

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

REQUEST FOR PROPOSAL

for

GEOTECHNICAL ENGINEERING SERVICES

RFP # 2023-5

CLOSING DATE
FOR RECEIPT OF PROPOSALS: Tuesday, March 14, 2023

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

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

TABLE OF CONTENTS

REQUEST FOR PROPOSALS 1

 Intent 1

 Procedure 1

 Rules of Procurement 1

 Proposal Organization 2

 Propriety Information..... 3

 Questions and Clarifications 3

 Proposal Submission..... 3

 Acceptance of Proposal..... 4

 Disqualification of Proposal 4

 Disposition of Proposal 4

 Interpretation of RFP 4

 Evaluation of Proposals 5

 Award of Contract..... 5

 General..... 6

 Annual Cost Increase 6

SPECIFICATIONS Attachment A

 Scope of Work S-1

 Geotechnical Engineering Services S-1

 Test Borings S-1

 Laboratory Testing Services S-2

 Geotechnical Construction Inspection & Testing S-2

FEE PROPOSAL Attachment B

PROPOSAL INFORMATION FORMExhibit A

CERTIFICATE OF NON-COLLUSION..... Exhibit B

SAMPLE AGREEMENT WITH STANDARD TERMS & CONDITIONS.....Exhibit C

1. REQUEST FOR PROPOSALS

1.1 INTENT

Through this Request for Proposals (RFP), Utah County is seeking proposals from qualified professional Geotechnical Engineering Firms to perform geotechnical engineering and related services for various projects, which may vary in complexity, on an as-needed basis including geotechnical investigations, design of mitigation and remediation measures for various sites exhibiting geotechnical instabilities, and inspection of constructed mitigation and remediation measures to verify acceptability. The intent is to select one or more engineering firms to perform services over the next five-year period as constraints allow and funding becomes available. Based upon the evaluation of the RFPs, Utah County may choose at its discretion to award to multiple Geotechnical Engineering Firms an ongoing contract.

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 firms 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.

If a firm or individual is recommended pursuant to this RFP, an agreement will be executed with Utah County, a sample copy of which is included herein as Exhibit C. **The County will not entertain changes to its Standard Terms and Conditions.** The agreement is expected to have an initial term of three (3) years with an option to renew for another two (2) years. However, the County has the right to terminate the contract for its convenience at any time.

1.2 PROCEDURE

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 evaluate all submitted proposals as described herein.
3. The selected firm or individual will enter into an agreement with the County.

1.3 RULES OF PROCUREMENT

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

- B. For this procurement, all 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.

1.4 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 herein to help ensure the project's success. It should include resumes of the key personnel, copies of applicable licenses and certifications of the key personnel.
 - b. If applicable, each Proposer shall include a list of subcontractors expected to be used and their expertise and references for similar situations where the subcontractors provided services.
 - 2. Proposer's Project Experience

Each Proposer shall include a minimum of three (3) examples of similar projects that have been completed by the Proposer and the key personnel as they relate to the Scope of Services Section S.2, Additional Services Section S.3, and Description of Services Section S.4. Information about similar projects should include starting and completion dates, project size, who the work was performed for at the time including name, address, telephone number and contact person, and what the responsibility of the Proposer was on the project.
 - 3. Proposed Work Plan

Provide a detailed and comprehensive description of how the Proposer intends to provide the services requested in this RFP. This description shall include, but not be limited to: how the project(s) will be managed and scheduled, how and when data will be delivered to the County, communication and coordination, the working relationship between the Proposer and County staff, and the Proposer's general philosophy in regards to providing the requested services.

4. Fee Proposal

Each Proposer shall 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.

5. Completed Proposal Information Form (Exhibit A).

6. Completed Certificate of Non-Collusion (Exhibit B).

7. A copy of the Proposer's current local business license.

8. Proof of required insurance.

9. Termination or Debarment Certification

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.

1.5 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.

1.6 QUESTIONS AND CLARIFICATIONS

All questions regarding this RFP must be submitted through the Utah Public Procurement Place (U3P) web site. The deadline for submission of questions is three business days before the closing date.

1.7 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 – GEOTECHNICAL ENGINEERING SERVICES RFP# 2023-5". The proposal must be delivered to:

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

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

1.8 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. Minor irregularities are those which will not have a significant adverse effect on overall competition or performance levels.
- B. The responding party agrees that Utah County may terminate this procurement procedure at any time, and Utah County shall have no liability or responsibility to the responding party for any costs or expenses incurred in connection with this RFP, or such party's response.

1.9 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.

1.10 DISPOSITION OF PROPOSALS

- A. All proposals (and the information contained therein) shall become the property of Utah County. No proposal shall be returned to the respondent regardless of the outcome of the selection process.
- B. The County 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 respondent, without prejudice, prior to, but not after, the time fixed to receive proposals.

1.11 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.

1.12 EVALUATION OF PROPOSALS

- 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:
 - Proposer's Statement of Qualifications: 25 points
 - Proposer's Project Experience: 25 points
 - Proposed Work Plan: 25 points
 - Fee Schedule: 25 points
 - TOTAL: 100 points.
- B. Evaluation Committee members shall not confer with any Proposer. If information or clarification is needed regarding the RFP, the prospective Proposers are to contact the Purchasing Manager as herein defined.
- C. All proposals received shall be evaluated and scored independently by each member of the Evaluation Committee on the scoring sheets provided by the Purchasing Manager. The evaluation criteria will be based on the information described in the RFP.
- D. The award recommendation will be based on the best evaluated proposal and shall constitute only a recommendation to the Board of County Commissioners.
- E. Committee members may discuss the proposals together, but each committee member will privately score and/or rank their selection. The score sheets and/or ranking will be submitted to the Purchasing Manager for tabulation and disclosure to the full committee.
- F. The Purchasing Manager shall provide to the Board of County Commissioners the Evaluation Committee's recommendations, final tabulations and ranking of the proposals.
- G. All proposals are subject to the final review, evaluation and decision by the Board of County Commissioners.

1.13 AWARD OF CONTRACT

- A. After taking into consideration the Evaluation Committee's recommendations, tabulations, and rankings, the Board of County Commissioners shall award the contract to one or more of the top ranked Proposers or may elect to reject all proposals. In making its decision, the Board of County Commissioners shall determine which proposal or proposals is in the best interest of the County, after considering all applicable factors.
- B. The Board of County Commissioners may make the awarding of a contract subject to further negotiations and modifications deemed to be in the best interest of the County, and the award of contract shall be subject to the County and the Proposer entering into a contract acceptable to the County. An individual contract will be required for each selected Proposer.

1.14 GENERAL

- A. Utah County will award a contract in reliance upon the information contained in proposals submitted in response to the RFP. Utah County will be legally bound only when and if there is a signed agreement entered into between Utah County and the awarded Proposers.
- 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 shall have no liability to any person or entity under or in connection with this RFP, unless and until Utah County 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 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 respondent in any manner as having any legal effect whatsoever.

1.15 ANNUAL COST INCREASE

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

ATTACHMENT A
SPECIFICATIONS

S.1 SCOPE OF WORK

Utah County is seeking proposals from qualified Geotechnical Engineering Firms to provide geotechnical engineering services and related services for various projects, which may vary in complexity, on an as-needed basis including geotechnical investigations, design of mitigation and remediation measures for various sites exhibiting geotechnical instabilities, and inspection of constructed mitigation and remediation measures to verify acceptability.

The Engineering Firm shall provide all labor, materials, tools, equipment, transportation, supplies, and other necessary items to complete the services herein specified.

S.2 GEOTECHNICAL ENGINEERING SERVICES

Geotechnical Engineering Services should include but not be limited to the following items bid at price per hour for engineers, technicians, and staff:

1. Geotechnical Investigations
Geophysical techniques - seismic refraction surveys, resistivity surveys, ground penetrating radar, subsurface explorations, geologic mapping and identification of geologic hazards (liquefiable soils, expansive or compressive soils, landslides, faults, debris flows and lahars, and rock fall hazards)
2. Foundation Design & Analysis
 - a. Retaining wall design and analysis
 - b. Foundation bearing conditions
3. Pavement evaluation and design
4. Slopes, Landslides, Levees, & Embankments
5. Specialized Geotechnical Services
 - a. Geologic hazard identification and mitigation
 - b. Slope stability
 - c. Fault identification
 - d. Liquefaction and lateral spread potential
 - e. Vibration monitoring
 - f. Pile dynamic analysis, testing

S.3 TEST BORINGS

Drilling (Test Borings) should include but not be limited to the following tests bid at price per hour and/or price per test.

1. Earth drilling and sampling
2. In-situ testing
3. Instrumentation installation
4. Pavement/slap coring
5. Rock coring (N and H sizes)

S.4 LABORATORY TESTING SERVICES

Laboratory Testing Services should include but not be limited to testing for soil, asphalt, concrete, base rock, and masonry such as the following tests bid at price per hour and/or price per test.

1. Visual and laboratory classification
2. Compacting testing
3. Consolidation tests
4. Direct shear tests
5. Moisture-density relationships
6. Permeability tests
7. Triaxial shear tests
8. Unconfined compression tests

S.5 GEOTECHNICAL CONSTRUCTION INSPECTION & TESTING

Geotechnical Construction Inspection & Testing should include but not be limited to the following tests bid at price per hour and/or price per test.

1. Native and fill soils
2. Base rock
3. Asphalt
4. Soil cement application
5. Retaining walls
6. Slope stabilization
7. Soil nails
8. Drains
9. Stormwater mitigation measures
10. Deep foundation installations
11. Deep ground improvements

ATTACHMENT B

FEE PROPOSAL

This form, and all associated documentation required as part of this form,
shall be included in the RFP submittal.

Company Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

B.1 COMPLETE FEE SCHEDULE

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 various potential projects.

B.2 CERTIFICATION

I hereby certify that I have read, understand, and agree to all sections, Exhibits, and Attachments of this Request for Geotechnical Engineering Services. I further certify that the information submitted by me/my firm in response to this RFP, including the pricing and other information, is true and accurate.

I understand that Utah County has the right to reject any or all proposals, to waive minor irregularities when to do so would be in the best interests of Utah County, and to negotiate a price for the proposed services as determined to be in the best interest of Utah County.

Signature

Name (please print)

Title

Date

EXHIBIT 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: (____) _____.

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

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

If a Corporation, in what State Incorporated: _____
Business License Number: _____
State of Utah 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: _____

EXHIBIT B

CERTIFICATE OF NON-COLLUSION

STATE OF UTAH) Request for Proposals
)SS for
COUNTY OF UTAH) Geotechnical Engineering Services

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 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 _____ 2023 A.D.

My Commission Expires _____

Residing at _____

Seal

By: _____
 Notary Public

EXHIBIT C

SAMPLE AGREEMENT WITH STANDARD TERMS AND CONDITIONS



AGREEMENT

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

Name: _____ Contact Person: _____

Address: _____ Phone #: _____

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

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

1. PURPOSE OF CONTRACT

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

2. CONTRACT COSTS

Contractor will be:

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

3. CONTRACT PERIOD

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

4. ATTACHMENTS

The following indicated attachments are fully incorporated into this agreement:

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

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

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

ATTEST:
AARON R. DAVIDSON
Utah County Clerk

BOARD OF COUNTY COMMISSIONERS,
UTAH COUNTY, UTAH

By: _____
Deputy Clerk/Auditor

By: _____
AMELIA POWERS GARDNER, Chair

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

CONTRACTOR

By: _____
Deputy Utah County Attorney

By: _____
Its: _____

**ATTACHMENT A:
UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR EXPERT 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 Expert 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 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) “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.
 - (E) “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 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, 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, if any, 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 any 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 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 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.

In the event that Contractor provides any products under the Agreement, 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 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 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. **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.
25. **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.
26. **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.
27. **SUCCESSORS IN INTEREST.** The Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties.
28. **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.
29. **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.**
30. **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 September 10, 2021