

UTAH COUNTY

REQUEST FOR PROPOSALS

FOR AN

EMPLOYEE BENEFITS BROKER/CONSULTANT

CLOSING DATE

FOR RECEIPT OF PROPOSALS: Tuesday, May 31, 2016

TIME: 12:00 Noon (Local Time)

PLACE: Office of the Utah County Purchasing Agent

100 East Center Street

Room 3600

Provo, Utah 84606

SECTION 1 ADMINISTRATIVE OVERVIEW

1.1 PURPOSE

Utah County is soliciting proposals from insurance brokers/consultants qualified to perform and interested in providing brokerage and consulting services for our Group Employee Benefits Programs, including medical, dental, vision, life, LTD, Employee Assistance Program, HSA, FSA, etc.

Utah County is interested in selecting a partner that will pro-actively assist Utah County in providing health and welfare programs to its employees. Proposers will be evaluated for their ability to provide health and welfare plans that:

- A. Directly improve employee recruitment, retention and satisfaction;
- B. Directly support Utah County's financial goals and objectives.

1.2 CURRENT BENEFITS

Utah County currently provides a fully-insured high deductible health plan as well as a PPO plan, both through the SelectHealth SHARE program. In addition, the County contributes to Health Savings Accounts administered by HealthEquity. The 2016 HDHP deductible is \$4000 for families and \$2000 for singles with out-of-pocket maximums of \$3000/\$6000. The cost of the HDHP Plan is paid in full by the County for full-time employees; the County also makes a matching contribution of up to \$1600 annually to each employee's Health Savings Account.

The County also offers a traditional health insurance plan (PPO) option along with the HDHP. Employees pay the difference in coverage cost for the PPO Plan. Fewer than 10% of eligible employees elect this option. In-network deductibles are \$1000/2000 with out-of-pocket maximums of \$3000/6000.

A waiver incentive of \$960 single/\$1920 family is paid to full time employees who have other health insurance coverage and elect to waive the County's plan.

In addition, full purpose and limited purpose Flexible Spending Accounts are available to employees, as well as a partially subsidized self-funded dental plan and an employee-funded vision plan. The County also provides an Employee Assistance Plan through IHC. The County has been sponsoring a successful wellness program since 2007. This program is administered by the Utah County Health Department and HealthyLiving.

Other welfare benefits include basic employee and dependent life insurance paid by the County (\$40,000 per employee, \$10,000 per dependent) as well as optional dependent and supplemental life insurance paid by employees. All life insurance is currently provided by CIGNA, who also provides Long Term Disability and AD&D insurance.

1.3

REQUIREMENTS

The selected broker/consultant will:

- A. Demonstrate extensive experience working in Utah with municipalities and governments.
- B. Provide expert advice in the design and review of benefit plans and plan documents;
- C. Actively analyze and benchmark Utah County's health and welfare programs against current and future trends in the marketplace and among similar municipalities and governments;
- D. Pro-actively develop strategic initiatives, recommendations for cost saving initiatives, and implementation of plans;
- E. Pro-actively advise and train County staff on all compliance matters, including the ACA, etc.
- F. Facilitate online enrollment and document distribution to employees.

This list is not intended to be all-inclusive. Additional ideas and suggestions for programs and/or services not specifically listed above which would benefit Utah County and its employees or further enhance the value of your services are invited and encouraged.

Please do not contact insurance markets on our behalf! At this point in time, we are seeking background information on your firm and ideas on how you would approach the management of our benefits program. Your response should be developed solely on the basis of your firm's knowledge, resources and experience, and how they might apply to Utah County Government.

Recipients of this RFP should view this as an opportunity to inform Utah County of the unique capabilities and resources you offer, the specific benefits you can offer to Utah County, and the reasons Utah County should do business with you.

1.4

Broker/Consultant's Responsibilities

- A. Serve as a designated insurance broker of record for Benefit Programs.
- B. Solicit and analyze insurance proposals and present the results of such analysis to the appropriate parties.
- C. Negotiate all insurance renewals, including meeting directly with insurance company underwriters and place insurance as directed.

- D. Analyze claim experience/financial development for all insurance coverages.
- E. Prepare annual reports, in any reasonable format requested by Utah County, for each line of coverage, analyzing financial developments, network utilization, insurer cost structures, etc., and make recommendations regarding changes, modifications and/or Benefit enhancements.
- F. Plan and attend quarterly meetings, take and distribute meeting notes, prepare financial reports, interpret and distribute carrier reports, coordinate presenters and attendees, follow-up with carriers, attendees and action items, and serve as the County's Benefit resource.
- G. In accordance with parameters and criteria established by Utah County, make recommendations regarding various Benefit and insurance plans, insurance carriers, health maintenance organizations, administrators and Benefit service providers.
- H. Review all insurance, benefit and administrative service documents for accuracy and adherence to prior agreements.
- I. Provide a software platform to support and track self-service benefits enrollment by employees throughout the year.
- J. Provide open enrollment support, including, but not limited to, developing time-lines, assisting with the development of open enrollment materials and the determination of the Benefits Fair attendees, and coordinating and participating in open enrollment meetings as reasonably requested.
- K. Assist with budget projections on future costs of Benefit programs.
- L. Review contracts with providers for accuracy in rates, Benefits, eligibility, and coverage definitions.
- M. Review evidences of coverage (EOC) for accuracy, make recommendations regarding changes, modifications and/or benefit enhancements, and negotiate changes with carriers.
- N. Assist with claims and billing issues as requested.
- O. Assist with the implementation/transition of carriers/administrators.
- P. Alert Utah County of legislative mandates and assist with compliance with benefit laws and regulations, including but not limited to ACA, COBRA and HIPAA.
- Q. Attend administrative meetings as requested.
- R. Provide concise, timely and effective special executive summary reports, as needed.

- S. Perform detailed analytical review of third party administration, prescription drug and utilization.
- T. Inform Utah County Staff of major national or regional health care trends.
- U. Provide seminars and educational sessions to employees and retirees, including monthly orientation.
- V. Knowledge of Governmental Accounting Standards Board (GASB) regulations as they relate to Utah County's employee benefit plans.

1.5 ASSURANCES

By responding to this RFP, each proposer assures the County that, if selected as a broker, proposer will:

- A. Make a diligent effort to place all insurance requested by the County at the lowest possible price consistent with adequate breadth of coverage and stability of insurers.
- B. Advise the County of ways in which coverages proposed or provided differ from that currently in place.
- C. Disclose to the County all commissions, payments, and compensation, proposer is eligible to receive or has received from insurers providing coverage to the County, or from any other source related to or arising out of the County's account.
- D. Not assign or transfer the County's account, or any portion of the County's business, without the County's prior written approval.
- E. Fully disclose to the County all quotes received from insurers, acting in the County's best interest at all times.
- F. Comply with all provisions of this RFP and the proposal throughout the term of appointment.
- G. Not create or maintain any conflict of interest between the County and any provider.
- H. Not accept or maintain any appointment or position as a board member, or official, with any provider.

1.6 RECOMMENDED MINIMUM QUALIFICATIONS

- A. Licensed as an insurance broker or agent in the State of Utah with at least 5 years of experience in providing services as outlined in this RFP.
- B. Errors and omissions insurance with a minimum limit of \$2,500,000 per occurrence.

- C. Access to sufficient markets to obtain quotes from A-rated companies.
- D. Ability to act as broker in procuring insurance from the County's current providers.

1.7 COMPENSATION

Your response to this RFP must state the annual amount of your fees and a statement as to your proposed method of compensation for your services. Your response may propose similar or different alternative methods for being compensated for your services. Explain your recommendation on how these fees can be funded (commissions, fees based on per hour of service, annual retainer fee, combination); be specific by line of coverage, if needed.

Describe your approach or philosophy towards commissions and/or your fee structure for:

- A. Placement of insurance, and administrative or other services;
- B. Complimentary Services that your firm provides; describe these services and the additional costs if any;
- C. Fees for other or optional services that can be purchased at an additional cost. Include a description of other or optional services that the firm provides that have not been listed, and the cost for each such service.

Utah County may engage in negotiations with the selected firm on the method of funding of fees.

SECTION 2 PROCUREMENT RULES AND PROCEDURES

2.1 PROCEDURE

The Procedure for the issuance of this RFP, evaluation of proposals, and selection of a Broker is as follows:

- A. Interested entities will prepare and submit their proposals according to the Procurement Timetable contained in Subsection 2.3.
- B. Utah County and/or its representatives will evaluate all submitted proposals to determine acceptance or rejection of the proposals. Selected responders may be asked to make an oral presentation and be interviewed on June 7, 2016.
- C. The selected Broker will be required to sign an agreement with Utah County. While the County may make modifications, the Proposer, by submitting a proposal, agrees to all of the terms contained in the sample agreement which is attached as Exhibit "A", unless the Proposer clearly states in writing, as a part of its proposal, which terms it will not accept.

2.2 RULES OF PROCUREMENT

This RFP shall conform to and is governed by and is subject to the Utah County Procurement Rules and Regulations.

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

Utah County reserves the right to reject any or all proposals 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.

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 through this RFP 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 party's response.

2.3 PROCUREMENT TIMETABLE

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

REQUIRED ACTIVITY	SCHEDULED DATE
RFP Issue Date	May 6, 2016
Closing Date for Receipt of Proposals, and Public Opening of Proposals	May 31, 2016 @ 12:00 Noon, local time
Oral Presentations and Interviews (<i>by invitation</i>)	June 7, 2016

2.4 QUESTIONS AND CLARIFICATIONS

Questions pertaining to this RFP may be E-mailed to

Robert Baxter

Purchasing Manager

RobertB@utahcounty.gov

no later than May 20, 2016.

Questions that may impact the response to the RFP will be published online at the location of the publication of this RFP.

Please note that we are not asking for, nor authorizing you to solicit quotes from insurance carriers at this time.

2.5 EVALUATION CRITERIA

All Proposals will be evaluated initially based on the written responses and reference checks, after which additional inquiries may or may not be made by Utah County to obtain clarification.

Proposals will be evaluated by a selection committee to identify the proposal that best meets the needs of Utah County as set forth in the RFP. A point-based evaluation system will be used to evaluate all proposals. The evaluation criteria and their relative weights are listed below (total points possible=100):

1. Employer administration support including benefits enrollment and tracking system, IRS reporting, and employee communication: **Maximum of 20 points.**
2. Expertise of consultant's team and ability to provide support to Utah County staff: **Maximum of 20 points.**
3. Scope and quality of consulting services to be provided, including compliance with ACA, HIPAA, etc, as well as recommendations on benefit offerings and plan design: **Maximum of 20 points.**
4. Access to and ability to negotiate favorable contracts with benefit providers: **Maximum of 20 points.**
5. Cost of services relative to scope of services provided: **Maximum of 20 points.**

Upon review of the written responses, some selected proposers may be invited to make formal oral presentations and be interviewed. These interviews will be

conducted by the Evaluation Committee on June 7, 2016. Please be sure members of your team are available if invited.

All information provided by Utah County in connection with this RFP shall be considered confidential and proprietary information of Utah County and must not be disclosed to individuals outside your organization without prior written approval from Utah County. All documentation, manuals and ideas submitted by your company shall become the property of Utah County once they are submitted to Utah County.

If a contract is awarded, it will be awarded to that firm whose proposal, in the sole judgement of Utah County, will be most advantageous to Utah County.

Utah County reserves the right to make an award without further discussion of proposals received. Therefore, it is important that proposals be complete, comprehensive, and submitted initially in the most favorable terms.

It is the intent of Utah County to award a single contract as the result of this RFP. However, Utah County reserves the right to apportion the requirements of this RFP among multiple contractors if this is determined to be in Utah County's best interests. The contract(s) resulting from this RFP shall require approval by the Board of County Commissioners of Utah County.

SECTION 3 INSTRUCTIONS FOR PROPOSAL PREPARATION

3.1 PROPOSAL SUBMISSION

Eleven (11) copies of each proposal must be submitted to the Utah County Purchasing Agent. The proposals must be delivered to:

Robert Baxter-RFP for Employee Benefits Broker/Consultant
Utah County Purchasing Agent
100 East Center, Suite 3600
Provo, Utah 84606

3.2 PROPOSAL INCLUSION REQUIREMENTS

To assist in the evaluation of potential brokers/consultants, please provide the following information in your written response to this Request for Proposal:

The proposal must include (in the following order):

- A. Transmittal letter with the following information:
- 1) Name, address, and phone number of firm, names of owners or principals of your firm and duration and extent of experience.
 - 2) Type of firm. If a corporation, provide date of incorporation and president's name. If other than a corporation or partnership, describe organization and name of principals. If individual or partnership provide date of organization and names and addresses of all partners (state whether general or limited partnership).
 - 3) Provide a corporate overview of your firm, including:
 - a) A brief history, including number of years in existence your firm has in providing health & welfare benefit services;
 - b) Organization structure and "fit" of your health and welfare structure (division);
 - c) Number and location of offices and total number of employees directly involved in providing health and welfare services;
 - d) Provide a list with the top five health and welfare plan providers and/or insurance companies that your firm deals with in each of the following areas: medical, dental, prescription drug benefits, excess and stop loss insurance, life insurance, disability benefits;
 - e) Provide a summary of the support, research, compliance assistance, and technical service your corporate headquarters makes available to your (a) employees and (b) to your health and welfare clients. Provide samples if available. Indicate if there are any charges for these services we would incur as your client;
 - 4) Identify and describe the specific individual(s) or team that would be the primary contact for Utah County. If you are recommending a team approach, clearly identify the team leader;
 - a) Provide a one page professional resume on each member from your firm that would have direct and ongoing contact with Utah County;
 - b) Identify specific accomplishments or key strategies that this individual and/or their team has successfully implemented with their direct clients in the area of health and welfare over the past two years.

- 5) A detailed list of insurance companies that you can access and from which you can obtain quotes for Health and Life insurance to meet the County needs as defined.
 - 6) A discussion of how you would handle the procurement of insurance and a description of services that you would provide under an insurance broker agreement with County.
 - 7) Have any claims or lawsuits been filed against you for nonperformance or inadequate performance? If yes, describe any such claims or lawsuits.
 - 8) Describe the firm's services in regard to directly assisting Utah County in maintaining information regarding the costs, premiums, service fees, outcomes, loss ratios, and performance of our health and welfare plans in relation to national, regional and local trends.
 - 9) Describe your communication systems (call centers, reports, automated correspondence, newsletters, seminars, internet websites, etc) that would be used to deliver or support the service.
 - 10) Describe your software system capabilities for open enrollment, midyear election changes, report writing, and ACA tracking and reporting. Describe other technology features that you would make available to the County.
- B. References of five commercial clients that can be contacted regarding the quality and competency of your firm and the account executive.
 - C. Evidence of insurance coverage as required above.
 - D. Completed fee proposal signed by an authorized individual.
 - E. Completed W-9 form.

SECTION 4 ACCEPTANCE OF PROPOSAL

The agreement period will be for a term of approximately three years, commencing when executed. Utah County shall have an option, pursuant to that agreement, to renew the agreement for two additional one-year periods, upon the same terms and conditions.

SECTION 5 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 fee proposal page.
- F. Failure to evidence a satisfactory record of integrity.
- G. Failure to qualify legally to contract.

SECTION 6 TERMS AND CONDITIONS

6.1 GENERAL REQUIREMENTS

Utah County will negotiate an agreement 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 agreement on behalf of a Broker's organization certifies that he or she has the authority to so act. The successful Broker 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 this RFP process or the use of the information contained in your response to this RFP. Only the terms and conditions contained in an agreement when, as, and if executed, and subject to such limitations and

restrictions as may be specified therein, may be relied upon by the parties in any manner as having any legal effect whatsoever.

No oral modifications or amendments to this RFP or any resulting agreement shall be effective, but such may be modified or amended only by a written agreement signed by the parties. If it becomes necessary to revise any part of this RFP, an addendum will be provided to all who received an RFP.

6.2 INSPECTION AND ACCEPTANCE

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

6.3 INSURANCE

The Broker agrees to carry errors and omissions insurance with a minimum limit of \$2,500,000 per occurrence, or as modified by the risk manager pursuant to state statute during the term of an agreement with Utah County. This coverage shall provide liability insurance to cover the activities of Broker including Broker's agents and employees, and for all equipment and vehicles, public or private, used in the performance of an agreement with Utah County. The Broker shall furnish, with the proposal submission, a certificate of insurance evidencing that the Broker has insurance coverage equal to or greater than the above stated amounts.

The Broker shall be required to submit said certificate of insurance to Utah County in the minimum amounts indicted above before beginning work under an agreement with Utah County.

6.4 INDEPENDENT CONTRACTOR

Broker 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 any 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 Broker. Broker is not to be considered an employee of Utah County for any purpose, and the employees of Broker are not entitled to any of the benefits that Utah County provides for County's

employees. It is understood that Broker 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 Broker shall be deemed an independent contractor in the performance of any agreement resulting from this RFP and shall comply with all laws regarding unemployment insurance, disability insurance, and workers' compensation. As such, Broker 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.

6.5 INDEMNIFICATION

The Broker shall defend, indemnify, save and hold harmless Utah County, its officers, employees, and agents, from and against any and all claims, demands, causes of actions, orders, decrees, judgments, losses, damages, and liabilities (including all costs and attorney's fees incurred in defending any claim, demand, or cause of action) occasioned by, growing out of, or arising out of the performance of an agreement with County which is caused by any act or omission of Broker's officers, employees, agents or volunteers. The Broker shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of any agreement with County.

6.6 PROPRIETARY INFORMATION

The Broker shall mark any specific information contained in the proposal which is not to be disclosed to the public or used for purposes other than the evaluation of the proposals. Pricing and service elements of the successful proposal will not be considered proprietary.

6.7 TERMINATION

- A. Any agreement resulting from this RFP may be terminated, without cause, or for any reason, by Utah County upon thirty (30) days written notice to the Broker, without prejudice to any other right or remedy Utah County may have.
- B. Failure of the Broker to adhere to any of the performance requirements of any agreement resulting from this RFP shall be cause for immediate termination.
- C. Any agreement resulting from this RFP may be terminated for any reason by the Broker upon ninety (90) days written notice to Utah County.

ATTACHMENT A

I hereby certify that the information submitted by me/my company in response to this RFP, including the pricing and other information in this Proposal Response Form is true and accurate.

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

Name of Firm _____

Name of Broker _____

Signature of Broker _____ Date _____

**ATTACHMENT B
CERTIFICATE OF NON-COLLUSION**

STATE OF UTAH) Request for Proposals for Employee Benefits Broker/Consultant
)SS
COUNTY OF UTAH)

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 proposal or potential agreement resulting therefrom.

Proposer's Signature

By: _____

Title: _____

Subscribed/sworn to before me this ____ day of _____ 2016

My Commission Expires _____

Residing at _____

Seal

By: _____

Notary Public

**ATTACHMENT C
AGREEMENT**

RFP EXAMPLE AGREEMENT

Agreement No. _____

AGREEMENT

Between

UTAH COUNTY

And

[NAME OF CONTRACTING ENTITY]

This Agreement is entered into this _____ day of _____, 201____, between Utah County, a body corporate and politic of the State of Utah ("County") and _____, a _____ corporation, with its principal place of business at _____ ("Contractor"). County and Contractor may be referred to as "the parties."

RECITALS

[Recitals are optional.]

THEREFORE, in exchange for valuable consideration, including the mutual covenants contained in this Agreement, the parties covenant and agree as follows:

1. **SCOPE OF SERVICES**

[To be based upon the Request for Proposals, the Contractor's Proposal and any negotiated terms and conditions.]

2. **CONSIDERATION**

[To be based upon the Request for Proposals, the Contractor's Proposal and any negotiated terms and conditions.]

3. **EFFECTIVE DATE/TERM**

[To be based upon the Request for Proposals, the Contractor's Proposal and any negotiated terms and conditions.]

4. **INDEPENDENT CONTRACTOR AND TAXES**

The relationship of County and Contractor under this Agreement shall be that of an independent contractor status. Each party shall have the entire responsibility to discharge all of the obligations of an independent contractor under federal, state and local law, including but not limited to, those obligations relating to employee supervision, benefits and wages, taxes, unemployment compensation and insurance, social security, worker's compensation, disability pensions and tax withholdings, including the filing of all returns and reports and the payment of all taxes, assessments and contributions and other sums required of an independent contractor. Nothing contained in this Agreement shall be construed to create the relationship between

County and Contractor of employer and employee, partners or joint venturers. The parties agree that Contractor's obligations under this Agreement are solely to the County. This Agreement shall not confer any rights to third parties unless otherwise expressly provided for under this Agreement.

5. AGENCY

No agent, employee or servant of Contractor or County is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by each party to its employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. Contractor and County shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement. Contractor and County shall each make all commercially reasonable efforts to inform all persons with whom they are involved in connection with this Agreement to be aware that Contractor is an independent contractor.

6. CONTRACTOR REPRESENTATIVE

Contractor hereby appoints _____ as Contractor Representative who is authorized to act for and in behalf of Contractor in its performance of this Agreement. Contractor Representative shall have the responsibility of working with the County to coordinate the performance of its obligations under this Agreement.

7. STANDARD OF PERFORMANCE/PROFESSIONALISM

Contractor acknowledges the standard of performance and professionalism required in the performance of its services under this Agreement. Contractor agrees to perform the services under this Agreement with the level of professionalism expected in its industry/profession in the community. Further, Contractor, while performing its obligations under this Agreement, will conduct itself in such a manner that will promote the best interests of the County. Contractor further agrees that it will not accept any fee or financial remuneration from any entity or person other than County for its performance under this Agreement, except for the following:

- A.
- B.
- C.
- D.

8. INDEMNIFICATION

Contractor agrees to indemnify, hold harmless and defend the County, its officers, agents and employees from and against any and all losses, damages, injuries, liabilities, and claims, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and material men (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, intentional acts, reckless acts, negligent acts or omissions by Contractor, its agents, representatives, officers, employees or subcontractors in the performance of this Agreement.

9. GOVERNMENTAL IMMUNITY

County is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"), Utah Code Ann. §§ 63G-7-101 to -904. The parties agree that County shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed, in any way, to modify the limits of liability set forth in that Act or the basis for liability as established in the Act.

10. NON-FUNDING CLAUSE

County intends to request the appropriation of funds to be paid for the services provided by Contractor under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the County's obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the County as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Contractor, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void.

11. INSURANCE

Contractor shall, at its sole cost and expense, secure and maintain during the term of this Agreement, including all renewal or additional terms, the following minimum insurance coverage.

GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES

A. Any insurance coverage required herein that is written on a "claims made" form rather than on an "occurrence" form must be approved in writing by County, and shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of at least four (4) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to the County.

B. All policies of insurance shall be issued by insurance companies licensed to do business in the State of Utah and either:

(i) Currently rated A- or better by A.M. Best Company;

—OR—

(ii) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

C. Contractor shall furnish certificates of insurance, acceptable to the County, verifying the foregoing matters concurrent with the execution hereof and thereafter as required.

D. In the event any work is subcontracted, Contractor shall require its subcontractor, at no cost to the County, to secure and maintain all minimum insurance coverages required of the Contractor hereunder.

E. In the event that governmental immunity limits are subsequently altered by legislation or judicial opinion, Contractor shall provide a new certificate of insurance within 30 (thirty) days after being notified thereof in writing by the County, certifying coverage in compliance with the modified limits or, if no new limits are specified, in an amount acceptable to the County.

F. All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing thirty (30) days prior written notice to the County in a manner approved by the County Attorney.

G. In the event Contractor fails to maintain and keep in force any insurance policies as required herein, County shall have the right at its sole discretion to obtain such coverage and reduce payments to Contractor for the costs of said insurance.

REQUIRED INSURANCE POLICIES.

Contractor agrees to secure and maintain the following required policies of insurance in accordance with the general insurance requirements set forth in the preceding subsection:

A. Workers' compensation and employer's liability insurance as required by the State of Utah unless a waiver of coverage is allowed and acquired pursuant to Utah law. This requirement includes contractors who are doing business as an individual and/or as a sole proprietor as well as corporations, limited liability companies, joint ventures and partnerships. In the event any work is subcontracted, Contractor shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

B. Commercial general liability insurance on an occurrence form with the County as an additional insured, in the minimum amount of \$2,500,000 per occurrence with a \$2,500,000 general policy aggregate, and upon request by the County, \$2,500,000 products completed operations policy aggregate. The policy shall protect the County, Contractor, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage that may arise from Contractor's operations under this Agreement, whether performed by Contractor itself, any subcontractor, or anyone directly or indirectly employed by either of them. Such insurance shall provide coverage for premises operations, acts of independent contractors, and completed operations.

C. Professional liability insurance in the minimum amount of \$2,500,000 per occurrence with a \$2,500,000 annual policy aggregate limit.

D. Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, with the County as an additional insured, in the minimum amount of \$2,500,000 per occurrence with a \$2,500,000 annual policy limit.

12. NO OFFICER OR EMPLOYEE INTEREST

It is understood and agreed that no officer or employee of the County has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer or employee of Contractor or any member of their families shall serve on any County board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises Contractor's operations, or authorizes funding or payments to Contractor.

13. ETHICAL STANDARDS

Contractor represents that it has not: (a) provided an illegal gift to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in Utah State statute; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in Utah State statute.

14. PUBLIC FUNDS AND PUBLIC MONIES

Definitions: "Public funds" and "public monies" mean monies, funds, and accounts, regardless of the source from which they are derived, that are owned, held, or administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. The terms also include monies, funds or accounts that have been transferred by any of the aforementioned public entities to a private contract provider for public programs or services. Said funds shall maintain the nature of "public funds" while in Contractor's possession.

Contractor's Obligation: Contractor, as recipient of "public funds" and "public monies" pursuant to this and other contracts related hereto, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these "public funds" and "public monies" as authorized by law and this Agreement for the provision of services to County. Contractor understands that it, its officers, and employees may be criminally liable under Utah Code Ann. § 76-8-402, for misuse of public funds or monies. Contractor expressly understands that County may monitor the expenditure of public funds by Contractor. Contractor expressly understands that County may withhold funds or require repayment of funds from Contractor for contract noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

15. AFFIDAVITS

Upon the execution of this Agreement and if requested by the County, Contractor shall submit a sworn affidavit from each officer, employee, or agent of Contractor who has been in contact or communicated with any officer, agent or employee of County during the past calendar year concerning the provision of these goods and services. The affidavit shall contain the following statement:

I do solemnly swear that neither I, nor to the best of my knowledge, any member of my firm or company, have either directly or indirectly restrained free and competitive bidding by entering into any agreement, participated in any collusion, or otherwise taken any action unauthorized by the governing body of the County, or in violation of applicable law.

16. TERMINATION

Event of Default. As used in this Agreement, the term “Event of Default” means (a) a party fails to make any payment herein when the same becomes due and such failure continues for a period of thirty (30) days after written notice to the party failing to make such payment; (b) a party hereto fails to perform any of its material obligations and such failure continues for a period of thirty (30) days after written notice to such defaulting party; or (c) any material representation or warranty of a party contained in this Agreement proves to be untrue or incorrect in any material respect when made.

Termination for Default. County may terminate this Agreement for an “Event of Default” as defined, upon written notice from County to Contractor.

Termination by Contractor for Default. Contractor may terminate this Agreement for an Event of Default upon written notice from Contractor to County.

Termination for Convenience. County reserves the right to terminate this Agreement, in whole or in part, at any time during the Term or any Additional Terms whenever County determines, in its sole discretion, that it is in the County’s interest to do so, without cause. If County elects to exercise this right, County shall provide written notice to Contractor at least thirty (30) days prior to the date of termination for convenience. Upon such termination, Contractor shall be paid for all services up to the date of termination. Contractor agrees that the County’s termination for convenience will not be deemed a termination for default nor will it entitle Contractor to any rights or remedies provided by law or this Agreement for breach of contract by the County or any other claim or cause of action.

17. NO LIMITATION OF RIGHTS

The rights and remedies of the parties hereto are in addition to any other rights and remedies provided by law or under this Agreement. The parties agree that the waiver of any breach of this Agreement by either party shall in no event constitute a waiver as to any future breach.

18. 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.

19. NON-DISCRIMINATION

Contractor and any agent of Contractor agree that they shall comply with all federal, state and county laws, rules and regulations governing discrimination and they shall not discriminate in the engagement or employment of any professional person or any other person qualified to perform the services required under this Agreement.

20. LABOR REGULATIONS AND REQUIREMENTS

Contractor agrees to comply with all applicable provisions of Title 34 of the Utah Code, and with all applicable federal, state and local labor laws. Contractor shall indemnify and hold County harmless from and against any and all claims for liability arising out of any violation of this paragraph or the laws referenced by Contractor, its agents or employees, including all attorney fees and costs incurred by the County as a result thereof.

21. EMPLOYEE STATUS VERIFICATION SYSTEM

If this Agreement was the result of a Request for Proposals by County, Contractor shall register and participate in the Status Verification System before entering into a contract with the county as required by Utah Code Ann. § 63G-12-302. The Status Verification System is an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. § 1373 to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision. Contractor is individually responsible for verifying the employment status of only new employees who work under Contractor's supervision or direction and not those who work for another contractor or subcontractor, except each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified, through the Status Verification System, the employment status of each new employee of the respective contractor or subcontractor. The contractor shall comply in all respects with the provisions of Utah Code Ann. § 63G-12-302. Contractor's failure to so comply may result in the immediate termination of its contract with the County.

22. CONFIDENTIALITY

Contractor shall hold all information provided to it by County, or which it observes or otherwise obtains through its performance of this Agreement, whether in written or other form, in strict confidence, shall make no use thereof other than for the performance of this Agreement, and shall not release any of said information to any third party, or to any representative of the news media without prior written consent of County. Materials, information, data, reports, plans, analyses, budgets and similar documentation provided to or prepared by Contractor in performance of this Agreement shall also be held confidential by Contractor. County shall have the sole obligation or privilege of releasing such information as required by law.

23. OWNERSHIP OF WORK PRODUCT

All work performed by Contractor under this Agreement shall become the sole property of the County. Ownership of the work shall apply regardless of the form of the work product including, but not limited to, writings, drawings, reports, any form of video or audio, etc. Upon final payment by County to Contractor, Contractor shall deliver to County all work product applicable to the services provided under this Agreement including, but not limited to, work product in draft form.

24. GOVERNMENT RECORDS ACCESS MANAGEMENT ACT

Contractor acknowledges that County is a governmental entity subject to the Utah Government Records Access and Management Act (“GRAMA”), Utah Code Ann. §§ 63G-2-101 to 901. As a result, County is required to disclose certain information and materials to the public, upon request. Contractor agrees to timely refer all requests for documents, materials and data in its possession relating to this Agreement and its performance to the County for response by County.

Generally, any document submitted to County is considered a “public record” under GRAMA. Any person who provides to the County a record that the person believes should be protected under subsection 63G-2-305(1) or (2) shall provide both: (1) a written claim of business confidentiality and (2) a concise statement of reasons supporting the claim of business confidentiality. Generally, GRAMA only protects against the disclosure of trade secrets or commercial information that could reasonably be expected to result in unfair competitive injury.

25. ASSIGNMENT

Contractor shall not assign or transfer its duties of performance nor its rights to compensation under this Agreement, without the prior written approval of County. County reserves the right to assert any claim or defense it may have against Contractor and against any assignee or successor-in-interest of Contractor.

26. SUBCONTRACTING

Contractor agrees that it shall not subcontract to provide any of the services under this Agreement, or execute performance of its obligations under this Agreement, without prior express written consent of County.

27. NOTICES

All notices to be given under this Agreement shall be made in writing and shall be deemed given upon personal delivery, upon the next business day immediately following the day sent if sent by overnight express carrier, or upon the third business day following the day sent if sent postage prepaid by certified or registered mail, return receipt requested, to the parties at the following addresses (or to such other address or addresses as shall be specified in any notice given):

COUNTY: *[Add]*
CONTRACTOR: *[Name and Address]*

28. TIME

The parties stipulate that time is of the essence in the performance of this Agreement. The time set forth for performance in this Agreement shall be strictly followed and any default in performance according to the times required shall be a default of this Agreement and shall be just cause for immediate termination by County of this Agreement and pursuit of any remedy allowed by this Agreement and by law.

29. ENTIRE AGREEMENT

County and Contractor acknowledge and agree that this Agreement , and the exhibits and attachments hereto, constitutes the entire integrated understanding between County and Contractor, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the parties to this Agreement except as set forth in this Agreement. This Agreement may not be enlarged, modified or altered, except in writing, signed by the parties.

30. GOVERNING LAW

It is understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of Utah and the ordinances of County, both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

31. COUNTERPARTS

This Agreement may be executed in several counterparts and all so executed shall constitute one agreement binding on all the parties, notwithstanding that each of the parties are not signatory to the original or the same counterpart. Further, executed copies of this Agreement delivered by facsimile or email shall be deemed an original signed copy of this Agreement.

32. INTERPRETATION

The Agreement documents are complementary and what is called for by any one of them shall be as binding as if called for by all. In the event of any inconsistency between any of the provisions of the Agreement documents, the inconsistency shall be resolved by giving precedence in the following order:

- A. This Agreement;
- B. County's Request for Proposals (Exhibit 1); and
- C. Contractor's Proposal in response to County's Request for Proposals (Exhibit 2).

County and Contractor agree that where possible, each provision of this Agreement shall be interpreted in such a manner as to be consistent and valid under applicable law; but if any provision of this Agreement shall be invalid, prohibited or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

33. HIPAA AND ACA

Consultant shall at all times protect the privacy and security of "Protected Health Information" (PHI) as that term is used under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated under it. Among other things, Consultant shall not have access to any PHI without first having executed a HIPAA compliant Business Associate Agreement between Consultant and Client. Consultant shall at all times comply with the requirements of the Affordable Care Act.

IN WITNESS WHEREOF, the Parties execute this Agreement the day and year recited above.

BOARD OF COUNTY COMMISSIONERS,
UTAH COUNTY, UTAH

Larry A. Ellertson, Chair

ATTEST:
Bryan E. Thompson
County Clerk/Auditor

By: _____
Deputy

APPROVED AS TO FORM:
Jeffrey R. Buhman
Utah County Attorney

By: _____
Deputy

CONTRACTOR

By: _____
Its: _____

ATTEST:

By: _____