



## **RFP 2020-3**

**UTAH COUNTY GOVERNMENT**

**REQUEST FOR PROPOSALS**

**FOR A WORKDAY HRIS CONSULTANT**

**Due Thursday, May 28, 2020 at 3:00 MT**

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## SECTION 1 ADMINISTRATIVE OVERVIEW

### 1.1 PURPOSE AND BACKGROUND

Through this Request for Proposal (“RFP”), Utah County Government (“Utah County” or “the County”) is accepting proposals from qualified service providers to provide consulting services to deliver as-needed Workday HRIS support as part of a continued relationship to provide technology support services.

The County entered into a contract with Workday to provide HRIS services in 2017. The County currently has a total of 1,361 employees

### 1.2 SERVICES SOUGHT

The Consultant will support deployed configurations and functionality in the production Workday tenant at the time of request.

Workday Support	Description
Regular Touchpoint	Request prioritization, escalation point, budget management
Tenant / Work Management	Assistance and guidance provided to manage work and efforts between tenants. (ex. Weekly Sandbox refresh)
Product Road Mapping	Guidance and insight regarding system configuration enhancements to improve system performance
Calendar Management	Proactive preparation and assistance for known & identified calendar events and product issues
Workday Update Assistance	Planning, guidance and support for each workday update release cycle
Break Fix / System Enhancements	Configurations and functionality within the Production Environment supported.
Knowledge Transfer I Training	Fully certified resources collaborate to ensure knowledge transfer and training.
Full Platform Support	Configurations and functionality within the Production environment are supported.
Cloud Based Request System	Online system for service requests, tracking and reporting.
Multiple Channel Interaction	Interaction via webform, email, phone and zoom meetings supported.
Event Driven Assistance	Events support such as Open Enrollment, Year End, and Workday Updates

### **1.3 SCOPE OF WORK - EXAMPLES**

This section provides examples of the services provided. This is not an exhaustive list of the services provided and is simply intended to be used for illustrative purposes:

1. Configurations and updates related to a particular functional area:
  - a) Update Time Off Plans and/or Leave types
  - b) Update an integration that consistently fails
  - c) Maintain Time Entry Calculations
  
2. Daily transactional requirements:
  - a) EIB Assistance- Assistance with mass transactional loads
  - b) Update Business Process routing, steps and ongoing maintenance
  - c) Support ad hoc End to End testing
  
3. Report Writer and Dashboard Assistance:
  - a) Build dashboards for core audiences (Executives, Managers, HR analysts, etc.)
  - b) Knowledge transfer within report writer
  - c) Create reports according to specific reporting needs

Consulting project work expertise expected in each functional area: US Payroll, Time Tracking, Benefits, Core HR & HCM, Recruiting, Onboarding, Performance & Talent, Compensation, Absence.

## **SECTION 2 - PROCUREMENT RULES AND PROCEDURES**

### **2.1 PROCEDURE**

Responses to this RFP require a hard copy submission of Proposals. The Procedure for the issuance of this RFP, evaluation of Proposals, and selection of a Service Provider is as follows:

- A. Interested parties must provide six (6) hard copies of their proposals by Thursday, May 28<sup>th</sup> 2020 at 3:00 pm Mountain Time to the following address:

**Robert Baxter**  
**Utah County Purchasing Manager**  
**100 East Center St, Suite 3600**  
**Provo, UT 84606**  
robertb@utahcounty.gov

- B. Utah County and/or its representatives will evaluate all submitted Proposals in response to the RFP. The County may choose to ask selected proposers to make a presentation to the Evaluation Committee.

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

## **2.2 RULES OF PROCUREMENT**

This RFP shall conform to and is governed by and subject to the Utah County Procurement Rules and Regulations. All materials submitted in response to this RFP become the property of Utah County and will not be returned. Formal Proposals submitted may be reviewed and evaluated by any person at the discretion of the County.

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.

The County reserves the right to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the County.

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.

The County may not award an agreement solely on the basis of this RFP and will not pay for the information solicited or obtained. The information obtained will be used in determining the Proposal that best meets the County's needs and is the most advantageous Proposal received. No oral or telephonic Proposals or modifications will be considered – all modifications must be in writing.

The responding party agrees that Utah County may terminate this procurement procedure at any time and/or delay the timetable stated below, and Utah County shall have no liability or responsibility to any responding party for any costs or expenses incurred in connection with this RFP, or such party's response.

## 2.3 QUESTIONS AND CLARIFICATIONS

Questions regarding this RFP must be submitted via the UP3 website by the designated deadline. Responses to all submitted questions will be posted on the website for all interested providers to review.

## 2.4 EVALUATION CRITERIA

All proposals will be evaluated by authorized representatives of Utah County, the Evaluation Committee, to identify the proposal that best meets the needs of Utah County as set forth in this RFP. The Board of County Commissioners shall award the contract to one of the top three ranked offerors, or may elect to reject all proposals. A point-based system will be used by the Evaluation Committee to evaluate all proposals. The evaluation categories and their relative weights are listed below:

- **40%** Cost, relative to value given.
- **40%** Relevant experience, and proven performance.
- **10%** Completeness and responsiveness of the proposal to the RFP requirements.
- **10%** Ability to respond to County requirements on-site quickly and effectively.

Utah County may make any and all inquiries necessary to evaluate each service provider's Proposal. In the submission of the firm's Proposal, the firm agrees that the final decision will not be challenged. Utah County may invite more than one finalist to an in-person presentation, but may prefer to enter into contract negotiations immediately with the selected provider.

## SECTION 3 - INSTRUCTIONS FOR PROPOSAL PREPARATION

### 3.1 PROPOSAL SUBMISSION

Sealed proposals should be mailed or hand delivered to:

**Robert Baxter, Utah County Purchasing Manager  
100 East Center, Ste 3600  
Provo, UT 84606**

Proposals should be clearly marked "RFP 2020-3 - Workday Consultant".

All Proposals are due on **May 28, 2020, at 3:00 PM** Mountain Time.

Late proposals will not be accepted, except as set forth in Utah County Procurement Rules and Regulations.

### **3.2 PROPOSAL INCLUSION REQUIREMENTS**

The Proposal must include (in the following order):

A. Transmittal letter:

This letter must state the firm's ability and willingness to perform the services described in this Request for Proposal. This letter should include a statement of how the firm is qualified to provide the services described herein as well as the firm's experience with governmental clients. Include an e-mail address for the firm's authorized point of contact. An individual who is authorized to bind the firm contractually must sign the letter. Finally, the Signature Sheet and the Certificate of Non-Collusion found at the end of this RFP must be submitted with the transmittal letter.

B. Certificate of Non-Collusion:

The Certificate of Non-Collusion included in this RFP must be signed and notarized, and included with the submitted proposal.

C. Evidence of Insurance. If selected as the finalist and prior to contract negotiations, evidence of insurance coverage must be provided, as required. See Section 6.3, below.

D. Standard Contract Terms

Utah County's Standard Contract terms are provided to the RFP in the Appendix, which shall form the basis of a service agreement covering the subject matter of this RFP between the selected service provider and Utah County. The Proposal must include any proposed exceptions or deviations from Utah County's standard contract terms, together with any accompanying reasons for the exceptions or deviations, and any proposed modifications offered by the service provider. Please be advised that exceptions or deviations from Utah County's standard terms will be taken into consideration when evaluating proposals submitted and may result in the Proposal being rejected in whole or part by Utah County.

## **SECTION 4 - ACCEPTANCE OF PROPOSAL**

The agreement period is anticipated to be for a term of three (3) years. Utah County shall have an option, pursuant to that agreement and at its own discretion,

to renew the agreement for additional periods of one (1) or more years without limitation, upon the same or substantially similar terms and conditions.

## **SECTION 5 - DISQUALIFICATION OF PROPOSAL**

At the County's discretion, it may give an opportunity to timely cure a minor error in the proposal. The occurrence of any of the following may result in disqualification of a respondent:

- a. Failure to respond by the established submission deadline.
- b. Failure to completely answer all substantive questions posed in the RFP.
- c. Failure to provide requested documentation at the time of Proposal submission.
- d. Illegible responses.
- e. Failure to sign and return the Proposal.
- f. Failure to evidence a satisfactory record of integrity.
- g. Failure to agree to terms and conditions set forth in Section 6, below.
- h. Failure to qualify legally to contract.
- i. Unauthorized contact with County personnel, other than those specifically listed in the RFP, as described in detail above, during the RFP period.

## **SECTION 6 - TERMS AND CONDITIONS**

### **6.1 GENERAL REQUIREMENTS**

Utah County will negotiate an agreement in reliance upon the information contained in Proposals submitted in response to the RFP. Utah County desires to have one agreement which covers both the subscription services and the implementation services. Appendix 3 of this RFP contains Utah County's standard terms which shall form the basis of an agreement covering the subject matter of this RFP between the selected service provider and Utah County. Exceptions or deviations from Utah County's standard terms must be clearly identified in the response to the RFP, together with any accompanying reasons for the exceptions or deviations, and any proposed modifications offered by the service provider. Exceptions or deviations from Utah County's standard terms will be taken into consideration when evaluating proposals submitted and may result in the Proposal being rejected in whole or part by Utah County. Utah County specifically reserves the right to reject any or all of the proposed modifications. Utah County will be legally bound only when and if there is a definitive signed agreement with the awarded HRIS Service Provider ("Contractor"). It is vitally important that any person who signs a Proposal or agreement on behalf of a Contractor's firm certifies that he or she has the authority to so act. The successful Contractor who has its Proposal



accepted may be required to answer further questions and provide further clarification regarding its Proposal and responses.

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

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

No oral modifications or amendments to this RFP or any resulting agreement shall be effective; the RFP may be modified or amended only by a written agreement signed by the parties. If it becomes necessary to revise any part of this RFP, an addendum will be posted to the U3P (SciQuest) website for all interested providers to review.

## **6.2 INSPECTION AND ACCEPTANCE**

Utah County or its authorized representatives shall have the right to enter the premises of Contractor, or such other places where services under an agreement with Utah County are being performed, in order to inspect, audit, monitor or otherwise evaluate the services being provided and the financial records pertaining to the agreement. Contractor must provide reasonable access to all facilities and assistance to Utah County or its authorized representatives.

## **6.3 INSURANCE**

Contractor agrees to carry errors and omissions insurance with a minimum limit of \$2,500,000 per occurrence, or such amount as modified by the County Risk Manager pursuant to Utah State statute, during the term of an agreement with Utah County. This coverage shall provide liability insurance to cover the activities of Contractor including Contractor's agents and employees, and for all equipment and vehicles, public or private, used in the performance of an agreement with Utah County. Contractor shall furnish, with the Proposal

submission, a certificate of insurance evidencing that Contractor has insurance coverage equal to or greater than the above-stated amounts.

#### **6.4 INDEPENDENT CONTRACTOR**

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

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

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

#### **6.5 INDEMNIFICATION**

Contractor shall be required to defend, indemnify, save and hold harmless Utah County, its officers, employees, and agents, from and against any and all claims, demands, causes of actions, orders, decrees, judgments, losses, damages, and liabilities (including all costs and attorney's fees incurred in defending any claim, demand, or cause of action) occasioned by, growing out of, or arising out of Contractor's performance of an agreement with Utah County which is caused by any act or omission of Contractor's officers, employees, agents or volunteers. Contractor shall assume sole liability for any injuries or damages caused to a third party as a result of fulfillment of an agreement with Utah County.

#### **6.6 PROPRIETARY INFORMATION**

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

## **6.7 PUBLIC INFORMATION**

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

**SIGNATURE SHEET**

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

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

Name of Firm \_\_\_\_\_

Address \_\_\_\_\_

Phone Number \_\_\_\_\_ Fax \_\_\_\_\_

Email Address \_\_\_\_\_

Print Name \_\_\_\_\_

**CERTIFICATE OF NON-COLLUSION**

STATE OF UTAH    )     Request for Proposals  
                          )SS    for  
COUNTY OF UTAH)     Workday Consultant

AFFIDAVIT

The undersigned of lawful age, being first duly sworn, disposes and says:  
That as a condition precedent to the award of the Utah County project as above  
captioned,

I \_\_\_\_\_  
(owner, partner, officer or delegate)  
of \_\_\_\_\_ do  
(company)

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

\_\_\_\_\_  
Contractor Signature

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

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

\*\*\*\*\*

Subscribed/sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 2020 A.D.

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

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

\_\_\_\_\_ Seal

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

Notary Public

# **APPENDIX**

## **UTAH COUNTY GOVERNMENT**

### **STANDARD CONTRACT TERMS**

**January 13, 2017**

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

#### **1. EXTRA WORK**

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

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

#### **2. GOVERNING LAW**

It is agreed that this AGREEMENT shall be governed by, construed and enforced in accordance with the laws of the State of Utah, and the ordinances of Utah County. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute

arising out of this Agreement or the breach thereof. Venue shall be in Provo in the Fourth Judicial District Court for Utah County

**3. EMPLOYMENT STATUS VERIFICATION**

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

**4. AMENDMENTS**

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

**5. ASSIGNMENT**

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

**6. SUCCESSORS IN INTEREST**

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

**7. INDEMNIFICATION**

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

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

**8. GOVERNMENTAL IMMUNITY**

COUNTY is a body corporate and politic of the State of Utah, subject to the Governmental Immunity Act of Utah (the “Act”), Utah Code Ann §§ 63G-7-101 to -904 (2011). COUNTY does not waive any procedural or substantive defense or benefit provided or to be provided by the Act or comparable legislation enactment. The parties agree that COUNTY shall only be liable within the parameters of the Governmental Immunity Act. Nothing contained in this Agreement shall be construed in any way, to modify the limits set forth in that Act or the basis for liability as established in the Act.

**9. NON-FUNDING CLAUSE**

COUNTY intends to request the appropriation of funds to be paid for the services provided by CONTRACTOR under this Agreement. If funds are not available beyond December 31 of any effective fiscal year of this Agreement, the COUNTY’s obligation for performance of this Agreement beyond that date shall be null and void. This Agreement shall create no obligation on the COUNTY as to succeeding fiscal years and shall terminate and become null and void on the last day of the fiscal year for which funds were budgeted and appropriated, except as to those portions of payments agreed upon for which funds were appropriated and budgeted. Said termination shall not be construed as a breach of this Agreement or any event of default under this Agreement and said termination shall be without penalty, whatsoever, and no right of action for damages or other relief shall accrue to the benefit of CONTRACTOR, its successors, or its assigns, as to this Agreement, or any portion thereof, which may terminate and become null and void. If funds are not appropriated for a succeeding fiscal year to fund performance by COUNTY under this Agreement, COUNTY shall promptly notify CONTRACTOR of said non-funding and the termination of this Agreement, and in no event, later than 30 (thirty) days prior to the expiration of the fiscal year for which funds were appropriated.

**10. SALES TAX EXEMPTION**

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

**11. COMPLIANCE WITH LAWS**

Each party agrees to comply with all federal, state, and local laws, rules and regulations in the performance of its duties and obligations under this Agreement. Any violation by CONTRACTOR of applicable law shall constitute an event of default under this Agreement and CONTRACTOR shall be liable for and hold the COUNTY harmless and defend the COUNTY from and against any and all liability arising out of or connected with the violation, to include all attorney fees and costs incurred by the COUNTY as a result of the violation. CONTRACTOR is responsible, at its expense, to acquire, maintain and renew during the term of this Agreement, all necessary permits and licenses required for its lawful performance of its duties and obligations under this Agreement.



## **12. CONFIDENTIALITY**

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

## **13. PAYMENT**

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

## **14. TERMINATION**

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

## **15. FORCE MAJEURE**

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

## **16. INDEPENDENT CONTRACTOR**

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

b. The parties intend that an independent contractor relationship will be created by this AGREEMENT. COUNTY is interested only in the results to be achieved, and the conduct and control of the work will lie solely with CONTRACTOR. CONTRACTOR is not to be considered an agent or employee of COUNTY for any purpose, and the employees of CONTRACTOR are not entitled to any of the benefits that

COUNTY provides for COUNTY'S employees. It is understood that COUNTY does not agree to use CONTRACTOR exclusively. It is further understood that CONTRACTOR is free to contract for similar services to be performed for others while working under the provisions of this AGREEMENT with COUNTY.

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

## **17. INTERPRETATION OF AGREEMENT**

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

## **18. INSURANCE**

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

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

## **19. LEGAL**

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

## **20. NO PRESUMPTION**

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

## **21. WARRANTY**

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

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

## **22. DELIVERY**

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

## **23. ENTIRE AGREEMENT.**

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