

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

REQUEST FOR PROPOSAL

for

**WATER SYSTEM-RELATED
ENGINEERING SERVICES
RFP # 2022-9**

CLOSING DATE
FOR RECEIPT OF PROPOSALS: Thursday, November 10, 2022

TIME: 10:00 a.m. (Mountain Time)

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

TABLE OF CONTENTS

1. REQUEST FOR PROPOSALS..... 1
 Intent 1
 Procedure..... 1
 Questions and Clarifications..... 1
 Proposal Submission 1
 Proposal Organization 2
 Value Based Selection..... 3
 Negotiation 3
 General 3
 Acceptance of Proposal 4
 Disposition of Proposal 4
 Disqualification of Proposal 4
 Interpretation of RFP 5
 Proprietary Information..... 5
 Rules of Procurement 5

A. SPECIFICATIONSExhibit A
 Scope of Work..... A-1
 Description of Services..... A-2

ENGINEER’S FEE PROPOSALExhibit B

PROPOSAL INFORMATION FORMAttachment A
CERTIFICATE OF NON-COLLUSION..... Attachment B
SAMPLE AGREEMENT..... Attachment C

1. REQUEST FOR PROPOSALS

1.1 INTENT

Through this Request for Proposals (RFP), Utah County and the Soldier Summit Special Service District (SSSSD), are seeking proposals from qualified engineering firms or individuals to submit proposals to provide various types of water system-related engineering services including but not limited to items described in Exhibit A Specifications, specifically A.2 Services Needed.

Responses to this RFP should include details about experience, key personnel, subcontractors and reference contacts as described herein. Utah County intends to compare and evaluate all qualifying submittals and select the most qualified engineering firm or individual based on proposal content.

This is a Request for Proposals only and should not be interpreted as a solicitation for services or as a contract for services. Submittals should be comprehensive, concise, and directly responsive to the goals and format as outlined in this RFP.

When an engineering firm or individual is selected pursuant to this RFP, agreements may be executed – one with Utah County and one with the Soldier Summit Special Service District. Sample copies of said agreements are included herein as Attachment C. These agreements are expected to have an initial term of three (3) years with an option to renew for another two (2) years. However, the County and the Soldier Summit Special Service District have the right to terminate the contract at its convenience at any time.

1.2 PROCEDURE

- A. The procedure for response to this RFP, evaluation of proposals, and selection will be 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 form an evaluation committee which will evaluate all submitted proposals as described herein and provide recommendations and tabulations along with rankings to the Utah County Purchasing Manager.
 3. The Purchasing Manager will then present the recommendations, tabulations and rankings to the Board of County Commissioners, who may select any of the top three recommended proposals or may reject all offers.
 4. The approved selected engineering firm or individual will then enter into an agreement with the County and Soldier Summit Special Service District.

1.3 QUESTIONS AND CLARIFICATIONS

All questions regarding this RFP must be submitted through the State U3P web site. The deadline for submission of questions is specified on the U3P web site.

1.4 PROPOSAL SUBMISSION

- A. Each respondent must submit SIX (6) COPIES of its SEALED proposal to the Utah County Purchasing Manager. The envelope containing the proposal must be clearly labeled “SEALED PROPOSAL – WATER SYSTEM-RELATED ENGINEERING SERVICES RFP# 2022-9”.

The proposal must be delivered to:
Utah County Purchasing Manager
100 East Center, Room 3600
Provo, Utah 84606

- B. PROPOSALS ARE DUE NOVEMBER 10, 2022 AT 10:00 AM MOUNTAIN STANDARD TIME. LATE PROPOSALS WILL NOT BE ACCEPTED EXCEPT AS SET FORTH IN UTAH COUNTY PROCUREMENT RULES AND REGULATIONS.

1.5 PROPOSAL ORGANIZATION

- A. The proposal must include the following information in a form not to exceed 25 pages:
1. Proposer's Statement of Qualifications
 - a. Each Proposer shall provide a statement of qualifications. This shall be a short document that indicates the experience and qualifications of the Proposer and key personnel that will be performing the specified services. It should include resumes of the key personnel, copies of applicable licenses and certifications of the key personnel.
 2. Proposer's Project Experience
 - a. Each Proposer shall provide information regarding the Services Needed outline but not limited in Exhibit A Specifications specifically A.2 Services Needed using similar projects that have been completed by the Proposer and the key personnel. Information about similar projects should include the dates, project size, firm worked for at the time, and what the responsibility of the individual was on the project.
 3. Subcontractors & Reference Contacts
 - a. Each Proposer shall include a list of sub consultants or firms expected to be used and their expertise if applicable and reference contacts for similar situations where the consultant provided engineering services to a jurisdiction (municipality).
 4. Fee Proposal (Exhibit B)
 - a. Each Proposer shall also attach a complete Fee Schedule listing hourly rates, unit costs, etc., for all services provided by the Proposer which may be applicable to this RFP.
 - b. The selected firm or individual, upon written notice to the County, may request a yearly increase in the fee schedule by a percentage equal to the percentage increase which occurred in the Consumer Price Index (defined as the Consumer Price Index, All Urban Consumers (CPI-U) U.S. City Average, All Items, or a similar index if this index is discontinued) during the preceding one year period, not to exceed three percent (3%) per year, to be effective not sooner than approved in writing by the Utah County Commission.
 5. Completed Proposal Information Form (Attachment A).
 6. Completed Certificate of Non-Collusion (Attachment B).
 7. A copy of the Proposer's current local business license.
 8. Proof of required insurance.
 9. Termination or Debarment Certification
 - a. Each Proposer must submit a certification that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from soliciting work by any governmental department or agency. The Proposer must also certify that neither it nor its principals have been terminated during the performance of a contract or withdrew from a contract to avoid termination. If the Proposer cannot certify these two statements, the Proposer shall submit a written explanation of the circumstances for review by Utah County.

1.6 VALUE BASED SELECTION

- A. All proposals will be evaluated by authorized representatives of Utah County (the Evaluation Committee). The following criteria will be used by the Evaluation Committee in creating a score for each of the proposals. Each member of the Evaluation Committee will then individually rank all proposals from highest to lowest evaluation score, and the Evaluation Committee will compile the rankings of all members of the Evaluation Committee. The top three proposals will be recommended to the Board of County Commissioners, from which they will select one proposal for agreement negotiations.
- B. The Evaluation Committee will consider all criteria in performing a comprehensive evaluation of each proposal. Weights have been assigned to each of the criteria in the form of points. Total points possible = 100.
 1. Proposer's Statement of Qualifications: 30 Points
The Evaluation Committee will evaluate the key personnel expected to work on the contract and how their knowledge and qualifications will help ensure the project's success as related to the Services Needed A.2.
 2. Proposer's Project Experience: 30 Points
The Evaluation Committee will evaluate the expertise and experience of the firm or the individual as it relates to similar projects that have been completed including the responsibility of the firm or individual on the project.
 3. Subcontractors & Reference Contacts: 20 Points
The Evaluation Committee will evaluate the Proposer's list of subcontractors expected to be used and their expertise. The Evaluation Committee will evaluate client satisfaction based on reference contacts for similar situations where the proposer provided engineering services.
 4. Fee Proposal and Overall Proposal Suitability: 20 points
The Evaluation Committee will evaluate whether each proposal was presented in a clear and organized manner and met the scope of work contemplated herein including a complete Fee Schedule listing hourly rates, unit costs, etc. Some factors might include:
 - The Proposer's quality of written and oral presentations.
 - The Proposer's overall suitability for the project.

1.7 NEGOTIATION

The fee proposal from the selected proposers will be opened and examined. Utah County and/or SSSSD will then enter into agreements with said Proposer. Should Utah County and/or SSSSD be unable to agree to a satisfactory agreement with the selected Proposer that Utah County and/or SSSSD, in its sole discretion, determines to be fair and reasonable, discussions with that Proposer shall be formally terminated. Negotiations will continue with the other selected Proposer. This process will be repeated until an agreement is reached or Utah County and/or SSSSD determines that it is in its best interest to initiate a new selection process.

1.8 GENERAL

- A. Utah County and/or SSSSD will award a contract in reliance upon the information contained in proposals submitted in response to the RFP. Utah County and/or SSSSD will be legally bound only when and if there is a signed agreement entered into between Utah County and/or SSSSD and the awarded Proposer.
- B. It is vitally important that any person who signs a proposal or agreement on behalf of a respondent certifies that he or she has the authority to so act. The Proposer who has its proposal accepted may be required to answer further questions and provide further

- clarification of its proposal and responses.
- C. 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 and/or SSSSD shall have no liability to any person or entity under or in connection with this RFP, unless and until Utah County and/or SSSSD and such person have executed and entered into an agreement pursuant to the terms of this RFP.
 - D. By responding to this RFP each responding party acknowledges that neither Utah County and/or SSSSD 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 and/or SSSSD 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 respondent in any manner as having any legal effect whatsoever.

1.9 ACCEPTANCE OF PROPOSAL

- A. 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 and/or SSSSD. Minor irregularities are those which will not have a significant adverse effect on overall competition or performance levels.
- B. The responding party agrees that Utah County and/or SSSSD may terminate this procurement procedure at any time, and Utah County and/or SSSSD 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.

1.10 DISPOSITION OF PROPOSALS

- A. All proposals (and the information contained therein) shall become the property of Utah County and/or SSSSD. No proposal shall be returned to the respondent regardless of the outcome of the selection process.
- B. The County and/or SSSSD reserves the right to use any or all ideas presented. Selection or rejection of the proposal does not affect this right.
- C. The proposal may be withdrawn upon request by the proposer, without prejudice, prior to, but not after, the time fixed to receive proposals.

1.11 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 and/or SSSSD reserves the right to reject any or all proposals.

1.12 INTERPRETATION OF RFP

The invalidity of any portion of this RFP 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 RFP are for convenience only and do not constitute a part of the provisions hereof.

1.13 PROPRIETARY INFORMATION

The PROPOSER shall mark proprietary 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.

1.14 RULES OF PROCUREMENT

- A. This procurement shall conform to and is governed by The Utah County Division of Purchasing, Procurement Rules and Regulations.
- B. For this procurement, all 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. Respondents must provide all information requested in the Proposal Information Form.
- 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 and/or SSSSD.

EXHIBIT A
SPECIFICATIONS

A.1 SCOPE OF WORK

A. Utah County and/or SSSSD is seeking proposals from qualified engineering firms or individuals to submit proposals to provide various types of water system-related engineering services for a contracted term of three (3) years with an option to renew for another two (2) years.

A.2 SERVICES NEEDED

A. Utah County and/or SSSSD anticipates that a full complement of professional services shall be provided by the engineering firm or individual selected for this RFP. These services may consist of, but not necessarily be limited to, those outlined below:

- Well Evaluations
- Well Design, including placement of well, pumphouse and associated
- Water System and Well Design, plans, bidding documents, construction oversight, and inspection
- Pumphouse Design, including structural, electrical, piping, plans, bidding documents, etc., construction oversight, and inspection
- Technical assistance in relation to operation of water systems
- Maintenance and upgrades, when appropriate, of the SCADA system
- Maintenance of the County's water distribution system model and running model scenarios, when requested
- Periodically updating Water Master Plans
- Providing general municipal water utility technical assistance
- Prepare and provide easements / rights-of-way documents and agreements with private landowners.
- Obtain appropriate permits with other agencies including government agencies such as the Department of Transportation, the Division of Drinking Water, Railroad companies, etc., to complete various projects

ATTACHMENT A

PROPOSAL INFORMATION FORM

In order to receive consideration, submitted proposals must contain responses to all questions.
Failure to respond to all questions may result in disqualification of the proposal.

COMPANY NAME & ADDRESS: _____

Is this an Office: _____, Home: _____, Shop: _____, Other: _____
Telephone Number: (____) _____, Emergency Number: (____) _____.
Answering Machine: (____) _____, Fax Number: (____) _____.
Email Address: _____

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

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

If a Corporation, in what State Incorporated: _____
Business License Number: _____
State of Utah Architect License Number: _____
Federal Tax Identification Number: _____
D&B D-U-N-S Number: _____
How long has this company been in business: _____ Years, and _____ Months.

Officers authorized to execute contracts: _____

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

Brief History of the Company: _____

Are there any judgments, suits or claims pending against your company? If Yes, attach a written explanation. **YES NO**

Has your company operated under any other name (s)? If Yes, attach a written explanation. **YES NO**

PROPOSAL INFORMATION FORM Page 2

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

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

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

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

FINANCIAL REFERENCES

1. Bank Name & Address _____

Manager _____ Phone _____

2. Bank Name & Address _____

Manager _____ Phone _____

CLIENT REFERENCES

1. Name: _____, Contact: _____
Address: _____, Phone: _____

2. Name: _____, Contact: _____
Address: _____, Phone: _____

3. Name: _____, Contact: _____
Address: _____, Phone: _____

4. Name: _____, Contact: _____
Address: _____, Phone: _____

ATTACHMENT C
SAMPLE AGREEMENT

AGREEMENT

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

Name: _____ Contact Person: _____

Address: _____ Phone #: _____

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

Legal Status of Contractor: Sole Proprietor Non-Profit Corporation
 Partnership For-Profit Corporation
 Government Department: _____

1. PURPOSE OF CONTRACT

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

2. CONTRACT COSTS

Contractor will be:

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

3. CONTRACT PERIOD

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

4. ATTACHMENTS

The following indicated attachments are fully incorporated into this agreement:

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

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

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

ATTEST:
JOSH DANIELS
Utah County Clerk/Auditor

BOARD OF COUNTY COMMISSIONERS,
UTAH COUNTY, UTAH

By: _____
Deputy Clerk/Auditor

By: _____
THOMAS V. SAKIEVICH, Chair

APPROVED AS TO FORM AND LEGALITY:
DAVID O. LEAVITT
Utah County Attorney

CONTRACTOR

By: _____
Deputy Utah County Attorney

By: _____
Its: _____

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

1. DEFINITIONS. The following terms shall have the meanings set forth below:

(A) The “Agreement” consists of the following documents:

- (i) The Utah County Agreement cover page, which contains the signatures of Utah County and Contractor;
- (ii) This Attachment A: Utah County Standard Terms and Conditions for Products and Services; and
- (iii) Any other express written attachments that are incorporated by reference on the Utah County Agreement cover page.

(B) “Contractor” means the individual or entity delivering the Products and Services identified in the Agreement. The term “Contractor” shall include the individual’s or entities’ agents, officers, employees, and partners.

(C) The “County” means Utah County, a political subdivision of the State of Utah, as directed and managed by a majority vote of the Board of County Commissioners of Utah County.

(D) “Products” means any products to be delivered to the County by Contractor as described in the Utah County Agreement cover page, including any products described in any attachments that are incorporated by reference on the Utah County Agreement cover page.

(E) “Services” means any services to be performed for the County by Contractor as described in the Utah County Agreement cover page, including any services described in any attachments that are incorporated by reference on the Utah County Agreement cover page.

(F) “Subcontractors” mean subcontractors or subconsultants that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or authorized resellers.

2. EXTRA WORK.

(A) Extra work shall be undertaken only when previously authorized in writing by the County and is defined as additional work which is neither shown nor defined in the Agreement or the attached Contractor’s proposal (if any) but determined by the County to be necessary to the project. Extra work is also defined as that additional effort necessary by reason of changed conditions which are radical and unforeseeable.

(B) Miscellaneous items normally associated with the major work items included in the Agreement, but which may not be specifically identified, shall be furnished by Contractor as if they had been included in the Agreement, without additional cost to the County. After written prior authorization of the Board of County Commissioners of Utah County, payment for authorized extra work will be made in the previously authorized amount only.

3. PAYMENT. Payments from the County are normally made by the end of the month following the date an order is delivered, service is performed, or the date a correct invoice is received, whichever is later. All payments for the Agreement will be remitted electronically, by mail, or as otherwise determined by the County. Contractor shall accept payment by check or by Purchasing Card without any additional fees.

4. OWNERSHIP IN INTELLECTUAL PROPERTY. The County and Contractor each recognize that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. The County will have all rights, title, and

ownership of all websites and social media accounts, including any passwords, usernames, or other pertinent login information or hosting credentials; advertising materials, including any content or work product; images; newsletters; and intellectual property, including derivative works, created, or arising out of the performance of the Agreement, unless otherwise indicated in the Agreement. Contractor will give the County a list of all current passwords, usernames, and any other relevant information or credentials necessary for access and control of any property under the Agreement upon completion of the Agreement or upon the County's request.

5. INSURANCE.

(A) Contractor agrees to carry Commercial General Liability insurance coverage equal to or greater than three million dollars (\$3,000,000) per occurrence, or in a lesser amount if explicitly authorized and identified on the Utah County Agreement cover page. This coverage shall provide liability insurance to cover the activities of Contractor and its subcontractors, all equipment and vehicles, public or private, used in the performance of the Agreement, and to add the County as an additional insured for any Services in the contract. Prior to commencement of work, Contractor shall furnish a Certificate of Insurance to the County evidencing that Contractor has this insurance in place and that the County is an additional insured. An umbrella policy may be used to supplement the Commercial General Liability insurance coverage if needed to reach the coverage requirement.

(B) Prior to commencement of Services, Contractor shall furnish a Certificate of Insurance to the County evidencing that Contractor has Workers Compensation Insurance for the Contractor and Subcontractors.

6. GOVERNING LAW AND VENUE. The Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Utah and Utah County. Any action or proceeding arising from the Agreement shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Provo, in the Fourth Judicial District Court for Utah County.

7. COMPLIANCE WITH LAWS AND REGULATIONS. At all times during the Agreement, Contractor and all Products and Services performed under the Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. Any violation by Contractor of applicable law shall constitute an event of default under the Agreement and Contractor shall indemnify the County from and against any and all liability arising out of or connected with the violation, to include all attorney fees and costs incurred by the County as a result of the violation. Contractor is responsible, at its expense, to acquire, maintain, and renew all necessary permits and licenses required for its lawful performance of its duties and obligations under the Agreement during the term of the Agreement. To the extent that Contractor uses, stores, transfers, or manipulates any data in the performance of its obligations, Contractor will further comply with all applicable privacy and data laws and regulations, including but not limited to General Data Protection Regulation 2016/679 of the European Union ("GDPR") and similar provisions from any jurisdiction in the United States and any locations where data is or may be stored.

8. EMPLOYMENT STATUS VERIFICATION. Contractor shall register and participate in the Status Verification System and comply with Utah Code section 63G-12-302 of the Identity Documents and Verification Act. Contractor shall require an affidavit verifying compliance with Utah Code section 63-G-12-302 from each of its contractors and subcontractors.

9. INDEPENDENT CONTRACTOR. Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the County, and therefore is not entitled to any of the benefits associated with such employment. As an independent contractor, Contractor shall have no express or implied authority to bind the County to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the County. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.

10. **INDEMNIFICATION.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, causes of action, orders, decrees, judgements, losses, risks of loss, damages, expenses, and liabilities arising out of or related to the Agreement. Contractor shall also pay any litigation expenses that the County incurs, including attorney's fees, arising out of or related to the Agreement. Contractor shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of the Agreement. The County reserves the right to conduct, control, and direct its own defense for any claims, demands, causes of action, orders, decrees, judgements, losses, damages, expenses, and liabilities arising out of or related to the Agreement.
11. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY.** Contractor shall indemnify and hold the County harmless from and against any and all damages, expenses (including reasonable attorney's fees), claims, judgments, liabilities, and costs in any action or claim brought against the County for infringement of a third party's copyright, trademark, trade secret, or other proprietary right.
12. **GOVERNMENTAL IMMUNITY.** The County is a corporate and political subdivision of the State of Utah, subject to the Governmental Immunity Act of Utah (the "Act"). The County does not waive any procedural or substantive defense or benefit provided or to be provided by the Act or any comparable legislative enactment. The parties agree that the County shall only be liable within the parameters of the Act. Nothing contained in the Agreement shall be construed in any way to modify the limits set forth in that Act or the basis for liability as established in the Act.
13. **NON-FUNDING CLAUSE.** The County intends to request the appropriation of funds to be paid for the services provided by Contractor under the Agreement. The Agreement shall create no obligation on the County as to succeeding annual budget cycles and if funds are not available beyond December 31 of any effective annual budget cycle of the Agreement, or if the budget is amended and such funds are no longer available, the County's obligation for performance of the Agreement shall be null and void. This termination shall not be construed as a breach of the Agreement or any event of default under the Agreement and the termination shall be without penalty, and no right of action for damages or other relief shall accrue to the benefit of Contractor, its successors, or its assigns, as to the Agreement. If funds are not appropriated for a succeeding annual budget cycle to fund performance by the County under the Agreement, or if the budget is amended to make such funds no longer available, the County shall attempt to notify Contractor of non-funding and the termination of the Agreement.
14. **SALES TAX EXEMPTION.** The County's sales and use tax exemption number is 11748944 002 STC. The tangible personal property or services being purchased are to be paid from the County's funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the Agreement. As such, Contractor shall not charge the County any sales tax for the product(s) purchased under the Agreement.
15. **CONFIDENTIALITY.** Materials, information, data, reports, plans, analyses, budgets, and similar documentation provided to or prepared by Contractor in performance of the Agreement shall be owned by the County and shall be held confidential by Contractor. In addition, all information provided to Contractor by the County for the purposes of Contractor's performance of the Products or Services, whether provided in writing or any other form, shall be held in confidence by Contractor and Contractor shall not release any of the information to any third party, any member of Contractor's firm who is not involved in the performance of Products or Services, or to any representative of the news media without prior written consent of the County. The County shall have the sole obligation or privilege of releasing such information as required by law. Any employee or member of the Contractor's firm, subcontractor, or agent with whom Contractor shares any information as described in this section will be under the same obligations of confidentiality, and Contractor is required to secure and provide to County written commitments to that effect from each such recipient of information.

16. **TERMINATION.** Unless otherwise stated in Attachment C: Special Provisions, the Agreement may be terminated with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. If the violation is reasonably subject to cure, the party in violation will be given 10 working days after notification to correct and cease the violation, after which the Agreement may be terminated for cause. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. The Agreement may be terminated without cause, in advance of the specified expiration date, by the County upon 30 days prior written notice being given to Contractor. On termination of the Agreement, all accounts and payments will be processed according to the financial arrangements in the Agreement for approved services rendered prior to the date of termination, subject to any offsetting claims by the County.
17. **FORCE MAJEURE.** The County will not be held liable for delay or default caused by fire, riot, acts of God, State or Utah County declared state of emergency, or war. The County may terminate the Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.
18. **SEVERABILITY OF AGREEMENT.** The invalidity of any portion of the Agreement shall not prevent the remainder from being carried into effect.
19. **LEGAL SUPPORT.** Contractor shall be responsible to provide all legal support for the project including but not limited to the preparation of contracts with subcontractors.
20. **NO PRESUMPTION.** Should any provision of the Agreement require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms in the Agreement shall be more strictly construed against the party, by reason of the rule of construction that a document is to be construed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that all parties have participated in the preparation hereof.
21. **WARRANTY.** Contractor warrants to the County that all services and materials furnished under the Agreement will be of the highest quality, consistent with the degree of skill and care ordinarily exercised by similarly situated members of Contractor's profession, and in conformance with the terms hereof.

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

22. **TIME IS OF THE ESSENCE.** The County and Contractor recognize that time is of the essence here and the County will suffer financial loss if any Products or Services are not delivered and performed within the time specified in the Agreement, plus any extensions approved in writing by the County. Contractor shall be liable for all reasonable damages to the County and to anyone whom the County may be liable to as a

result of Contractor's failure to timely deliver and perform the Products and Services.

23. **DELIVERY.** Unless otherwise specified in this contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the County except as to latent defects, fraud, and Contractor's warranty obligations.
24. **CONDITION AND TITLE.** The products delivered by Contractor to the County shall be new and free of all faults and defects. Upon payment of the purchase price by the County to Contractor, Contractor shall provide the County with clear title, free and clear of all liens and encumbrances.
25. **INTERPRETATION OF AGREEMENT.** Whenever the context of any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include all genders. The paragraph and section headings in this Agreement are for convenience only and do not constitute a part of the provisions hereof.
26. **NOTICES.** All notices, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if delivered by hand or by certified mail, return receipt requested, postage paid, to the parties at their respective places of business, or at such other addresses as may be designated by notice given hereunder, including by email to the contact person for Contractor at the email address identified on the Utah County Agreement cover page.
27. **COUNTERPARTS AND FACSIMILE SIGNATURES.** The Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which together constitute one and the same instrument. Original, facsimile, emailed, texted, electronic, or power of attorney signatures shall be binding upon the executing party.
28. **AMENDMENTS.** No oral modifications or amendments to the Agreement shall be effective. The Agreement may be modified or amended by a written agreement signed by the parties.
29. **ASSIGNMENT.** The parties to the Agreement shall not assign the Agreement without the prior written consent of the other party to the Agreement. No assignment shall relieve the original parties from any liability arising out of or related to the Agreement.
30. **SUCCESSORS IN INTEREST.** The Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties.
31. **WAIVER.** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege. Any waiver must be in writing and signed by the party making the waiver.
32. **SURVIVAL.** The provisions of this Agreement which by their terms call for performance subsequent to termination of the Agreement shall so survive such expiration or termination, such as but not limited to: **Section 4. Ownership of Intellectual Property, Section 10. Indemnification, Section 11. Indemnification Relating to Intellectual Property, and Section 15. Confidentiality.**
33. **ENTIRE AGREEMENT.** The Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of the Agreement shall not be binding upon either party except to the extent incorporated in the Agreement.

Revised October 6, 2021