

AGREEMENT

between

SALT LAKE COUNTY

and

[NAME OF CONTRACTING ENTITY]

for

[NAME OF PROJECT]

This Agreement is entered into this ____ day of _____, 201____, between Salt Lake County, a body corporate and politic of the State of Utah (“County”); and _____ (“Contractor”), a(n) (check the applicable designation)

- | | |
|--|--|
| <input type="checkbox"/> individual | <input type="checkbox"/> limited partnership |
| <input type="checkbox"/> proprietorship | <input type="checkbox"/> corporation of the State of _____ |
| <input type="checkbox"/> general partnership | <input type="checkbox"/> limited liability company of the State of _____ |
| <input type="checkbox"/> other: _____ | |

with its principal place of business address: _____
County and Contractor may be referred to as the “Parties.”

R E C I T A L S

A. This Agreement is entered into pursuant to the Expedited RFP Procedure contained in section 3.22.100, Salt Lake County Code of Ordinances, 2001, and section 13.0, Countywide Policy 7030.

B. On _____, 201____, County issued RFP No. _____ for _____ hereafter referred to as the “RFP.”

C. On _____, 201____, Contractor submitted a proposal in response to the RFP.

A G R E E M E N T

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

1. SCOPE OF SERVICES

Contractor agrees to provide the services outlined in the RFP, which is incorporated by reference and attached as Exhibit 1, and the services outlined in its proposal, which is incorporated by reference and attached as Exhibit 2.

* Any alteration of the standard form language without approval of the attorney shall render this agreement void and without effect. The expiration date stated above applies only to the approved use of this standard form contract, and does not affect or alter the termination/expiration set forth in Paragraph 3, below.

2. CONSIDERATION

County shall pay Contractor an amount not to exceed \$_____ for the services provided by Contractor under this Agreement according to the specifics for consideration set forth in the attached Exhibits (if any). If payments for the consideration are to be made in installments, no installment payment shall become due until 30 days following receipt by County of Contractor's invoice for said installment payment which invoice shall set forth in detail the services provided and for which County is being billed. Said invoice will detail the billing rates, whether hourly, daily or other, the work performed, by whom and on what dates. If payment is required in a lump sum payment, no payment shall be made by County until all services are performed by Contractor under this Agreement. In the event of a lump sum payment, County will pay the lump sum within 30 days after services are completed by Contractor and receipt of an invoice from Contractor for said services.

If services will be performed and billed on a monthly basis, Contractor will submit an invoice to County within 15 days following the end of the month. Contractor's invoice will detail the services performed, by whom, the date of the services, the time expended by each person, and billing rates for each person's work. If expenses and costs will be reimbursed under the Agreement, the invoice will also detail all costs and expenses incurred by Contractor in the performance of services under this Agreement. If County agrees to reimburse Contractor for costs and expenses incurred, County will only reimburse Contractor for reasonable costs and expenses, at County's sole discretion.

3. EFFECTIVE DATE/TERM

This Agreement shall be effective upon execution by both Parties and shall continue for a term of _____ [] year(s), [] month(s) from the date of execution ("Term"). This Agreement may be renewed, at the end of the Term, for _____ additional _____ [] year/[] month terms upon the same terms and conditions. Contractor may present justification for a cost of living increase for each renewal term.

4. INDEPENDENT CONTRACTOR AND TAXES

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

The Parties agree that Contractor's obligations under this Agreement are solely to County. This Agreement shall not confer any rights to third Parties unless otherwise expressly provided for under this Agreement.

5. AGENCY

No agent, employee or servant of Contractor or County is or shall be deemed to be an employee, agent or servant of the other party. None of the benefits provided by each party to its

employees including, but not limited to, workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. Contractor and County shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement. Contractor and County shall each make all commercially reasonable efforts to inform all persons with whom they are involved in connection with this Agreement to be aware that Contractor is an independent contractor.

6. COUNTY REPRESENTATIVE

County hereby appoints _____ as County Representative to assist in the administrative management of this Agreement and to coordinate performance of the services to be provided by Contractor under this Agreement.

7. CONTRACTOR REPRESENTATIVE

Contractor shall designate an employee and make known to County the name and title of this employee within its organization who is authorized to act as Contractor's representative in its performance of this Agreement. Contractor Representative shall have the responsibility of working with County to coordinate the performance of its obligations under this Agreement.

8. STANDARD OF PERFORMANCE/PROFESSIONALISM

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

9. INDEMNIFICATION

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

9.2 For all claims, losses, damages, injuries, and liabilities of, to, or by third parties, Contractor agrees that its duty to defend and indemnify County under Paragraph 9.1 of this Agreement includes all attorney's fees, litigation and court costs, expert witness fees, and any sums expended by or assessed against County for the defense of any claim or to satisfy any settlement, arbitration award, or verdict paid or incurred on behalf of County.

9.3 Intellectual Property Indemnity by Contractor – In addition to the indemnification obligations in Paragraph 9.1 of this Agreement, Contractor will defend or settle any claim made or any suit or proceeding brought against County insofar as such claim, suit, or proceeding is based, in whole or in part, on an allegation that any of the software or media supplied to County, or viewed by County, pursuant to this Agreement, infringes the proprietary and intellectual

property rights of any third party in or to any invention, patent, copyright or any other rights, provided that County will notify Contractor in writing promptly after the third party provides County notice of a claim, suit or proceeding against County, and will give Contractor information and such assistance as is reasonable in the circumstances. Contractor will have sole authority to defend or settle any such claim at Contractor's expense. Contractor will indemnify and hold County harmless from and against any and all such claims and will pay all damages and costs finally agreed to be paid in settlement of such claim, suit, or proceeding. If the software in any claim, suit or proceeding is held to infringe any proprietary or intellectual property rights of any third party and the use thereof is enjoined or, in the case of settlement as referred to above, prohibited, Contractor will have the option, at its own expense, to either (i) obtain for County the right to continue using the infringing item, or (ii) replace the infringing item or modify it so that it becomes non-infringing, provided that no such replacement or modification will diminish the performance of the software.

10. GOVERNMENTAL IMMUNITY

County is a body corporate and politic of the State of Utah, subject to the Utah Governmental Immunity Act ("Act"), UTAH CODE ANN. §§ 63G-7-101 to -904 (2017). The Parties agree County shall only be liable, if ever, only within the parameters of the Act. Nothing contained in this Agreement shall be construed in any way to modify the limits of liability set forth in the Act or the bases for liability, if any, as established in the Act.

11. NON-FUNDING CLAUSE

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

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

12. INSURANCE

Contractor shall maintain in force during the entire contract period at least the same insurance coverages as those in place at the time of the contract inception. Specifically, contractor shall, at a minimum, maintain the same policy types, deductibles and per loss limits during the entire life of this Agreement as are in place at the time this Agreement is executed.

13. NO OFFICER OR EMPLOYEE INTEREST

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

14. ETHICAL STANDARDS

Contractor represents that it has not: (a) provided an illegal gift or payoff to any County officer or employee, or former County officer or employee, or to any relative or business entity of a County officer or employee, or relative or business entity of a former County officer or employee; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the ethical standards set forth in Utah State statute or Salt Lake County's Ethics Code, Chapter 2.07, Salt Lake County Code of Ordinances, 2001; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any County officer or employee or former County officer or employee to breach any of the ethical standards set forth in Utah State statute or Salt Lake County ordinances.

15. CAMPAIGN CONTRIBUTIONS

The Salt Lake County campaign finance disclosure ordinance limits campaign contributions by contractors to County candidates. Chapter 2.72A, Salt Lake County Code of Ordinances 2001. Contractor acknowledges and understands those limitations on campaign contributions mean that any person, business, corporation or other entity that enters into a contract or is engaged in a contract with County is prohibited from making campaign contributions in excess of \$100 to County candidates during the term of the contract and during a single election cycle as defined in the ordinance. Contractor further acknowledges that violation of those provisions governing campaign contributions may result in criminal sanctions as well as termination of this Agreement.

16. PUBLIC FUNDS AND PUBLIC MONIES

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

16.2 Contractor's Obligation: Contractor, as recipient of "public funds" and "public monies" pursuant to this and other contracts related hereto, expressly understands that it, its officers, and employees are obligated to receive, keep safe, transfer, disburse and use these "public funds" and "public monies" as authorized by law and this Agreement for the provision of services to Salt Lake County. Contractor understands that it, its officers, and employees may be criminally liable under section 76-8-402, UTAH CODE ANN. (2017), for misuse of public funds or monies. Contractor expressly understands that County may monitor the expenditure of public

funds by Contractor. Contractor expressly understands that County may withhold funds or require repayment of funds from Contractor for contract noncompliance, failure to comply with directives regarding the use of public funds, or for misuse of public funds or monies.

17. AFFIDAVITS

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

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

18. TERMINATION

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

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

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

18.4 Force Majeure. Neither party shall be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of that party, e.g., acts of God, fires, floods, strikes, or unusually severe weather. If such condition continues for a period in excess of sixty (60) days, Contractor or County shall have the right to terminate this Agreement without liability or penalty effective upon written notice to the other party.

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

18.6 Termination for Convenience. County reserves the right to terminate this Agreement, in whole or in part, at any time during the Term or any additional terms whenever County determines, in its sole discretion that it is in County’s interest to do so. If County elects to exercise this right, County shall provide written notice to Contractor at least 30 (thirty) days prior to the date of termination for convenience. Upon such termination, Contractor shall be paid for all services up to the date of termination. Contractor agrees that County’s termination for convenience will not be deemed an Event of Default nor will it entitle Contractor to any rights or remedies provided by law or this Agreement for breach of contract by County or any other claim or cause of action.

19. COMPLIANCE WITH LAWS

The Parties agree to comply with all federal, state and local laws, ordinances, rules and regulations in the performance of their duties and obligations under this Agreement. Any violation by Contractor of applicable law shall constitute an Event of Default under this Agreement and Contractor shall be liable for and hold County harmless and defend 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 County as a result of the violation. Contractor is responsible, at its expense, to acquire, maintain and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.

20. NON-DISCRIMINATION

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

21. NOTICE TO RETIREES OF UTAH RETIREMENT SYSTEMS (“URS”)

County is a URS “participating employer.” Entering into this Agreement with County may affect a URS retiree’s retirement benefits including, but not limited to, cancellation of the retiree’s “retirement allowance” due to “reemployment” with a “participating employer” pursuant to sections 49-11-504 and 49-11-1204 to -1208, UTAH CODE ANN. (2017). In addition, Contractor is required to immediately notify County if a retiree of URS is the contractor; or an owner, operator, or principal of the contractor. Contractor shall refer the URS retiree to the URS Retirement Department at 801-366-7770 or 800-695-4877 for all questions about post-retirement employment regulations.

22. LABOR REGULATIONS AND REQUIREMENTS

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

23. EMPLOYEE STATUS VERIFICATION SYSTEM

If this Agreement was the result of a Request for Proposals by County, Contractor shall register and participate in the Status Verification System before entering into a contract with County as required by section 63G-12-302, UTAH CODE ANN. (2017). The Status Verification System is an electronic system operated by the federal government, through which an authorized official of a state agency or a political subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. § 1373 to verify the citizenship or immigration status of an individual within the jurisdiction of the agency or political subdivision. Contractor is individually responsible for verifying the employment status of only new employees who work under Contractor’s supervision or direction and not those who work for another contractor or subcontractor, except each contractor or subcontractor who works under or for another contractor shall certify to the main contractor by affidavit that the contractor or subcontractor has verified, through the Status Verification System, the employment status of each new employee of the respective contractor or subcontractor. The contractor shall comply in all respects with the

provisions of section 63G-12-302, UTAH CODE ANN. (2017). Contractor's failure to so comply may result in the immediate termination of this Agreement by County.

24. GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA

If any GIS data is created or maintained under this Agreement, Contractor agrees to comply with Countywide Policy 1013 – Standards for Geographic Information System.

25. CONFIDENTIALITY

Contractor shall hold all information provided to it by County for the purposes of its performance of this Agreement, whether provided in written or other form, in strict confidence, shall make no use thereof other than for the performance of the Agreement, and shall not release any of said information to any third party, any member of Contractor's firm who is not involved in the performance of services under the Agreement, or to any representative of the news media without prior written consent of County. Materials, information, audio-visual recordings, data, reports, plans, analyses, budgets and similar documentation provided to or prepared by Contractor in performance of this Agreement shall also be held confidential by Contractor. County shall have the sole obligation or privilege of releasing such information as required by law.

26. OWNERSHIP OF WORK PRODUCT

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

27. GOVERNMENT RECORDS ACCESS MANAGEMENT ACT

Contractor acknowledges that County is a governmental entity subject to the Utah Government Records Access Management Act ("GRAMA"), UTAH CODE ANN. §§ 63G-2-101 to -901 (2017). As a result, County is required to disclose certain information and materials to the public, upon request. Contractor agrees to timely refer all requests for documents, materials and data in its possession relating to this Agreement and its performance to County Representative for response by County.

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

28. ASSIGNMENT

Contractor shall not assign or transfer its duties of performance or its rights to compensation under this Agreement without prior and express written consent of County.

County reserves the right to assert any claim or defense it may have against Contractor and against any assignee or successor-in-interest of Contractor.

29. SUBCONTRACTING

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

30. NOTICES

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

COUNTY: Contracts Administrator
 Salt Lake County
 2001 South State, Suite, N4-600
 Salt Lake City, Utah 84190-3100

CONTRACTOR: _____

31. TIME

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

32. ENTIRE AGREEMENT

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

33. GOVERNING LAW

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

34. COUNTERPARTS

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

35. INTERPRETATION

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

SALT LAKE COUNTY

By: _____
Mayor or Designee

Date: _____

CONTRACTOR

By: _____

Title: _____

Date: _____