



REQUEST FOR PROPOSALS FOR
FINANCIAL AUDIT
OF
UTAH COUNTY GOVERNMENT

RFP #2021-13

CLOSE DATE: THURSDAY, NOVEMBER 18TH, 2021 AT 3:00 pm MST

Submit proposals by email in PDF format to **RobertB@UtahCounty.gov** with a subject line of PROPOSAL – AUDIT SERVICES. If an electronic response is not feasible, mail or deliver one (1) original and three (3) copies of your proposal to:

Utah County Government
PROPOSAL – AUDIT SERVICES
Attn: Robert Baxter, Purchasing Manager
100 East Center Street, Suite 3600
Provo, UT 84606-3159

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SECTION 1: INTRODUCTION

1.1 OBJECTIVE

Utah County is soliciting competitive proposals from qualified independent auditing firms to provide audit services. It is anticipated that this Request for Proposal (“RFP”) may result in a contract award to a single contractor.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal’s content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability.

1.2 BACKGROUND INFORMATION

Utah County Government (the “County”) was established in 1850. The County’s fiscal year end is December 31.

The County currently has the following funds:

- Governmental Funds
 - General Fund
 - Special Revenue Funds
 - Health Department
 - Transportation Projects
 - Grants / Outside Projects
 - Children’s Justice Center
 - Inmate Benefit
 - Outside Law Enforcement Contracts
 - Transient Room Tax
 - Tourism, Recreation, Cultural, and Convention Facilities Tax
 - Assessing and Collecting
 - Utah County Service Area No. 6 (blended component unit)
 - Utah County Service Area No. 7 (blended component unit)
 - Utah County Service Area No. 8 (blended component unit)
 - Utah County Service Area No. 9 (blended component unit)
 - Utah Valley Roads Special Service District (blended component unit)
 - Soldier Summit Special Service District (blended component unit)
 - Municipal Building Authority of Utah County, Utah
 - Debt Service Fund
 - Capital Projects Fund
- Proprietary Funds
 - Motor Pool (internal service fund)
 - Jail Kitchen (internal service fund)
 - Building Maintenance (internal service fund)
 - Telephone (internal service fund)
 - Radio (internal service fund)
 - Information Technology (internal service fund)
- Agency Trust Funds

In addition to these funds, there are additional component organizations that are part of the County as defined by Governmental Accounting Standards Board Statement No. 61. They are:

- North Pointe Solid Waste Special Service District
- Timpanogos Special Service District
- Wasatch Mental Health Special Service District
- North Fork Special Service District
- Utah Valley Convention & Visitors Bureau

For the fiscal year ended December 31, 2019, the County reported the following financial information:

- Total assets of \$211,763,913 for all governmental funds.
- Total liabilities of \$39,127,717 for all governmental funds.
- Total revenues of \$281,071,327 for all governmental funds.
- Total expenditures of \$266,660,719 for all governmental funds.
- Total ending fund balances of \$169,987,819 for all governmental funds.
- Outstanding debt service principal balance of \$225,285,000.

The County uses an in-house developed software for its accounting applications. The software is Oracle-based and is supported by the County's Information Systems Department.

The County contributes to multiple employer-defined benefit pension plans administered by the Utah State Retirement System, including plans covering regular and public safety employees. The County also maintains a 401(k) plan, a 401(a) plan covering non-public safety employees, and a plan under Internal Revenue Code Section 457.

The County is required by law (*Utah Code 17-36-39*) to provide an annual audit of its financial statements by a Certified Public Accountant in accordance with generally accepted auditing standards.

This requirement includes: (1) a financial statement audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, (2) a State Compliance Audit, in accordance with the *State Compliance Audit Guide* issued by the Office of the Utah State Auditor, and (3) a Single Audit in accordance with the Single Audit Act and OMB Circular A-133.

The general accounting and financial reporting functions of the County are mostly centralized in the Utah County Auditor's Office; however, most departments maintain fiscal records customized to meet their unique needs. The County also has an internal audit staff of three employees.

Prior year reports for the County can be found on the Utah County Auditor's website at:
<http://www.UtahCounty.gov/Dept/ClerkAud/FinancialReports.html>.

1.3 DURATION OF WORK

The audit contract resulting from this RFP will cover the annual audits for each of the calendar years ending December 31, 2021 through December 31, 2025, subject to annual performance evaluations, budget appropriations, and County needs.

The County reserves the right to review the contract on a regular basis regarding performance and cost analysis and may negotiate price and service elements during the term of the contract.

1.4 DETAILED SCOPE OF WORK

A. AUDIT STANDARDS

The offeror shall perform a financial audit, a state compliance audit, and a single audit of the County for each fiscal year of the contract period in accordance with the following:

- Auditing standards generally accepted in the United States of America, as promulgated by the American Institute of Certified Public Accountants (“AICPA”).
- The *AICPA Audits of State and Local Governmental Units* audit and accounting guide.
- The most current revision of *Government Auditing Standards*, published by the U.S. Government Accountability Office.
- For the state compliance audit: The *State Compliance Audit Guide*, issued by the Office of the Utah State Auditor.
- For the single audit: OMB Circular A-133 *Audits of States, Local Governments, and Non-Profit Organizations* and related OMB A-133 Compliance Supplement (as applicable).

B. REPORTING REQUIREMENTS

1. Financial Report – The offeror shall audit the financial statements and records of the County and shall issue an auditor’s opinion on those financial statements. Such financial statements shall be prepared in conformity with accounting principles generally accepted in the United States of America. The offeror will assist the County’s efforts to obtain the Government Finance Officers Association’s Certificate of Achievement of Excellence in Financial Reporting.
2. Independent Auditor’s Report on Internal Control over Financial Reporting and on Compliance and Other Matters – The offeror shall issue a report on internal control over financial reporting and on compliance and other matters in accordance with *Government Auditing Standards*.
3. Reports Required for the OMB Circular A-133 Audit – The offeror shall prepare all necessary audit reports and schedules required by OMB Circular A-133.
4. Report Required for State Compliance Audit – The offeror shall prepare and include a statement expressing positive assurance of compliance with State fiscal laws and other financial issues related to the expenditure of funds received from federal, state, or local governments identified in the *State Compliance Audit Guide*, issued by the Office of the Utah State Auditor. This statement is in addition to the compliance opinion required as part of the single audit.
5. Management Letter – As appropriate, the offeror shall prepare a comprehensive management letter including the auditor’s findings and recommendations relative to the internal control over financial reporting, compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles.

The offeror shall request written responses from County officials for each recommendation and shall include such responses in the letter. If the County declines the opportunity to respond, the offeror shall so state in its letter.

6. Reporting Deadlines – The audit must be completed and an electronic copy of each of the reports must be submitted to the County by June 24 of the year following the year being audited.

C. CONTRACTUAL ARRANGEMENTS

1. Document Retention – Workpapers and reports for the audit must be retained for a period of five years after the completion of the audit and made available for inspection by the County or government auditors, including the Office of the Utah State Auditor, if requested by them.
2. Compensation for Services – Payment for the audit will be made by the County within 30 (thirty) days after an invoice is submitted after the audit reports have been presented to the Board of County Commissioners.
3. Availability of Staff – The County’s staff will be available to prepare schedules and trial balances and to provide documentation as their schedules permit during the course of the audit.

SECTION 2: PROCUREMENT RULES AND PROCEDURES

2.1 OVERVIEW OF RFP PROCEDURES

The procedure for the issuance of this RFP, evaluation of proposals, and selection of an independent auditor is as follows:

- Interested entities will prepare and submit their proposals according to the Procurement Timetable in Subsection 2.3.
- The County and/or its representatives will evaluate all submitted proposals to determine acceptance or rejection of the proposals.
- The selected offeror will be required to sign a contract, which is included in this RFP as Exhibit D.

2.2 RULES OF PROCUREMENT

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

All proposals must be submitted in the proposal format outlined in Section 3 of this RFP.

All offerors must meet the required criteria as of the date of submission.

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

The County has established certain requirements with respect to proposals to be submitted by offerors. 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 the 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.

The 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 the County. Minor irregularities are those which will not have a significant adverse effect on overall competition or performance levels.

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

An entire proposal cannot be identified as “PROTECTED,” “CONFIDENTIAL,” or “PROPRIETARY,” and may be considered non-responsive if marked as such.

2.3 PROCUREMENT TIMETABLE

| REQUIRED ACTIVITY | SCHEDULED DATE |
|---------------------------------------|---|
| RFP Issuance Date | Thursday, October 21, 2021 |
| Closing Date for Receipt of Proposals | Thursday, November 18, 2021 (3:00 PM MST) |

2.4 DISQUALIFICATION OF PROPOSALS

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

- Failure to submit proposal by the established submission deadline.
- Failure to completely answer all questions posed in the RFP.
- Failure to provide requested documentation at the time of proposal submission.
- Illegible responses.
- Failure to evidence a satisfactory record of integrity.
- Failure to qualify legally to contract.

2.5 CONTACT INFORMATION

All questions regarding this RFP must be submitted through the SciQuest (UP3) website. All inquiries relating to SciQuest should be directed to:

Robert Baxter, Purchasing Manager
Phone: 801-851-8233
Email: RobertB@UtahCounty.gov

SECTION 3: INSTRUCTIONS FOR PROPOSAL PREPARATION AND SUBMISSION

3.1 PROPOSAL ORGANIZATION

The proposal must include (in the following order):

- Title page
- Transmittal letter
- Peer review report
- Completed Cost Proposal Form provided in Exhibit A of this RFP
- Signed Signature Page Form provided in Exhibit B of this RFP
- Completed Vendor Certification Form provided in Exhibit C of this RFP, including any required attachments
- Completed W-9 form

3.2 SUBMITTING A PROPOSAL

By submitting a proposal in response to this RFP, the offeror is acknowledging that the requirements, scope of work, and evaluation process outlined in the RFP are fair, equitable, not unduly restrictive, understood, and agreed to. Any exceptions to the content of the RFP must be protested to the County prior to the closing date and time for submission of the proposal.

Proposals must be received by the submission deadline of Thursday, November 18, 2021 no later than 3:00 p.m. MST. Proposals received after the deadline will be late and ineligible for consideration.

The preferred method of submitting a response to the proposal is by email in PDF format to RobertB@UtahCounty.gov with a subject line of PROPOSAL – AUDIT SERVICES. If an electronic response is not feasible, mail one (1) original and three (3) copies of your proposal to the County at the following address:

Utah County Government
PROPOSAL – AUDIT SERVICES
Attn: Robert Baxter, Purchasing Manager
100 East Center Street, Suite 3600
Provo, UT 84606-3159

Any mailed proposals must still arrive by the submission deadline of Thursday, November 18, 2021 no later than 3:00 p.m. MST.

It is anticipated that selection of the contractor will be made by Friday, December 10, 2021, and all offerors submitting proposals will be notified immediately as to the selection results.

SECTION 4: PROPOSAL REQUIREMENTS

4.1 TITLE PAGE

The title page must show the title of the RFP and the firm's name.

4.2 TRANSMITTAL LETTER

The transmittal letter shall be on the bidder's official business letterhead and must be signed by an authorized agent of the firm. The letter of transmittal shall include:

- A. General Overview of Firm – This section should contain a general description of the firm, including size, indication of whether the firm is local/regional/national/international in operations, the address of the office which would provide the services requested, the number of professional staff by staff level employed at that office, and firm's website address, if applicable.
- B. Key Contacts – This section should identify the supervising employee who will be assigned to the engagement and one other key contact person along with their contact information including, but not limited to, mailing address, business/cell phone number(s), and email address. Other personnel who will have key roles in the work should also be identified.
- C. Résumé Section – This section should contain brief résumés for the key professional staff who will be assigned to this engagement. Summary information should be provided covering the professional qualifications, continuing professional education, and experience of the supervising and supporting personnel who would perform the requested work.
- D. Qualifications Section - This section should describe the firm's experience in providing auditing services for governmental entities.
- E. Significant Prior Engagements – This section should list the most significant engagements that are similar to the scope of work described in this RFP and that have been performed in the last five years for other governmental entities by the firm's office that will be responsible for the work.
- F. Current Clients – This section should list the governmental entities currently audited by the firm and the fiscal year end of those governmental entities.
- G. Approach – This section should describe the general audit work plan that will be utilized to accomplish the scope defined in this RFP. The audit work plan should demonstrate the offeror's understanding of the audit requirements and the audit tests and procedures to be applied in completing the audit plan. The description of the audit work plan should also detail the expected number of audit hours by staff level required to complete the audit.

4.3 PEER REVIEW REPORT

A copy of the offeror's most recent peer review report must be included in the submission.

4.4 COST PROPOSAL FORM

The Cost Proposal Form attached as Exhibit A must be completed and included in the submission. The not-to-exceed costs listed on the Cost Proposal Form shall be inclusive of all costs for all of the specified services requested in Section 1.4. Under no circumstances will the County pay more than the not-to-exceed fee listed on the Cost Proposal Form, including out-of-pocket expenses.

All pricing must be guaranteed for the entire term of the contract and is based upon successful completion of the audit within the time frame provided.

4.5 SIGNATURE PAGE FORM

The Signature Page Form attached as Exhibit B must be executed and included in the submission. The Signature Page Form will be signed, in ink, by a principal of the business who is authorized to execute the contract. Penciled signatures or notations will not be accepted.

4.6 VENDOR CERTIFICATION FORM

The Vendor Certification Form attached as Exhibit C must be completed, witnessed by a notary, and included in the submission.

4.7 W-9 FORM

A completed W-9 form (Request for Taxpayer Identification Number and Certification) must be included in the submission. The W-9 form is not included with this RFP but a blank form is available upon request.

SECTION 5: EVALUATION CRITERIA

5.1 EVALUATION CRITERIA

Proposals will be evaluated and ranked according to the following evaluation criteria:

| % OF SCORING WEIGHT | EVALUATION CRITERIA |
|---------------------|--|
| Mandatory | Licensing, independence, peer review, and ability to meet audit deadline |
| 10% | Responsiveness of proposal |
| 20% | Experience and reputation of firm |
| 20% | Qualifications and expertise of staff |
| 20% | Ability to maintain independence and objectivity |
| 30% | Proposed not-to-exceed Fee (Cost Proposal Form) |

The County reserves the right to reject any and all proposals submitted and to request additional information from all offerors. Any contract awarded will be made to the offeror who, based on evaluation of all responses, is determined to be the best to perform the audit.

Purchasing will use the following formula to score the Proposed Not-to-Exceed Fee (Cost of the Audit): The points assigned to each offeror’s fee proposal will be based on the lowest proposed fee. The offeror with the

lowest proposed fee will receive 100 percent of the Cost of the Audit points. All other offerors will receive a portion of the total points based on what percentage higher their proposed fee is than the lowest proposed fee. An offeror whose proposed fee is either double or more than double the lowest proposed fee will receive no points. The formula to compute the points is: $30 \times (2 - \text{Proposed Fee}/\text{Lowest Proposed Fee})$.

All proposals will be evaluated by authorized representatives of Utah County (the “Evaluation Committee”). The above-noted weighted average criteria will be used by each member of the Selection Committee to individually score each proposal. Each member of the Selection Committee will then ordinally rank each proposal from highest to lowest evaluation score.

The Evaluation Committee will rank each proposal from “1” to “n”, the highest-scored proposal receiving a rank of “1” (one), which represents the best, or first-place, rank. Purchasing will compile the rankings of all members of the Evaluation Committee. The three highest ranked proposals will be submitted to the Board of County Commissioners, who may select any of the top three proposals for further negotiation or award of a contract, or they may elect to reject all offers.

SECTION 6: TERMS AND CONDITIONS

6.1 TERMS AND CONDITIONS

The County will award a contract in reliance upon the information contained in proposals submitted in response to the RFP. The County will be legally bound only when, and if, there is a definitive signed agreement with the awarded contractor.

Any person who signs a proposal or contract on behalf of an offeror certifies that he or she has the authority to so act.

The successful offeror whose proposal is accepted may be required to answer further questions and provide further clarification of the 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. The County shall have no liability to any person or entity under or in connection with this RFP unless and until the County and such person shall have executed and delivered a definitive written agreement.

By responding to this RFP, each offeror acknowledges that neither the 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 offeror further agrees that neither the 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 legal use of the information contained in this RFP. Only the terms and conditions contained in a contract when, and if, executed, and subject to such limitations and restrictions as may be specified therein, may be relied upon by the parties in any manner as having any legal effect whatsoever.

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

If it becomes necessary to revise any part of this RFP, an addendum will be provided to all who received an RFP.

Pursuant to this RFP, a contract will be executed, a copy of which is attached (see Exhibit D). The contract period will be for the audit of the County's fiscal year ended December 31, 2021, commencing when executed. The County shall have an option, pursuant to that contract, to renew the contract for four additional annual audits upon the same terms and conditions.

Exceptions and or additions to the contract are strongly discouraged. Exceptions and additions must be submitted with the proposal response. Exceptions, additions, service level agreements, etc. submitted after the date and time for receipt of proposals will not be considered. URLs are prohibited from any language included in the final contract document.

The County retains the right to refuse to negotiate on exceptions should the exceptions be excessive or not in the best interests of the County, or if the negotiations could result in excessive costs to the County or could adversely impact existing time constraints.

6.2 CONFLICT OF INTEREST

The successful offeror will be required to certify, through execution of the contract, that no person in the County's employment, directly or through subcontract, will receive any private financial interest, direct or indirect, as a result of the contract. The successful offeror will not be allowed to hire nor subcontract with any person having such conflicting interest.

EXHIBIT A
COST PROPOSAL FORM

| | Not-to-Exceed Fee |
|---|-------------------|
| Audit Services for the Year Ended December 31, 2021 | \$ _____ |
| Audit Services for the Year Ended December 31, 2022 | \$ _____ |
| Audit Services for the Year Ended December 31, 2023 | \$ _____ |
| Audit Services for the Year Ended December 31, 2024 | \$ _____ |
| Audit Services for the Year Ended December 31, 2025 | \$ _____ |

NOTES:

1. All amounts are to include out-of-pocket expenses.
2. Any deviation from this format may result in disqualification of proposal.

EXHIBIT B
SIGNATURE PAGE

I hereby certify that the information submitted by me/my company in response to this request for proposal, including pricing and other information, is true and accurate.

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

I hereby certify that me/my company is independent of Utah County and is unaware of any potential conflicts of interest if it were selected to perform the requested work.

Name of Firm _____

Signature _____

Print Name _____

Print Title _____

Date _____

EXHIBIT C
 VENDOR CERTIFICATION FORM

To receive full consideration, submitted proposals must contain responses to all questions. Failure to respond to all questions may result in exclusion from participation in this RFP.

| | YES | NO |
|---|--------------------------|--------------------------|
| Is your firm currently involved in arbitration or litigation for any reason? If “yes,” attach explanation. | <input type="checkbox"/> | <input type="checkbox"/> |
| Has your firm or any partner or officer ever been involved in any bankruptcy action? If “yes,” attach explanation. | <input type="checkbox"/> | <input type="checkbox"/> |
| Has your firm or any partner or officer ever been listed on the Excluded Parties List System? | <input type="checkbox"/> | <input type="checkbox"/> |
| Are any of the firm’s owners, officers, employees, or agents also employees of Utah County, or related to any employees of Utah County? If “yes,” attach explanation. | <input type="checkbox"/> | <input type="checkbox"/> |
| Is your firm properly licensed for practice as a certified public accountant in the State of Utah? | <input type="checkbox"/> | <input type="checkbox"/> |
| Is your firm registered to do business in the State of Utah? | <input type="checkbox"/> | <input type="checkbox"/> |
| Does your firm meet the <i>Government Auditing Standards’</i> continuing professional education, independence, peer review, and licensing requirements? | <input type="checkbox"/> | <input type="checkbox"/> |
| Has your firm had experience in governmental auditing? <i>The experience must have been on an entity-wide basis, and an opinion must have been issued.</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| Can your firm meet the reporting deadlines described in this Request for Proposal? | <input type="checkbox"/> | <input type="checkbox"/> |
| Does your firm owe any property taxes to Utah County Government? | <input type="checkbox"/> | <input type="checkbox"/> |
| Prior to commencing work, will your firm be able to supply a Certificate of Insurance as described in Section 25 of Exhibit D? If “no,” attach explanation. | <input type="checkbox"/> | <input type="checkbox"/> |

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, _____, a duly authorized representative of _____,
 (name of owner, partner, officer, or delegate) (firm’s name)

do hereby certify that the responses on this form are true and correct and do 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 contract or bidding process.

Signature: _____ Title: _____ Date: _____
 (signature) (please print)

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Seal:

Notary: _____

My commission expires: _____

ATTACHMENT A:
UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR PRODUCTS AND SERVICES

1. **DEFINITIONS.** The following terms shall have the meanings set forth below:
 - (A) The “Agreement” consists of the following documents:
 - (i) The Utah County Agreement cover page, which contains the signatures of Utah County and Contractor;
 - (ii) This Attachment A: Utah County Standard Terms and Conditions for Products and Services; and
 - (iii) Any other express written attachments that are incorporated by reference on the Utah County Agreement cover page.
 - (B) “Contractor” means the individual or entity delivering the Products and Services identified in the Agreement. The term “Contractor” shall include the individual’s or entities’ agents, officers, employees, and partners.
 - (C) The “County” means Utah County, a political subdivision of the State of Utah, as directed and managed by a majority vote of the Board of County Commissioners of Utah County.
 - (D) “Products” means any products to be delivered to the County by Contractor as described in the Utah County Agreement cover page, including any products described in any attachments that are incorporated by reference on the Utah County Agreement cover page.
 - (E) “Services” means any services to be performed for the County by Contractor as described in the Utah County Agreement cover page, including any services described in any attachments that are incorporated by reference on the Utah County Agreement cover page.
 - (F) “Subcontractors” mean subcontractors or subconsultants that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or authorized resellers.
2. **EXTRA WORK.**
 - (A) Extra work shall be undertaken only when previously authorized in writing by the County and is defined as additional work which is neither shown nor defined in the Agreement or the attached Contractor’s proposal (if any) but determined by the County to be necessary to the project. Extra work is also defined as that additional effort necessary by reason of changed conditions which are radical and unforeseeable.
 - (B) Miscellaneous items normally associated with the major work items included in the Agreement, but which may not be specifically identified, shall be furnished by Contractor as if they had been included in the Agreement, without additional cost to the County. After written prior authorization of the Board of County Commissioners of Utah County, payment for authorized extra work will be made in the previously authorized amount only.
3. **PAYMENT.** Payments from the County are normally made by the end of the month following the date an order is delivered, service is performed, or the date a correct invoice is received, whichever is later. All payments for the Agreement will be remitted electronically, by mail, or as otherwise

determined by the County. Contractor shall accept payment by check or by Purchasing Card without any additional fees.

4. **OWNERSHIP IN INTELLECTUAL PROPERTY.** The County and Contractor each recognize that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. The County will have all rights, title, and ownership of all websites and social media accounts, including any passwords, usernames, or other pertinent login information or hosting credentials; advertising materials, including any content or work product; images; newsletters; and intellectual property, including derivative works, created, or arising out of the performance of the Agreement, unless otherwise indicated in the Agreement. Contractor will give the County a list of all current passwords, usernames, and any other relevant information or credentials necessary for access and control of any property under the Agreement upon completion of the Agreement or upon the County's request.
5. **INSURANCE.**
 - (A) Contractor agrees to carry Commercial General Liability insurance coverage equal to or greater than three million dollars (\$3,000,000) per occurrence, or in a lesser amount if explicitly authorized and identified on the Utah County Agreement cover page. This coverage shall provide liability insurance to cover the activities of Contractor and its subcontractors, all equipment and vehicles, public or private, used in the performance of the Agreement, and to add the County as an additional insured for any Services in the contract. Prior to commencement of work, Contractor shall furnish a Certificate of Insurance to the County evidencing that Contractor has this insurance in place and that the County is an additional insured. An umbrella policy may be used to supplement the Commercial General Liability insurance coverage if needed to reach the coverage requirement.
 - (B) Prior to commencement of Services, Contractor shall furnish a Certificate of Insurance to the County evidencing that Contractor has Workers Compensation Insurance for the Contractor and Subcontractors.
6. **GOVERNING LAW AND VENUE.** The Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Utah and Utah County. Any action or proceeding arising from the Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Provo, in the Fourth Judicial District Court for Utah County.
7. **COMPLIANCE WITH LAWS AND REGULATIONS.** At all times during the Agreement, Contractor and all Products and Services performed under the Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. Any violation by Contractor of applicable law shall constitute an event of default under the Agreement and Contractor shall indemnify the County from and against any and all liability arising out of or connected with the violation, to include all attorney fees and costs incurred by the County as a result of the violation. Contractor is responsible, at its expense, to acquire, maintain, and renew all necessary permits and licenses required for its lawful performance of its duties and obligations under the Agreement during the term of the Agreement. To the extent that Contractor uses, stores, transfers, or manipulates any data in the performance of its obligations, Contractor will further comply with all applicable privacy and data laws and regulations, including but not limited to General Data Protection Regulation 2016/679 of the European Union ("GDPR") and similar provisions from any jurisdiction in the United States and any locations where data is or may be stored.
8. **EMPLOYMENT STATUS VERIFICATION.** Contractor shall register and participate in the Status Verification System and comply with Utah Code section 63G-12-302 of the Identity Documents and

Verification Act. Contractor shall require an affidavit verifying compliance with Utah Code section 63-G-12-302 from each of its contractors and subcontractors.

9. **INDEPENDENT CONTRACTOR.** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the County, and therefore is not entitled to any of the benefits associated with such employment. As an independent contractor, Contractor shall have no express or implied authority to bind the County to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the County. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgments, losses, risks of loss, damages, expenses, and liabilities arising out of or related to the Agreement. Contractor shall also pay any litigation expenses that the County incurs, including attorney's fees, arising out of or related to the Agreement. Contractor shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of the Agreement. The County reserves the right to conduct, control, and direct its own defense for any claims, demands, causes of action, orders, decrees, judgments, losses, damages, expenses, and liabilities arising out of or related to the Agreement.
11. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY.** Contractor shall indemnify and hold the County harmless from and against any and all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities, and costs in any action or claim brought against the County for infringement of a third party's copyright, trademark, trade secret, or other proprietary right.
12. **GOVERNMENTAL IMMUNITY.** The County is a corporate and political subdivision of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"). The County does not waive any procedural or substantive defense or benefit provided or to be provided by the Act or any comparable legislative enactment. The parties agree that the County shall only be liable within the parameters of the Act. Nothing contained in the Agreement shall be construed in any way to modify the limits set forth in that Act or the basis for liability as established in the Act.
13. **NON-FUNDING CLAUSE.** The County intends to request the appropriation of funds to be paid for the services provided by Contractor under the Agreement. The Agreement shall create no obligation on the County as to succeeding annual budget cycles and if funds are not available beyond December 31 of any effective annual budget cycle of the Agreement, or if the budget is amended and such funds are no longer available, the County's obligation for performance of the Agreement shall be null and void. This termination shall not be construed as a breach of the Agreement or any event of default under the Agreement and the termination shall be without penalty, and no right of action for damages or other relief shall accrue to the benefit of Contractor, its successors, or its assigns, as to the Agreement. If funds are not appropriated for a succeeding annual budget cycle to fund performance by the County under the Agreement, or if the budget is amended to make such funds no longer available, the County shall attempt to notify Contractor of non-funding and the termination of the Agreement.
14. **SALES TAX EXEMPTION.** The County's sales and use tax exemption number is 11748944 002 STC. The tangible personal property or services being purchased are to be paid from the County's funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the Agreement. As such, Contractor shall not charge the County any sales tax for the

product(s) purchased under the Agreement.

15. **CONFIDENTIALITY.** Materials, information, data, reports, plans, analyses, budgets, and similar documentation provided to or prepared by Contractor in performance of the Agreement shall be owned by the County and shall be held confidential by Contractor. In addition, all information provided to Contractor by the County for the purposes of Contractor's performance of the Products or Services, whether provided in writing or any other form, shall be held in confidence by Contractor and Contractor shall not release any of the information to any third party, any member of Contractor's firm who is not involved in the performance of Products or Services, or to any representative of the news media without prior written consent of the County. The County shall have the sole obligation or privilege of releasing such information as required by law. Any employee or member of the Contractor's firm, subcontractor, or agent with whom Contractor shares any information as described in this section will be under the same obligations of confidentiality, and Contractor is required to secure and provide to County written commitments to that effect from each such recipient of information.
16. **TERMINATION.** Unless otherwise stated in Attachment C: Special Provisions, the Agreement may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. If the violation is reasonably subject to cure, the party in violation will be given 10 working days after notification to correct and cease the violation, after which the Agreement may be terminated for cause. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. The Agreement may be terminated without cause, in advance of the specified expiration date, by the County upon 30 days prior written notice being given to Contractor. On termination of the Agreement, all accounts and payments will be processed according to the financial arrangements in the Agreement for approved services rendered prior to the date of termination, subject to any offsetting claims by the County.
17. **FORCE MAJEURE.** The County will not be held liable for delay or default caused by fire, riot, acts of God, State or Utah County declared state of emergency, or war. The County may terminate the Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.
18. **SEVERABILITY OF AGREEMENT.** The invalidity of any portion of the Agreement shall not prevent the remainder from being carried into effect.
19. **LEGAL SUPPORT.** Contractor shall be responsible to provide all legal support for the project including but not limited to the preparation of contracts with subcontractors.
20. **NO PRESUMPTION.** Should any provision of the Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms in the Agreement shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.
21. **WARRANTY.** Contractor warrants to the County that all services and materials furnished under the Agreement will be of the highest quality, consistent with the degree of skill and care ordinarily exercised by similarly situated members of Contractor's profession, and in conformance with the terms hereof. Contractor warrants and assumes responsibility for all products (including hardware, firmware, and software products) that it licenses, contracts, or sells to the County under the Agreement for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in the Agreement or Contractor's proposal, attached hereto (if any). Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to the

Agreement. Product liability disclaimers and warranty disclaimers from the seller are not applicable to the Agreement unless otherwise specified and mutually agreed upon elsewhere in the Agreement. In general, Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the County has relied upon Contractor's skill or judgment to consider when it advised the County about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of defects or unusual problems about which the County has not been warned in writing prior to entering into the Agreement. Remedies available to the County include, without limitation, the following: Contractor will repair or replace (at no charge to the County) the product whose nonconformance is discovered and made known to Contractor in writing. If the repaired or replaced product proves to be inadequate, or fails of its essential purpose, Contractor will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the County may otherwise have under the Agreement.

22. **TIME IS OF THE ESSENCE.** The County and Contractor recognize that time is of the essence here and the County will suffer financial loss if any Products or Services are not delivered and performed within the time specified in the Agreement, plus any extensions approved in writing by the County. Contractor shall be liable for all reasonable damages to the County and to anyone whom the County may be liable to as a result of Contractor's failure to timely deliver and perform the Products and Services.
23. **DELIVERY.** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the County except as to latent defects, fraud, and Contractor's warranty obligations.
24. **CONDITION AND TITLE.** The products delivered by Contractor to the County shall be new and free of all faults and defects. Upon payment of the purchase price by the County to Contractor, Contractor shall provide the County with clear title, free and clear of all liens and encumbrances.
25. **INTERPRETATION OF AGREEMENT.** Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include all genders. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.
26. **NOTICES.** All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage paid, to the parties at their respective places of business, or at such other addresses as may be designated by notice given hereunder, including by email to the contact person for Contractor at the email address identified on the Utah County Agreement cover page.
27. **COUNTERPARTS AND FACSIMILE SIGNATURES.** The Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which together constitute one and the same instrument. Original, facsimile, emailed, texted, electronic, or power of attorney signatures shall be binding upon the executing party.
28. **AMENDMENTS.** No oral modifications or amendments to the Agreement shall be effective. The Agreement may be modified or amended by a written agreement signed by the parties.

29. ASSIGNMENT. The parties to the Agreement shall not assign the Agreement without the prior written consent of the other party to the Agreement. No assignment shall relieve the original parties from any liability arising out of or related to the Agreement.
30. SUCCESSORS IN INTEREST. The Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties.
31. WAIVER. A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege. Any waiver must be in writing and signed by the party making the waiver.
32. SURVIVAL. The provisions of this Agreement which by their terms call for performance subsequent to termination of the Agreement shall so survive such expiration or termination, such as but not limited to: Section 4. Ownership of Intellectual Property, Section 10. Indemnification, Section 11. Indemnification Relating to Intellectual Property, and Section 15. Confidentiality.
33. ENTIRE AGREEMENT. The Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon either party except to the extent incorporated in the Agreement.

Revised October 6, 2021