

**REQUEST FOR PROPOSALS**

**for**

**Sketch Verification Project**

**RFP # 2019 - 14**

 CLOSING DATE

 FOR RECEIPT OF PROPOSALS: Wednesday, September 18, 2019

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

 PLACE: Utah County Purchasing Manager

 100 East Center Street

 Suite 3600

 Provo, UT 84606

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**SECTION 1 ADMINISTRATIVE OVERVIEW**

**1.1 PURPOSE**

Utah Code requires an assessment office to complete detailed reviews. House Bill 2019-11 refers to a valuation cycle associated with the detailed review process. Utah County is one of the fastest growing metro areas in the state (and nation). To comply with statute, the Utah County Assessment office is seeking a desktop review solution that will comply with both Utah Code and State Tax Commission rule.

Utah County utilizes Apex Sketch. The objective of this RFP is to:

1. Utilize improvement sketches to create a building layer in the GIS system for:
	1. The rectification of shape files with aerial images
	2. Exception report associated with rectification process
2. Provide a desktop solution to perform and manage review project
3. Provide a solution to maintain sketch building GIS layer after initial review project for new construction and changes

2019 House Bill 11 refers to the valuation cycle associated with the detailed review process. Per Utah Code 59-2-303.1(3)(a), “the county assessor shall complete a detailed review of property characteristics for each property at least once every five years.” Per 59-2-303.1(4)(a) the state tax commission shall take corrective action if (iii) the county assessor has failed to comply with the requirements of this section. Utah State Tax Commission Administrative Rule R884-24P-70, Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1:

(3)(a) A detailed review of property characteristics shall include a sufficient inspection to determine any changes to real property due to:

1. new construction, additions, remodels, demolitions, land segregations, changes in use, or other changes of a similar nature; and
2. a change in condition or effective age.

(3)(b) (i) A detailed review of property characteristics shall be made in accordance with the IAAO Standard on Mass Appraisal of Real Property.

(3)(b)(ii) When using aerial photography, including oblique aerial photography, the date of the photographic flight is the property review date for purposes of Section 59-2-303.1.

IAAO Standard on Mass Appraisal of Real Property: 3.3.5 Alternative to Periodic On-site inspections:

Provided that initial physical inspections are timely completed and that an effective system of building permits or other methods of routinely identifying physical changes is in place, jurisdictions may employ a set of digital imaging technology tools to supplement field re -inspections with a computer-assisted office review. These imaging tools should include the following:

• Current high-resolution street-view images (at a sub-inch pixel resolution that enables quality grade and physical condition to be verified).

• **Orthophoto images** (minimum 6” pixel resolution in urban/suburban and 12” resolution in rural areas, **updated every 2 years** **in rapid growth areas**, or 6–10 years in slow growth areas).

• Low level oblique images capable of being used for measurement verification (four cardinal directions, minimum 6-inch pixel resolution in urban/suburban and 12-inch pixel resolution in rural areas**, updated every 2 years in rapid growth areas** or, 6–10 years in slow growth areas).

Implementation of requirements: The IAAO standard identifies three tools that should be utilized within an alternative periodic on-site inspection, provided supporting conditions exist.

* High-resolution street-view images
* Orthophoto images
* Oblique images

High-resolution has many variables. The spatial resolution of a computer monitor can impact resolution as much as pixel count. The typical monitor displays 72 pixels per inch. The primary factor is the user’s ability to view sufficient detail.

**1.2** **SERVICES SOUGHT**

The County contains approximately 200,000 parcels. The majority of these parcels are improved. Each parcel has an associated record in the Assessor’s Computer Assisted Mass Appraisal (CAMA) system. Improved parcels (depending on the type of improvement) have an associated sketch of improvements. The objective is to link GIS data and aerial imagery to the CAMA system via the sketch in order to perform a quality control task that satisfies state mandated property review.

To accomplish this the county is seeking third party services to:

Phase One: GIS Improvement Sketch Layer

* Convert sketch data/images into a format for GIS integration
* Rectification of sketch integration solution with aerial images
* An analysis of each parcel to determine the accuracy of rectification (integration)
* Delivery of an exception report of integration and rectification unity
* A solution to maintain created GIS layer after completion of Phase One

Phase Two: Desktop Analysis Solution

* A desktop solution to review and analyze property characteristics that includes
	+ Parcel level viewing
	+ Community level viewing
	+ GIS sketch layer for comparison with aerial images at parcel level
	+ A solution to track status of each parcel in review process
* A recommended solution to utilize CAMA data in review process
* A recommended solution to update CAMA system associated with review
	+ Individual parcels
	+ Mass update (example review date and review by fields)
* Dashboard environment to track and manage project
* Export and reporting options
* Import and data update options associated with proposed desktop solution

**SECTION 2 PROCUREMENT RULES AND PROCEDURES**

**2.1 PROCEDURE**

The procedure for response to this RFP, evaluation of proposals, and selection of a vendor is as follows:

1. Interested entities will prepare and submit their proposals prior to the specified Closing Date for Receipt of Proposals.

2. Utah County and/or its representatives will evaluate all submitted proposals as described herein.

3. The selected vendor will enter into contract negotiations with the County.

**2.2 RULES OF PROCUREMENT**

 A. This procurement shall conform to and is governed by The Utah County Division of Purchasing Procurement Rules and Regulations.

B. For this procurement, all proposals must be submitted in the proposal format outlined herein.

C. All prospective Proposers must meet the required criteria as of the date of submission.

D. Utah County has established certain requirements with respect to proposals to be submitted by respondents. The use of "shall", "must", or "will", in this RFP indicates a requirement or condition from which a material deviation will not be approved by Utah County.

**2.3 PROCUREMENT TIMETABLE**

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

|  |  |
| --- | --- |
| **REQUIRED ACTIVITY** | **SCHEDULED DATE** |
| RFP Issue Date | August 22, 2019 |
| Closing Date for Bidding Provider Questions | September 13, 2019 |
| Closing Date for Receipt of Proposals |  September 18, 2019 3:00 pm MT |
|  Anticipated Final Decision |  October 1, 2019 |

**2.4 QUESTIONS AND CLARIFICATIONS**

Questions regarding this RFP must be submitted by September 13, 2019. Please submit questions through the SciQuest website.

The point of contact for this RFP is the Utah County Purchasing Manager, Robert Baxter:

RobertB@utahcounty.gov

**2.5 EVALUATION CRITERIA**

All proposals will be evaluated by authorized representatives of Utah County (the Selection Committee). Each member of the Selection Committee will ordinally rank all proposals from highest to lowest evaluation score, and the Selection Committee will compile the rankings of all member of the Selection Committee. If any proposal receives a majority of first place votes, that proposal will be recommended to the County Board of Commissioners for award of the contract. If not, the proposal that received the lowest average ranking will be removed from selection and the rankings will be recast. That process will be repeated until one proposal receives a majority of votes as the #1 ranking proposal. The Board of County Commissioners shall award the contract to one of the top three ranked offerors, or may elect to reject all proposals. After the Board of County Commissioners has selected a proposal, the firm will enter into negotiations for a contract. The contract will become final and binding only with the approval and signing of the Utah County Commission. The Selection Committee and Board of Commissioners will consider all criteria in performing a comprehensive evaluation of the proposals. The following weighted average criteria will be used by the Selection Committee in creating a score for each of the proposals:

* + **35%** Cost
	+ **35%** Vendor’s Qualifications and Relevant Experience

* + **20%** Ability to meet County’s requirements

* + **10%** Quality, Clarity, and Responsiveness of the Submitted Proposal

**SECTION 3 INSTRUCTIONS FOR PROPOSAL PREPARATION**

**3.1 PROPOSAL SUBMISSION**

Each respondent must submit THREE (3) HARD COPIES and ONE (1) ELECTRONIC COPY of its SEALED proposal to the Utah County Purchasing Manager. The envelope containing the proposal must be clearly labeled “SEALED PROPOSAL - SKETCH VERIFICATION RFP # 2019-14”. Hard copy proposals must be delivered to:

Utah County Purchasing Manager

 100 East Center, Suite 3600

 Provo, Utah 84606

Electronic copies must be delivered to the Utah County Purchasing Manager at RobertB@utahcounty.gov

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

**3.2 PROPOSAL ORGANIZATION**

 The proposal must include:

 1. Cover Letter

 2. Vendor’s Qualifications – Provide a description of the firm and appropriate individuals’ and subcontractors’ historical background.

 3. Cost/Fee Proposal

 4. Signed Signature Sheet – Signed by individual with authority to make commitments on behalf of the company (Attachment A)

 5. Completed Certificate of Non-Collusion (Attachment B)

 6. A copy of the Proposer’s current business license

 7. Proof of required insurance.

 8. Completed Exhibit A

**SECTION 4 DISQUALIFICATION OF PROPOSAL**

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

A. Failure to respond within the established timetable.

B. Failure to completely answer all questions presented in the RFP.

C. Use of any type of form or format other than those indicated in the RFP.

D. Failure to provide requested documentation at the time of proposal submission.

E Illegible responses.

F. If the Proposer 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 Proposer is unable to evidence a satisfactory record of integrity.

H. If the Proposer is not qualified legally to contract.

I. If the proposal at the opening does not contain a signed proposal, and a signed certificate of non-collusion.

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

**SECTION 5 TERMS AND CONDITIONS**

**5.1 GENERAL REQUIREMENTS**

Utah County will negotiate an agreement in reliance upon the information contained in Proposals submitted in response to the RFP. The Appendix of this RFP contains Utah County’s standard terms which shall form the basis of an agreement covering the subject matter of this RFP between the selected service provider and Utah County. Exceptions or deviations from Utah County’s standard terms must be clearly identified in the response to the RFP, together with any accompanying reasons for the exceptions or deviations, and any proposed modifications offered by the service provider. Exceptions or deviations from Utah County’s standard terms will be taken into consideration when evaluating proposals submitted and may result in the Proposal being rejected in whole or part by Utah County. Utah County specifically reserves the right to reject any or all of the proposed modifications. Utah County will be legally bound only when and if there is a definitive signed agreement with the awarded Service Provider (“Contractor”). It is vitally important that any person who signs a Proposal or agreement on behalf of a Contractor's firm certifies that he or she has the authority to so act. The successful Contractor who has its Proposal accepted may be required to answer further questions and provide further clarification regarding its Proposal and responses.

Receiving this RFP or responding to it does not entitle any entity to participate in services or transactions resulting from or arising in connection with this RFP. Utah County shall have no liability to any person or entity under or in connection with this RFP, unless and until Utah County and such person shall have executed and delivered a definitive written agreement.

By responding to this RFP, each responding party acknowledges that neither Utah County nor any of its representatives is making or has made any representation or warranty, either express or implied, as to the accuracy or completeness of any portion of the information contained in this RFP. The responding party further agrees that neither Utah County nor any of its representatives shall have any liability to the responding party or any of its representatives as a result of this RFP process or the use of the information contained in this RFP. Only the terms and conditions contained in an agreement when, as, and if executed, and subject to such limitations and restrictions as may be specified therein, may be relied upon by the parties in any manner as having any legal effect whatsoever.

No oral modifications or amendments to this RFP or any resulting agreement shall be effective; the RFP may be modified or amended only by a written agreement signed by the parties. If it becomes necessary to revise any part of this RFP, an addendum will be posted to SciQuest for all interested providers to review.

**5.2 INDEPENDENT CONTRACTOR**

Contractor states and affirms that it is acting as an independent contractor, holding itself out to the general public as an independent contractor for other work or contracts as it sees fit; that it advertises its services as it sees fit to the general public, maintains its office or place of employment separate from Utah County, and that any agreement resulting from this RFP is not exclusive of other agreements, contracts or opportunities.

The parties intend that an independent contractor relationship will be created by an agreement resulting from this RFP. Utah County is interested only in the results to be achieved, and the conduct and control of the work will lie solely with Contractor. Contractor is not to be considered an agent or employee of Utah County for any purpose, and the employees of Contractor are not entitled to any of the benefits that Utah County provides for County's employees. It is understood that Contractor is free to contract for similar services to be performed for others while working under the provisions of any agreement with Utah County resulting from this RFP.

Both parties agree that Contractor shall be deemed an independent contractor in the performance of any agreement with Utah County resulting from this RFP, and shall comply with all laws regarding unemployment insurance, disability insurance, and workers’ compensation. As such, Contractor shall have no authorization, express or implied, to bind Utah County to any other agreement, or any settlement, liability, or understanding whatsoever, and agrees not to perform any acts as agent for Utah County.

**5.3 PROPRIETARY INFORMATION**

Contractor is required to mark any specific information contained in its Proposal which is not to be disclosed to the public or used for purposes other than the evaluation of the bid. Each request for non-disclosure must be accompanied by a specific justification explaining why the information is to be protected. Pricing and service elements of any Proposal will not be considered proprietary.

**5.4 PUBLIC INFORMATION**

Contractor agrees that the agreement, related sales orders, and invoices will be public documents, and may be available for distribution. Contractor gives the County express permission to make copies of the agreement, related sales orders and invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the Utah County Purchasing Agent, Contractor also agrees that the permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation.

**ATTACHMENT A**

**SIGNATURE SHEET**

I hereby certify that the information submitted by me/my company in response to this RFP, including the pricing and all written and electronic information in this RFP response is true and accurate.

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

Name of Firm

Address

Phone Number Fax

Email Address

Print Name

Signature Date

**ATTACHMENT B**

 **CERTIFICATE OF NON-COLLUSION**

STATE OF UTAH ) Request for Proposals

 )SS for

COUNTY OF UTAH ) Sketch Verification Project

AFFIDAVIT

The undersigned of lawful age, being first duly sworn, disposes and says:

That as a condition precedent to the award of the Utah County project as above captioned,

I\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (owner, partner, officer or delegate)

of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_do

 (company)

solemnly swear that neither I, nor to the best of my knowledge any member or members of my firm or company have either directly or indirectly restrained free and competitive bidding on this project by entering into any agreement, participating in any collusion, or otherwise taking any action unauthorized by Utah County, with regard to this bid or potential agreement resulting therefrom.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature

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

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

 \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

Subscribed/sworn to before me this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 2019 A.D.

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

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Seal

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 Notary Public

**EXHIBIT A**

**UTAH COUNTY PROPERTY CHARACTERISTIC REVIEW CRITERIA, REQUIREMENTS, AND EXCEPTIONS**

**INSTRUCTIONS:** The Requirement and Criteria or Procedure are provided. The third column, Comment, allows for a response. If additional space is needed for a response, enter Detail Explanation in column. Detailed responses can be entered at the end of the table, referencing the associated requirement.

|  |  |  |
| --- | --- | --- |
| REQUIREMENT | CRITERIA OR PROCEDURE | COMMENT |
| Phase One: GIS Improvement Sketch Layer |
| 1: Sketch Conversion | County to provide a file format or agreed criteria for the conversion of perimeter sketch information into a shape file or similar approved format that can be utilized in an ESRI GIS layer.  |  |
| 2: Parcel Selection, Condominium | Sketches information provided will not be for all properties. Condominium units (and other identified types) will not be provided. |  |
| 3: Parcel Selection, Commercial | Sketch information may not be provided for some commercial properties that are maintained with unit information, such as a strip mall or similar types.  |  |
| 4: Rectification | Contractor is to orient shape files or approved format with associated improvement images on aerial imagery provided by county, producing a GIS “sketch” layer |  |
| 5: Footprint | Current sketch information is level based, resulting in multiple sketches for multistory and basement areas. The GIS layer is intended to only contain footprint shapes. All sketch levels will be provided. Options to include or exclude layers is a contractual option based on one of the layers being the footprint. |  |
| 6: Comparison Analysis  | Contractor to analyze and record classification of match (parameters to be agreed to) between image and shape file. |  |
| 7: Analysis, other | Contractor to analyze complete imagery layer to determine if County may be missing sketches where images exist.  |  |
| 8: Exceptions | Contractor to provide an exception report that will contain notes, descriptions, and agreed to items that analysis stage has flagged as an issue. The intent is to identify items Contractor is suggesting County review (needing research or analysis beyond scope of agreement). |  |
| 9: Maintenance | Agreed to process and costs to add future sketch information to GIS layer in order to maintain validity of this GIS layer as future changes occur. This includes needed sketching corrections by County based on Phase One analysis. |  |
| Phase Two: Desktop Analysis Solution |
| 10: Setup Hardware | Setup description of hardware |  |
| 11: Setup Software | Setup description of software |  |
| 12: Integration | Setup description of any integration |  |
| 13: Environment | Review environment of Desktop Review.  |  |
| 14: Workflow | Workflow that allows for management of resources assigned to tasks. Should easily be able to reassign workload.  |  |
| 15: Dashboard | Ability to monitor progress of project with integrated tools, displays, and reports |  |
| 16: Exception Report | Integration access (format) of Exception Report pertaining to Workflow and review process |  |
| 17: Status Tracking | Ability to change status codes with flexibility to define status codes per property |  |
| 18: User Access | Multiple users have access to the system at any time (is there a user limit?) |  |
| 19: Access Points | Hosting options allows for user access flexibility |  |
| 20: Access Hours | Any restriction due to server time |  |
| 21: Result Updates | Process of updating CAMA system with results |  |
| 22: Support | Hours of support (Mountain Time) |  |
| 23: Multiple Views | Synchronized views of parcel layer, Improvement layer, and other associated desktop screens |  |
| 24: Navigation | Navigation that follows property list. Refocus of all views when parcel is selected from a list |  |
| 25: Filtering | Ability of filter completed (status) parcels from list of uncompleted parcels assigned to a user |  |
| 26: Quality Control | Ability for quality control tasks to be completed within the same environment as the review process. |  |
| 27: Random Samples | System provides a random sample of completed properties for quality control to review |  |
| 28: Standardization | List options from a standardized list, not freeform entries, such as dates, status, user, review codes, and other similar fields |  |
| 29: Field Reviews | Ability to create a list and track the status and progress of properties assigned for a field review |  |
| 30: Export Lists | For field reviews, ability to export a selected list of properties for field review |  |
| 31: Customization | Ability to customize application based on local unique criteria |  |
|  |  |  |
| 32: Lead Time for Phase One | Typical time from signing agreement to actual start of Phase One |  |
| 33: Lead Time for Phase Two | Time necessary to transition from Phase One to Phase Two |  |
| 34: Agreement | Typical amount of time utilized between verbal confirmation for services (RFP selection) and signing of agreement  |  |

SPACE PROVIDED TO REFERENCE AND PROVIDE LONGER COMMENTS WHEN NECESSARY

**APPENDIX**

### UTAH COUNTY GOVERNMENT

### STANDARD CONTRACT TERMS

### April 17, 2017

**This Appendix contains Utah County’s standard terms which shall form the basis of an agreement covering the subject matter of this RFP between the selected service provider and Utah County. Exceptions or deviations from Utah County’s standard terms must be clearly identified in the response to the RFP, together with any accompanying reasons for the exceptions or deviations, and any proposed modifications offered by the service provider. Exceptions or deviations from Utah County’s standard terms will be taken into consideration when evaluating proposals submitted and may result in the Proposal being rejected in whole or part by Utah County. Utah County specifically reserves the right to reject any or all of the proposed modifications.**

**1. EXTRA WORK**

 a. Extra work shall be undertaken only when previously authorized in writing by Utah County, and is defined as additional work which is neither shown nor defined in this AGREEMENT or the attached CONTRACTOR’s proposal (if any), but determined by Utah County to be necessary to the project. Extra work is also defined as that additional effort necessary by reason of changed conditions which are radical, unforeseen, and completely beyond the control of the CONTRACTOR.

 b. Miscellaneous items normally associated with the major work items included in this agreement, but which may not be specifically identified, shall be furnished by the CONTRACTOR as if they had been included in the agreement, without additional cost to COUNTY. After prior authorization of the County Commission in writing, payment for authorized extra work will be made by reimbursement for all direct and substantiated costs of labor, materials, and supplies used.

**2. GOVERNING LAW**

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

**3. EMPLOYMENT STATUS VERIFICATION**

CONTRACTOR shall register and participate in the Status Verification System and comply with Utah Code Annotated Section 63G-11-103 of the Identity Documents and Verification Act. CONTRACTOR shall by contract require its contractors, subcontractors, contract employees, staffing agencies, or any contractors regardless of their tier to register and participate in the Status Verification system and comply with Utah code Annotated Section 63G-11-103 of the Identity Documents and Verification Act.

**4. AMENDMENTS**

No oral modifications or amendments to this AGREEMENT shall be effective, but such may be modified or amended by a written agreement signed by the parties.

**5. ASSIGNMENT**

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

**6. SUCCESSORS IN INTEREST**

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

**7. INDEMNIFICATION**

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

CONTRACTOR agrees to fully and completely defend, at CONTRACTOR’s own expense, COUNTY against any and all claims, demands, causes of action, orders, decrees, judgements, losses, damages, expenses and liabilities (including all costs and attorney’s fees incurred in defending or resolving any claim, demand, or cause of action) occasioned by, growing out of, or arising or resulting from a data breach or other unauthorized access or COUNTY’s data created, stored, transmitted, or otherwise related to the services or products described in this AGREEMENT.

**8. 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 (2011). COUNTY does not waive any procedural or substantive defense or benefit provided or to be provided by the Act or comparable legislation enactment. 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 set forth in that Act or the basis for liability as established in the Act.

**9. 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. If funds are not appropriated for a succeeding fiscal year to fund performance by COUNTY under this Agreement, COUNTY shall promptly notify CONTRACTOR of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

**10. SALES TAX EXEMPTION**

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

**11. 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.

**12. CONFIDENTIALITY**

Contractor shall hold all information provided to it by COUNTY for the purposes of its performance of this Agreement, whether provided in written or other form, in strict confidence, shall make no use thereof other than for the performance of the Agreement, and shall not release any of said information to any third party, any member of CONTRACTOR’s firm who is not involved in the performance of services under the Agreement, or to any representative of the news media without prior written consent of 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.

**13. PAYMENT**

Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. All payments to the CONTRACT will be remitted by mail unless paid by the COUNTY’s Purchasing Card. CONTRACTOR shall accept payment by Purchasing Card without any additional fees.

**14. TERMINATION**

This Agreement may be terminated with cause by either party, in advances of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violation, after which the Agreement may be terminated for cause. Time allowed for cure will not diminish or eliminate CONTRACTOR’s liability for damages. The Agreement may be terminated without cause, in advance of the specified expiration date, by either party, upon 90 days prior written notice being given the other party. On termination of this Agreement, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

**15. FORCE MAJEURE**

Neither party to this Agreement will be held liable for delay or default caused by fire, riot, acts of God and/or war which is beyond that party’s reasonable control. The COUNTY may terminate this Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.

**16. INDEPENDENT CONTRACTOR**

 a. CONTRACTOR states and affirms that he is acting as an independent contractor, holding himself out to the general public as an independent contractor for other work or contracts as he sees fit; that he advertises his services as he sees fit to the general public, maintains his office or place of employment separate from COUNTY, and that this AGREEMENT is not exclusive of other agreements, contracts or opportunities.

 b. The parties intend that an independent contractor relationship will be created by this AGREEMENT. COUNTY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONTRACTOR. CONTRACTOR is not to be considered an agent or employee of COUNTY for any purpose, and the employees of CONTRACTOR are not entitled to any of the benefits that COUNTY provides for COUNTY'S employees. It is understood that COUNTY does not agree to use CONTRACTOR exclusively. It is further understood that CONTRACTOR is free to contract for similar services to be performed for others while working under the provisions of this AGREEMENT with COUNTY.

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

**17. INTERPRETATION OF AGREEMENT**

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

**18. INSURANCE**

a. CONTRACTOR agrees to carry Commercial General Liability insurance coverage equal to or greater than $2,500,000 per occurrence. This coverage shall provide liability insurance to cover the activities of CONTRACTOR including CONTRACTOR’S agents, employees and subcontractors, and for all equipment and vehicles, public or private, used in the performance of this contract. Prior to commencement of work, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY evidencing that CONTRACTOR has this insurance in place.

 b. Prior to commencement of work, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY evidencing that CONTRACTOR has Workers Compensation Insurance for the CONTRACTOR, all subcontractors, and all employees of the CONTRACTOR and/or subcontractors.

**19. LEGAL**

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

**20. NO PRESUMPTION**

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

**21. WARRANTY**

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

The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the COUNTY under this Agreement for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this AGREEMENT or CONTRACTOR’s proposal, attached hereto (if any). The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this Agreement unless otherwise specified and mutually agreed upon elsewhere in this Agreement. In general, the CONTRACTOR warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the COUNTY has relied upon the CONTRACTOR’s skill or judgment to consider when it advised the COUNTY about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the COUNTY has not been warned. Remedies available to the COUNTY include the following: The CONTRACTOR will repair or replace (at no charge to the COUNTY) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the COUNTY may otherwise have under this Agreement.

**22. DELIVERY**

Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by the CONTRACTOR. Responsibility and liability for loss or damage will remain with CONTRACTOR until final inspection and acceptance when responsibility will pass to the COUNTY except as to latent defects, fraud, and CONTRACTOR’s warranty obligations.

**23. ENTIRE AGREEMENT.**

This AGREEMENT shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this AGREEMENT shall not be binding upon either party except to the extent incorporated in this AGREEMENT.