposal.

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

Pursuant to this ITB an agreement will be executed, a sample copy of which is attached as Attachment C. **The County will not entertain changes to its Standard Terms and Conditions.**

1.2 PROCEDURE

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 bidder(s) will be required to sign an agreement, a sample of which is included as Attachment C.

1.3 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.

1.4 BID ORGANIZATION

- A. Each respondent must submit its SEALED bid to the Utah County Purchasing Agent. The envelope containing the bid must be clearly labeled “SEALED BID – HIGH DENSITY MINERAL BOND SEAL, ITB # 2023-13”. The bid must be delivered to

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

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

- B. The bid must include:
1. Completed Contractor’s Cost Proposal (Exhibit B)
 2. Completed Contractor Information Form (Attachment A).
 3. Completed Certificate of Non Collusion (Attachment B).
 4. A copy of the bidder’s current local business license.
 5. A copy of the bidder’s current Contractor License issued by the Utah Department of Commerce, Division of Occupational and Professional Licensing.
 6. Proof of required insurance.
 7. Documentation from the County Treasurer of the bidder's county showing that bidder is current on its personal property taxes.

1.5 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.

1.6 QUESTIONS AND CLARIFICATIONS

Questions regarding this ITB should be directed prior to the submission deadline date to :
Logan Gurr, Engineering Division Manager
Telephone Number: (801) 851-8620
Email: logang@utahcounty.gov

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 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.

1.9 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.

1.10 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.

1.11 REQUIRED EXPERIENCE

- A. Contractor must complete certification program from licensed Frictional Mastic Surface Treatment manufacturer and be approved and certified to apply material from licensed manufacturer of Frictional Mastic Surface Treatment.
- B. The Contractor must have a minimum of three (3) years' experience in the work specified herein. Proof of experience must be submitted with each bid.
- C. Each bidder shall provide a list of at least five (5) projects similar to this project, which are available for inspection by the County. The minimum information required

may be supplied on the Contractor Information Form, however, bidders are encouraged to provide more detailed information, as they may see fit, with their bid submission.

- D. The Contractor shall be the general contractor for the project and is required to have a Contractor License from the Utah Division of Occupational and Professional Licensing and a current local business license from the jurisdiction in which their business is located. A copy of the bidder's Contractor License and current local business license must be submitted with the bid.

1.12 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.

1.13 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.

1.14 BONDS

- A. Before this contract is awarded by Utah County, the Contractor shall furnish to Utah County the following bonds:
 - 1. A performance bond satisfactory to County in an amount equal to 100% of the price specified in the contract, to assure the faithful performance of the contract, for the protection of Utah County, to be held until final acceptance by Utah County of all aspects of this project; and
 - 2. A payment bond satisfactory to the County in an amount equal to 100% of the price specified in the contract, for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the contract.
- B. Each bond shall be:
 - 1. Bidding upon the award of the contract;
 - 2. Executed by a surety company or companies duly authorized to do business in the State of Utah, or, in the form or cash or other certified funds.
 - 3. Payable to Utah County, A Body Corporate and Politic;
 - 4. Filed with the Utah County Public Works Department in a timely manner following the Closing date for Receipt of Bids.
 - 5. Increased if the contract price is increased by change order or otherwise subsequent to entering into the contract.
- C. Utah County will hold the Payment Bond for 90 days subsequent to the completion of the project.

1.15 ANNUAL COST INCREASE

Contractor may, upon written notice delivered to Utah County on or before November 1 of any year of the Agreement term, request an increase to the contract price by a percentage equal to the percentage increase which occurred in the Consumer Price Index (defined as the Consumer Price Index, All Urban Customers (CPI-U) U.S. City Average, All Items, or a similar index if this index is discontinued) during the preceding one year period, not to exceed three percent (3%) per year, to be effective not sooner than January 1 of the following year of the Agreement term.

EXHIBIT A
SPECIFICATIONS

S.1 STANDARD SPECIFICATIONS

All work performed by the Contractor shall meet or exceed all applicable specifications listed in the publication American Public Works Association - Manual of Standard Specifications, 2017 Edition, published by the Utah Chapter of the American Public Works Association, hereinafter referred to as the “Manual of Standard Specifications.” and its accompanying “Manual of Standard Plans.”

S.2 LOCATIONS AND COMPLETION DATE

- A. Various roadways within Utah County shall receive a High-Density Mineral Bond Seal Surface Treatment as specified herein prior to October 15, 2023:
The specific list of roadways shall be determined after the bid is awarded and at the beginning of each subsequent year.
- B. Various parking lots within Utah County at various building complexes and parks shall receive a High-Density Mineral Bond Seal Surface Treatment as specified herein prior to October 15, 2023:
The specific list of parking lots shall be determined after the bid is awarded and at the beginning of each subsequent year.
- C. Various parkways and trails within Utah County shall receive a High-Density Mineral Bond Seal Surface Treatment as specified herein prior to October 15, 2023:
 - 1. Murdock Canal Parkway
 - 2. Other parkways or trails may be added after the bid is awarded and at the beginning of each subsequent year.
- D. Surface Treatment of additional roadways, parking lots, parkways, and trails shall be performed during Contractor’s production seasons for up to three (3) additional years. All work shall be completed generally between the dates April 15 and October 1, as approved by the County. Costs for additional areas to be sealed this year and in subsequent years shall be based on the Unit Prices set forth in Contractor’s Cost Proposal. A provision for requesting a price increase on an annual basis is included in the contract.

S.3 QUANTITIES AND PRICING

- A. Various Roadways within Utah County
Units for bidding 200,000 sq ft
- B. Various Parking Lots within Utah County
Units for bidding 50,000 sq ft
- C. Various Parkway and trails within Utah County
Units for bidding 422,000 sq ft
- D. The quantities specified herein are only estimates used for bid evaluation purposes. Actual payment will be based upon inspection records kept by the County, the actual work completed and the amount of materials installed, approved, and accepted by the County.
- E. The Unit Prices listed in Contractor’s Cost Proposal for Roadways shall be:
A per-square-foot cost for a completed High Density Mineral Bond Seal Surface

Treatment consisting of mineral aggregate and asphalt binder slurry spread as a high-density mineral bond seal coat over a roadway surface and all associated costs.

- F. The Unit Prices listed in Contractor's Cost Proposal for Parking Lots shall be:
A per-square-foot cost for a completed High Density Mineral Bond Seal Surface Treatment consisting of mineral aggregate and asphalt binder slurry spread as a high-density mineral bond seal coat over a parking lot surface and all associated costs.
- G. The Unit Prices listed in Contractor's Cost Proposal for Parkways and Trails shall be:
A per-square-foot cost for a completed High Density Mineral Bond Seal Surface Treatment consisting of mineral aggregate and asphalt binder slurry spread as a high-density mineral bond seal coat over a parkway or trail surface and all associated costs.
- H. Unit prices shall include all costs of work and material to prepare and apply a high-density mineral bond seal as per the specifications including labor, materials, equipment, tools, transportation and supplies required to complete the work and all incidental work in accordance with the terms hereof.

S.4 PUBLIC NOTICING

- A. Follow Laws and Regulations concerning when and to whom notices are to be given at least seven (7) days prior to applying surface treatment material.
- B. Indicate application time and when the surface can be used. Include a map providing detailed directions signifying the specific area to be closed.
- C. Provide phone numbers of at least two (2) individuals who represent the Contractor who can be reached at any time during the work.
- D. Should work not occur on specified day, issue an updated notice.

S.5 TRAFFIC CONTROL

This item shall be governed by **SECTION 01 55 26 Traffic Control** of the APWA Standard Specifications, Utah County Standards, and the contract documents and plans provided.

- A. The Contractor shall do no work that endangers, interferes, or conflicts with traffic or access to roadways, parking lots or parkway and trails until a satisfactory traffic control plan has been submitted and approved by the County using the Utah "Manual on Uniform Traffic Control Devices (UMUTCD)" as a guide.
- B. The Contractor shall place signs and barricades closing applicable areas as work progresses. Type and placement of signs shall be identified on the traffic control plan to be approved by County prior to Contractor's work.
- C. If a roadway, parking lot or parkway and trails closure is approved by the County, the Contractor shall provide advance public notification before closure takes place at least 7 days prior to closure. This shall be done using electronic message boards (variable message signs) to be placed at the beginning and end of each reach to be closed and in all directions at intersections, and all access point, as well as flyers to the residents in the vicinity.
- D. The Contractor shall implement traffic control measures to safely and properly secure the work area, equipment, residents, and personnel throughout the duration of the

project. This requirement also applies to areas of work being performed by subcontractors.

- E. All costs for this item are the responsibility of the Contractor and shall NOT be paid as a separate item.

S.6 UTILITIES

Care shall be taken to preserve and protect existing overhead and underground utilities, pole lines, signs, pipelines, and improvements from injury or damage during construction operations. The Contractor shall assume full responsibility for reimbursing the owners of the utilities for any damage to their properties, utilities, or improvements, or interference with their service caused through Contractor's operations. The Contractor shall contact "Blue Stakes of Utah," and individual utility owners as necessary, to have all underground utilities located on the work site in accordance with Utah law.

S.7 SAFETY

The Contractor shall comply with all applicable requirements of the Utah Labor Commission and Occupational Safety and Health Act of 1970. Nothing in this Agreement shall relieve the Contractor of responsibility assigned herein, in Utah Labor Commissions' requirements, or in Federal, state, and local laws and ordinances.

S.8 MOBILIZATION AND DEMOBILIZATION, STORAGE AND CLEANUP

This item shall be governed by **SECTIONS 01 71 13 Mobilization and Demobilization**, of the APWA Standard Specifications, Utah County Standards, and the contract documents.

- A. Unit Prices shall cover cost of mobilization, demobilization, installation of temporary facilities, and bringing all necessary construction equipment to site.
- B. All areas for storage of materials and equipment used by the Contractor shall be approved by the County prior to use. These areas shall be cleaned up upon completion of the project, and shall be approved by the County prior to final payment. All related costs for storage and clean-up are the responsibility of the Contractor and shall NOT be paid as a separate item.

S.9 HIGH DENSITY MINERAL BOND SEAL

This item shall be governed by **SECTIONS 32 01 13.68 High Density Mineral Bond Seal**, of the APWA Standard Specifications, Utah County Standards, and the contract documents.

References to OWNER should be understood to be Utah County. References to ENGINEER should be understood to be County Engineer or his designee

- A. Upon request, Contractor shall provide a list of at least (5) successfully completed projects of similar size and nature, using the same mix design as described in this section. Foreman of the crew must have completed at least (3) projects of similar size and nature.
- B. Apply surface treatment material when air and surface temperatures in the shade are 55 deg F. Do not apply if the finished product will freeze before 48 hours or during rain, 24 hours prior to forecast rain, or unsuitable windy weather.

- C. The surface treatment material must carry a warranty from both the contractor and the manufacturer for a period of five (5) years including peeling and pre-mature wear.
- D. Paver Calibration: On a test strip at least 300 feet long, determine the correct pump settings, spray bar height, and ground speed for the application equipment. Apply material with pump settings at 80 percent of maximum output (plus or minus 5 percent) and a ground speed of 300 to 400 feet per minute.
 - 1. Do not begin or continue application without ENGINEER's knowledge of the calibration process and equipment settings
 - 2. Do not deviate from calibration settings without ENGINEER's knowledge.
- E. Clean the surface immediately prior to installation. Remove loose material, mud spots, sand, dust, oil, vegetation and other objectionable material.
- F. Application Rate: Two separate applications coats are required. The first application must be thoroughly dry and free of any damp areas before the second application begins. Machine settings must match the following application rates.
 - First application = 0.20 gallons per square yard minimum.
 - Second application = 0.16 gallons per square yard minimum.
- G. Remove spatter and mar from curb and gutter, sidewalk, guard rails and guide posts and leave no streaks, holes, bare spots, or cracks through which liquids or foreign matter could penetrate to the underlying surface. Leave surface in good appearance.
- H. All costs for this item are the responsibility of the Contractor and shall NOT be paid as a separate item.

EXHIBIT B

CONTRACTOR'S COST PROPOSAL

1. **BID PRICES FOR ROADWAYS:**

ITEM	UNIT PRICE	TOTAL COST
High Density Mineral Bond Seal per square foot of finished surface	_____ x 200,000 sq ft =	_____

2. **BID PRICES FOR PARKING LOTS:**

ITEM	UNIT PRICE	TOTAL COST
High Density Mineral Bond Seal per square foot of finished surface	_____ x 50,000 sq ft =	_____

3. **BID PRICES FOR PARKWAYS AND TRAILS:**

ITEM	UNIT PRICE	TOTAL COST
High Density Mineral Bond Seal per square foot of finished surface	_____ x 422,000 sq ft =	_____

TOTAL BID PRICE: \$ _____

NOTE: Unit prices shall include all costs of work and material to prepare and apply a mastic seal as per the specifications including labor, materials, equipment, tools, transportation, and supplies required to complete the work and all incidental work in accordance with the terms hereof. The quantities specified herein are only estimates used for bid evaluation purposes. Actual payment will be based upon inspection records kept by the County, the actual work completed and the amount of materials installed, approved and accepted by the County.

4. **CERTIFICATION OF BID:**

I hereby certify that I have read, understand, and agree to all sections, Exhibits, and Attachments of this Invitation to Bid for Roadway, Parking Lot, Parkway or Trail High Density Mineral Bond Seal. 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

Print name and Title

ATTACHMENT 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: (____) _____.

COMPANY OWNER: _____
COMPANY PRESIDENT: _____
CONTACT PERSON: _____ Phone: _____
EMAIL ADDRESS: _____

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: _____

ATTACHMENT C

SAMPLE AGREEMENT WITH STANDARD TERMS & CONDITIONS



AGREEMENT

THIS AGREEMENT is made and entered into by and between Utah County, a political and corporate body of the State of Utah, located at 100 East Center Street, Provo, Utah 84606, and the following CONTRACTOR:

Name: _____ Contact Person: _____

Address: _____ Phone #: _____

City: _____ State: _____ Zipcode: _____ Email: _____

Legal Status of Contractor: [] Sole Proprietor [] Non-Profit Corporation Limited Liability Company (LLC)
[] Partnership [] For-Profit Corporation
[] Government Department: _____

1. PURPOSE OF CONTRACT

This agreement is to obtain the following products, services, or products and services (be specific):

2. CONTRACT COSTS

Contractor will be:

- [] paid a maximum of \$_____ for costs authorized by this agreement;
[] compensated in accordance with ATTACHMENT B: CONTRACTOR's Proposal.

3. CONTRACT PERIOD

The term of this agreement shall commence on: [] _____, or [] the date of execution of this agreement. This agreement shall terminate on _____, or unless terminated earlier, or performance has been completed.

4. ATTACHMENTS

The following indicated attachments are fully incorporated into this agreement:

- [] A: Utah County Standard Terms and Conditions [] F: _____
[] B: CONTRACTOR's Proposal [] G: _____
[] C: Special Provisions [] H: _____
[] D: Utah County Procurement Compliance
[] E: General Liability and Workers Compensation Certificate

Except as explicitly modified by ATTACHMENT C: Special Provisions, any ambiguities or conflicting terms will be resolved by granting deference to the terms of ATTACHMENT A: Utah County's Standard Terms and Conditions.

IN WITNESS WHEREOF, the parties have executed this agreement on ____ of _____ 20__.

ATTEST:
AARON R. DAVIDSON
Utah County Clerk

BOARD OF COUNTY COMMISSIONERS,
UTAH COUNTY, UTAH

By: _____
Deputy Clerk/Auditor

By: _____
AMELIA POWERS GARDNER, Chair

APPROVED AS TO FORM AND LEGALITY:
JEFFREY S. GRAY
Utah County Attorney

CONTRACTOR

By: _____
Deputy Utah County Attorney

By: _____
Its: _____

ATTACHMENT A:
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, including any products described in any attachments that are incorporated by reference on 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, including any services described in any attachments that are incorporated by reference on 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 or hosting credentials; advertising materials, including any content or work product; images; newsletters; and intellectual property, including derivative works, 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 or credentials 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, or in a lesser amount if explicitly authorized and identified on the Utah County Agreement cover page. 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 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. COMPLIANCE WITH 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. 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. To the extent that Contractor uses, stores, transfers, or manipulates any data in the performance of its obligations, Contractor will further comply with all applicable privacy and data laws and regulations, including but not limited to General Data Protection Regulation 2016/679 of the European Union ("GDPR") and similar provisions from any jurisdiction in the United States and any locations where data is or may be stored.

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. **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. Any employee or member of the Contractor's firm, subcontractor, or agent with whom Contractor shares any information as described in this section will be under the same obligations of confidentiality, and Contractor is required to secure and provide to County written commitments to that effect from each such recipient of information.

16. **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.
17. **FORCE MAJEURE.** The County will not be held liable for delay or default caused by fire, riot, acts of God, State or Utah County declared state of emergency, or war. 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. **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.
20. **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.
21. **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, without limitation, 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.

22. **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.

23. **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.
24. **CONDITION AND TITLE.** The products delivered by Contractor to the County shall be new and free of all faults and defects. Upon payment of the purchase price by the County to Contractor, Contractor shall provide the County with clear title, free and clear of all liens and encumbrances.
25. **INTERPRETATION OF AGREEMENT.** 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.
26. **NOTICES.** All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage paid, to the parties at their respective places of business, or at such other addresses as may be designated by notice given hereunder, including by email to the contact person for Contractor at the email address identified on the Utah County Agreement cover page.
27. **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.
28. **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.
29. **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.
30. **SUCCESSORS IN INTEREST.** The Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties.
31. **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.
32. **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 15. Confidentiality.**
33. **ENTIRE AGREEMENT.** The Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon either party except to the extent incorporated in the Agreement.

Revised October 6, 2021