



REQUEST FOR PROPOSALS
MUNICIPAL FINANCIAL ADVISOR
SERVICES
RFP 2021-3

CLOSING DATE FOR
RECEIPT OF PROPOSALS: Tuesday, May 4, 2021

TIME: 3:00 pm MT

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

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SECTION 1 ADMINISTRATIVE OVERVIEW

1.1 PURPOSE

Through this Request for Proposals (RFP), Utah County intends to select a qualified firm to provide independent municipal financial advisory services.

1.2 SERVICES SOUGHT

Utah County contemplates ongoing capital projects, which may result in the issuance of bonds, notes, refunding bonds and/or the use of other financial analysis and instruments relating to such ongoing capital projects. The County deems it in its best interest to retain a Provider, a qualified and experienced investment banking firm to serve as a financial advisor to the County and to perform related tasks in connection with the issuance of notes and other debt securities of the County.

1.3 SCOPE OF SERVICES

The Provider shall provide the County with financial advisory services in connection with the issuance of bonds and other debt instruments and other related matters. In particular, the Provider shall:

1. Work with the County and others as directed by the County's Administration concerning the issuance of debt securities and/or application for low-interest rate loans or grants from State or Federal agencies;
2. Advise the County on matters pertinent to its capital financings, other financing matters, inter-local agreements where requested, and conduit financings where requested;
3. Participate in and provide data and analysis for County's Finance Committee;
4. Attend meetings and make itself available to the County, its Administration and other agents for consultation and conference at times and places mutually agreed upon;
5. Assist the County in preparation, coordination and distribution of printed matter, including circulars, press releases, special mailing, etc., in order to acquaint the County's population with the benefits and financial considerations of the issue(s);
6. Prepare financial information and schedules necessary to acquaint the County with the characteristics and terms of various forms of financing potentially available to the County, including potentially applicable interest rates, marketing factors, credit enhancements, and user fee/tax impact costs;
7. Advise the County on underwriting or privately placing its bonds, providing

- regular updates of bond market conditions, analysis of financial or accounting factors of importance to the proper placement of bonds, recommendations regarding appropriate bond maturity schedules, call features, registration provisions, paying agency and trusteeship responsibility, user rate covenants, any special sinking fund provisions, flow of tax user fee funds, interest rate limitations, bond delivery procedures and/or investment of idle bond funds;
8. Make recommendations as to the exact amount of the bonds to be issued, maturity schedules, redemption features and provisions and other related items, in order to formulate the most attractive and appealing investment package to the purchasers of the bonds then available in the marketplace which will result in the maximum benefit and minimum net effective interest cost to the County;
 9. Manage the preparation of credit presentations for bond rating agencies and bond insurance companies and investors;
 10. Collect, format and prepare information, in cooperation with the County, for Preliminary Official Statements, Private Placement Memoranda or State/Federal loan or grant applications as appropriate, and related contracts or agreements and bond proceedings, all of which shall be appropriately approved and/or executed by the County;
 11. Engage in the selection of underwriters or private placement purchasers where appropriate;
 12. Arrange to distribute Preliminary Official and/or Final Official Statements to potential investors and/or purchasers ;
 13. Consult with the County as to the timing of the sale of all bonds and the manner of selling bonds;
 14. Make the necessary arrangements for the delivery of bonds, escrow of legal papers and funds, and assist with the reinvestment of bond proceeds;
 15. Coordinate with the County 's bond counsel to arrange for closing and delivery of bonds ;
 16. The Provider will not limit its work to the specific obligations outlined above, but reasonably will extend its services in an effort to achieve the overall objective that all specific projects agreed by the County and Provider are brought to a successful conclusion on behalf of the County in a timely, professional and satisfactory manner.

SECTION 2 PROCUREMENT RULES AND PROCEDURES

2.1 PROCEDURE

The procedure for response to this RFP, evaluation of proposals, and selection of a vendor is 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 vendor will enter into contract negotiations with the County.

2.2 RULES OF PROCUREMENT

This procurement shall conform to and is governed by The Utah County Division of Purchasing Procurement Rules and Regulations. For this procurement, all proposals must be submitted in the proposal format outlined herein. All prospective Proposers must meet the required criteria as of the date of submission. 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.

2.3 PROCUREMENT TIMETABLE

Below is the Procurement Timetable that has been established for this RFP.

REQUIRED ACTIVITY	SCHEDULED DATE
RFP Issue Date	April 13, 2021
Closing Date for Bidding Provider Questions	April 30, 2021
Closing Date for Receipt of Proposals	May 4, 2021 – 3:00 PM MT
Anticipated Final Decision (estimated)	May 25, 2021

2.4 QUESTIONS AND CLARIFICATIONS

Questions regarding this RFP must be submitted by April 30, 2021 at 3:00 MT.
The point of contact for this RFP is the Utah County Purchasing Manager, Robert Baxter:

RobertB@utahcounty.gov

2.5 EVALUATION CRITERIA

All proposals will be evaluated by authorized representatives of Utah County (the Evaluation Committee). Each member of the Evaluation Committee will ordinarily rank all proposals from highest to lowest evaluation score, and the Evaluation Committee will compile the rankings of all members of the Evaluation Committee. If any proposal receives a majority of first place votes, that proposal will be recommended as the #1 ranked proposal. The same process will be repeated to rank the #2 and #3 ranking proposals. The Board of County Commissioners shall award the contract to one of the top three ranked offers or may elect to reject all proposals. After the Board of County Commissioners has selected a proposal, the firm will enter into negotiations for a contract. The contract will become final and binding only with the approval and signing of the Utah County Commission.

The following weighted average criteria will be used by the Evaluation Committee in creating a score for each of the proposals:

5% - Responsiveness

1. The completeness and conformity of the proposal response to the RFP requirements. Is the proposal complete and does it respond to the requirements of the RFP? Does it indicate any requirements that cannot be met?

40% - Relevant Firm Experience

1. The ability of the firm to meet the specific financial needs of the County as detailed in the Scope of Services. Proven record of providing financial advisement/representation to similar clients on specific topics listed in the Scope. Demonstrated financial expertise as it relates to counties and other governmental entities. Other peripherals, such as structured support services, dedicating a firm representative for supporting the County, proximity of firm offices and key personnel, and the training and experience of key personnel.

30% - Individual Experience

1. Experience of all financial advisor's within the firm who will be specifically assigned to work on behalf of the County. Identify lead advisors and points of contact including advisor support and secretaries. All financial advisors who will be providing services on behalf of the County must be licensed as such per the laws of the State of Utah.

15% - References

1. Provide names of three (3) clients who may be contacted for whom services were rendered that are comparable in scope to the services listed in these specifications. Quality and comparability of the references provided.

10% - Price Proposal

1. Cost will be determined by the combined base bond fees + fee per \$1,000 bond issued using the type(s) of bonding which the Evaluation Committee determines to be most applicable to the County's anticipated need for services. Fees per \$1,000 will be

calculated into the maximum of the range to gather a total cost for each range.

SECTION 3 INSTRUCTIONS FOR PROPOSAL PREPARATION

3.1 PROPOSAL SUBMISSION

Each respondent must submit its proposal to the Utah County Purchasing Manager per the following instructions:

Five (5) hard copies must be submitted to the address listed below by Tuesday, May 4th at 3:00 pm MT. The envelope containing the proposal must be clearly labeled “SEALED PROPOSAL – MUNICIPAL FINANCIAL ADVISOR SERVICES RFP #2021-3”. The proposal must be delivered to:

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

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

3.2 PROPOSAL ORGANIZATION

The proposal must include:

1. Cover Letter
2. Qualifications – Provide a statement of the firm’s experience and qualifications to meet the requirements of the County as outlined herein, including the following:
 - A. Please include a list of three (3) major public sector clients who would provide references for your work as a Financial Advisor.
 - B. A description of your firm's financial advisor relationships for the past three (3) years, including the dollar amount and type of bond issues.
 - C. Describe your firm’s experience with, and any innovations you have developed, in the following areas:
 1. Short Term Financing
 2. General Obligation Bonds
 3. Sales Tax Revenue Bonds
 4. Motor Fuel Excise Tax Revenue Bonds
 5. Municipal Building Authority Bonds
 6. Revenue Bonds
 7. Special Improvement District Bonds
 8. Tax Increment Bonds
 9. Refunding Bonds
 - D. List key individuals who would be assigned to work with the County (attach professional resumes) and provide information concerning the following:
 1. What would be their availability to the County?

2. What other personnel or services would be available to the County (e.g. software programs, personnel, as well as capabilities and location of these services which would be available to the County)?

The County recognizes the value of an Advisor who is readily available on short notice, therefore, all other things being equal, the County will give greater consideration to a financial advisor residing in or doing substantial financial advisor business within the State of Utah.

E. Describe the means by which your firm monitors daily municipal bond market conditions, market trends and/or forecasts, and describe the way in which this activity is used to advise clients of marketing decisions such as market timing, pricing, etc.

F. Describe your firm's experience in negotiated under-writings of municipal bonds where it has served as a Financial Advisor. What, in your firm's view, is the most critical role of the Financial Advisor in a negotiated sale? How would your firm best fill that role?

G. Outline your firm's experience during the last three (3) years with the major rating agencies. Discuss its applicability to the County in retaining its current ratings and outline your strategy to best assure the County continued success for future debt issues.

H. Please include a representative example of a recent Official Statement in which your firm acted as Financial Advisor, and for which your firm was directly responsible for preparation, printing, etc.

I. Indication of whether the municipal advisor is registered with the SEC and MSRB.

3. Provide a statement to disclose any currently pending investigation or disciplinary action by the SEC, the IRS, or any other financial regulatory agency, or any other pending arbitration or litigation.
4. Fee Proposal, (Attachment C) to include any and all payments the firm anticipates receiving from County.
5. Signed Signature Sheet – Signed by individual with authority to make commitments on behalf of the company (Attachment A)
6. Completed Certificate of Non-Collusion (Attachment B)

SECTION 4 DISQUALIFICATION OF PROPOSAL

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

1. Failure to respond within the established timetable.
2. Failure to completely answer all questions presented in the RFP.
3. Failure to provide requested documentation at the time of proposal submission.
4. Illegible responses.
5. If the Proposer is unable to evidence a satisfactory record of integrity.
6. If the Proposer is not qualified legally to contract.
7. If the proposal at the opening does not contain a signed proposal, and a signed certificate of non-collusion.
8. Utah County reserves the right to reject any or all proposals.

ATTACHMENT A

SIGNATURE SHEET

I hereby certify that the information submitted by me/my company 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: _____

Address: _____

Phone Number: _____ Fax: _____

Email Address: _____

Print Name: _____

Signature: _____ Date: _____

ATTACHMENT B

CERTIFICATE OF NON-COLLUSION

STATE OF UTAH) Requests for Proposals
)§ for
COUNTY OF UTAH) Municipal Financial Advisor 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 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.

Signature

By: _____

Title: _____

Subscribed/sworn to before me this ____ day of _____ 2021 A.D.

My Commission Expires _____

Residing at _____

Seal

By: _____

Notary Public

ATTACHMENT C
PRICE PROPOSAL

The following table lists the name and unit volume of each financial service required by the County. Please indicate the per unit amount your institution will charge for each service.

<u>Type of Service</u>		
General Obligation Bond	<u>Units</u>	<u>Per Unit Cost</u>
Senior Financial Advisor	Per Hour	
Junior or Associate Advisor	Per Hour	
Fee for general obligation bonds including refunding bonds:	Base Fee	+ Fee per \$1,000 bonds issued
Less than \$10 million	\$	
\$10-24.999 million	\$	
\$25-49.999 million	\$	
\$50 million plus	\$	
Maximum FA fee per general obligation bond transaction	\$	

Other Fees

If applicable, please list any other fees that you plan to charge in the table below.

<u>Fee Name</u>	<u>Fee Amount</u>	<u>Comments</u>

<u>Type of Service</u>		
Sales Tax Revenue Bonds	<u>Units</u>	<u>Per Unit Cost</u>
Senior Financial Advisor	Per Hour	
Junior or Associate Advisor	Per Hour	
Fee for sales tax revenue bonds including refunding bonds:	Base Fee	+ Fee per \$1,000 bonds issued
Less than \$10 million	\$	
\$10-24.999 million	\$	
\$25-49.999 million	\$	
\$50 million plus	\$	
Maximum FA fee per sales tax revenue bond transaction	\$	

Other Fees

If applicable, please list any other fees that you plan to charge in the table below.

<u>Fee Name</u>	<u>Fee Amount</u>	<u>Comments</u>

All pricing must be guaranteed for five calendar years.

A. Please confirm that your proposed fees for sales tax revenue bonds, as set forth above, will be the same fee for all of the following, or, if not, indicate your proposed fee:

1. Tax and Revenue Anticipation Notes
2. Water, Sewer, or Storm Water Revenue Bonds
3. Redevelopment Agency Tax Increment Revenue Bonds
4. Lease Revenue Bonds
5. Class C Revenue Bonds
6. Special Assessment Area Bonds
7. Industrial Revenue Bonds

B. Please indicate if your proposed fees, as described above, will be reduced for a refunding or combined refunding and new money issue, and if so, state the amount of the reduction as a percentage reduction from the proposed fees

C. Provide details with respect to any additional charges related to the bidding or composition of current or advance refunding escrows.

D. Please state if, and by how much, your fee per \$1,000 of bonds issued would vary depending on:

1. If the bonds were issued in a fixed rate, or a variable rate mode;
2. If the bonds were sold competitively, negotiated or as a private placement.

E. State in your proposal whether your firm would expect to receive the proposed fee or any part of the proposed fee, or to be reimbursed for the costs incurred, in the event that bonds are not sold.

F. Describe your proposal for fee arrangements for special projects where no bonds are to be issued.

G. Please indicate if your firm would charge a retainer to guarantee a minimum annual fee

per calendar year in the event that no bonds or few bonds were issued in any given calendar year.

H. Please provide an estimate of any out-of-pocket expenses that your firm would expect to receive reimbursement for each issue, if any.

I. Describe any other related fees or charges not covered above.

APPENDIX
UTAH COUNTY STANDARD TERMS AND CONDITIONS FOR PRODUCTS AND SERVICES

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

the date an order is delivered, service is performed, or the date a correct invoice is received, whichever is later. All payments for the Agreement will be remitted electronically, by mail, or as otherwise determined by the County. Contractor shall accept payment by check or by Purchasing Card without any additional fees.

4. **OWNERSHIP IN INTELLECTUAL PROPERTY.** The County and Contractor each recognize that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. The County will have all rights, title, and ownership of all websites and social media accounts, including any passwords, usernames, or other pertinent login information; advertising materials, including any content or work product; images; newsletters; and intellectual property 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 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. 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 three million-dollar 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. **LAWS AND REGULATIONS.** At all times during the Agreement, Contractor and all Products and Services performed under the Agreement shall comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
8. **EMPLOYMENT STATUS VERIFICATION.** Contractor shall register and participate in the Status Verification System and comply with Utah Code section 63G-12-302 of the Identity Documents and Verification Act. Contractor shall require an affidavit verifying compliance with Utah Code section 63-G- 12-302 from each of its contractors and subcontractors.
9. **INDEPENDENT CONTRACTOR.** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the County,

and therefore is not entitled to any of the benefits associated with such employment. As an independent contractor, Contractor shall have no express or implied authority to bind the County to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the County. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.

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

15. **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 the Agreement. 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.
16. **CONFIDENTIALITY.** Materials, information, data, reports, plans, analyses, budgets, and similar documentation provided to or prepared by Contractor in performance of the Agreement shall be owned by the County and shall be held confidential by Contractor. In addition, all information provided to Contractor by the County for the purposes of Contractor's performance of the Products or Services, whether provided in writing or any other form, shall be held in confidence by Contractor and Contractor shall not release any of the information to any third party, any member of Contractor's firm who is not involved in the performance of Products or Services, or to any representative of the news media without prior written consent of the County. The County shall have the sole obligation or privilege of releasing such information as required by law.
17. **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.
18. **FORCE MAJEURE.** Neither party to the Agreement will be held liable for delay or default caused by fire, riot, acts of God, or war. The County may terminate the Agreement after determining such delay or default will reasonably prevent successful performance of the Agreement.
19. **SEVERABILITY OF AGREEMENT.** The invalidity of any portion of the Agreement shall not prevent the remainder from being carried into effect.
20. **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.
21. **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.

22. **WARRANTY.** Contractor warrants to the County that all services and materials furnished under the Agreement will be of the highest quality, consistent with the degree of skill and care ordinarily exercised by similarly situated members of Contractor's profession, and in conformance with the terms hereof.

Contractor warrants and assumes responsibility for all products (including hardware, firmware, and software products) that it licenses, contracts, or sells to the County under the Agreement for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in the Agreement or Contractor's proposal, attached hereto (if any). Contractor (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the State of Utah apply to the Agreement. Product liability disclaimers and warranty disclaimers from the seller are not applicable to the Agreement unless otherwise specified and mutually agreed upon elsewhere in the Agreement. In general, Contractor warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used, (4) the product will be suitable for any special purposes that the County has relied upon Contractor's skill or judgment to consider when it advised the County about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of defects or unusual problems about which the County has not been warned in writing prior to entering into the Agreement. Remedies available to the County include 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.

23. **TIME IS OF THE ESSENCE.** The County and Contractor recognize that time is of the essence here and the County will suffer financial loss if any Products or Services are not delivered and performed within the time specified in the Agreement, plus any extensions approved in writing by the County. Contractor shall be liable for all reasonable damages to the County and to anyone whom the County may be liable to as a result of Contractor's failure to timely deliver and perform the Products and Services.
24. **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.
25. **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.
26. **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.

27. **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.
28. **SUCCESSORS IN INTEREST.** The Agreement shall be binding upon the heirs, successors, administrators, and assigns of each of the parties.
29. **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.
30. **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 16. Confidentiality.**
31. **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 July 2019