

TERMS AND CONDITIONS

This Contract with County includes these Terms and Conditions.

1. INTERPRETATION: This Contract between Salt Lake County ("County") and Contractor incorporates all provisions and specifications of County's solicitation, including all amendments, these Terms and Conditions, and Contractor's bid. Any purported terms and conditions on Contractor's sales orders, invoices, quotes, website, etc., are not part of this Contract. In the event of any inconsistency between the County's solicitation and Contractor's bid, the County's solicitation shall control.

2. WARRANTY: Contractor expressly warrants that the merchandise will conform to its description and all specifications, shall be of good merchantable quality, and fit for the known purpose for which it is required. This warranty is in addition to any manufacturer's warranty or standard warranty or service guarantee given by Contractor to County. Said warranties shall be in addition to any warranties express or implied under the laws of the State of Utah. Contractor warrants and assumes full and sole responsibility for all products that it licenses, contracts, or sells to the County under this agreement for a period of one year, unless otherwise specified. Contractor acknowledges that all warranties provided under the Uniform Commercial Code of the State of Utah apply to this agreement. Product liability disclaimers and/or warranty disclaimers by Contractor are not applicable to this agreement unless otherwise specified and accepted in writing and signed by County. Remedies available to County include, but are not limited to, the following: Contractor will repair or replace, at no charge to County, each and every nonconforming product upon discovery of the nonconformance and written notice from County. If the repaired and/or replaced product does not meet the specifications and is not accepted by County, Contractor will refund the full amount of all payments previously made by County. Nothing in this warranty section will be construed to limit any rights or remedies County may otherwise have under this agreement or pursuant to law.

3. DELIVERY: All deliveries shall be FOB destination, freight pre-paid by Contractor. Time is of the essence. If Contractor anticipates a delay in the delivery of the goods or services, Contractor shall, as soon as reasonable, notify County. Such notification shall not, however, constitute a change to the delivery terms of this Contract. If Contractor fails to deliver the goods or services by the delivery date, or Contractor fails to deliver conforming goods or services, County may purchase substitute goods or services elsewhere and Contractor shall be liable to the County for any additional cost and expense incurred by the County relating to the purchase of such substitute goods or services.

4. INSPECTION AND ACCEPTANCE OF GOODS: County may inspect and test goods provided under this Contract. County may reject goods within a reasonable time. The goods delivered shall be exactly as specified in this Contract, free from all defects in design, workmanship, and materials. All goods delivered shall be newly manufactured and the current model, unless otherwise specified. Prior to acceptance, if any goods are found to be defective or not as specified in the Contract, at County's sole discretion, County may reject them, require Contractor to correct them without charge, or require delivery of such goods at a reduction in price which is equitable under the circumstances. Failure by County to inspect or test the goods shall not be deemed acceptance. If Contractor fails to correct rejected goods within a time deemed reasonable by County, County may terminate the order in whole or in part. Upon termination of the order in whole or in part, Contractor shall return any payments made by County, and shall also reimburse County for all transportation costs and other costs incurred. Notwithstanding acceptance and payment, Contractor shall be liable for latent defects, fraud, or such gross mistakes as amount to fraud. If County rejects the goods, County may purchase substitute goods elsewhere and Contractor shall be liable to County for any additional cost and expense incurred by County relating to the purchase of such substitute goods.

5. INSPECTION AND ACCEPTANCE OF SERVICES: County may inspect in-progress and completed services performed under this Contract and may reject the services within a reasonable time. The services provided shall be provided in a good and workmanlike manner, as specified in this Contract. If, prior to acceptance, any services are not as specified in the Contract, at County's sole discretion, County may require Contractor to correct them without charge. Failure by County to inspect the services shall not be deemed acceptance.

6. RISK OF LOSS: Title to the goods will remain with Contractor until accepted by County. Contractor will bear the entire risk of loss until the goods are accepted by County. Contractor must carry property damage and liability insurance covering the goods until acceptance. Rejected goods may be returned to the Contractor, held by County at Contractor's risk and expense, or disposed of by County at Contractor's risk and expense fourteen (14) days after County has advised Contractor of the rejection.

7. LICENSING: Contractor is responsible, at its sole expense, to acquire, maintain, and renew during the term of this Contract, all necessary permits, licenses, and certifications required for its lawful performance of its duties and obligations under this Contract.

8. REGISTRATION: Contractor must be registered with the Utah Division of Corporations and Commercial Code and shall maintain this Contract active and current through the term of this Contract.

9. PRICES: Prices are firm for the duration of this Contract. Contractor shall be solely responsible for all costs, expenses, and other charges it incurs in connection with its performance under this Contract.

10. INVOICING: Invoices are to be submitted directly to the ordering division or agency, unless otherwise specified in the specifications attached hereto, with payment to be made by the Mayor's Office of Financial Administration. County has the right to request additional information or require Contractor to correct and re-issue any incorrect invoice before paying. References on the invoice should note the ordering agency or division's name and purchase order number or contract number. If Contractor offers an early payment discount, then the discount shall be shown on Contractor's invoices to County.

11. PAYMENT TERMS: County will not pay Contractor any amount in excess of the total price set forth in this Contract. Payment terms are net 30 days after County accepts the goods or services and receives an accurate invoice. If Contractor offers an early payment discount and if County makes payment on the invoice within the time frame for the discount, Contractor shall either (a) accept the payment amount less the appropriate discount or (b) refund the discount back to County.

12. INDEPENDENT CONTRACTOR: Contractor is an independent contractor. Contractor shall 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; Social Security; unemployment compensation and insurance; 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. This Contract does not create a partnership, joint venture, or employer/employee relationship.

13. 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 be entirely responsible for their respective acts and for the acts of their respective agents, employees, and servants during the performance of this Contract.

14. NO THIRD-PARTY BENEFICIARIES: The Parties agree that Contractor's obligations under this Contract are solely to County. This Contract shall not confer any rights to third parties.

15. STANDARD OF PERFORMANCE: Contractor agrees to perform its services under this Contract with the highest standard of professionalism observed by professionals in its industry.

16. TIME: Time is of the essence.

17. INDEMNIFICATION: To the fullest extent allowable by law, Contractor agrees to indemnify County, its officers, agents, and employees against any and all actual or threatened claims, losses, damages, injuries, or liabilities of, to, or by third parties, including subcontractors, or the employees of Contractor or subcontractors, including claims for personal injury, death, or damage to personal property or profits and liens of workmen and materialmen (suppliers), however allegedly caused, resulting directly or indirectly from, or arising out of, Contractor's breach of this Contract or any acts or omissions of or by Contractor, its agents, representatives, officers, employees, or subcontractors in connection with the performance of this Contract. Contractor agrees that its duty to indemnify County under this Contract includes all 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 judgment awarded against or paid by or on behalf of County.

18. 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 §§ 63G-7-101 to -904. The Parties agree that County shall only be liable within the parameters of the Act. Nothing contained in this Contract shall be construed to modify the limits of liability set forth in that Act or the bases for liability as established in the Act. Nothing in this Contract or any act or forbearance in the course of performance shall be construed as a waiver of the Act.

19. CONFLICTS OF INTEREST

a. Contractor, by signing this Contract, represents that no County employee has or shall be given any pecuniary interest, direct or indirect, related to this Contract and that none of Contractor's owners, directors, officers, or employees serve on any Salt Lake County boards or committees or are County employees or relatives of a County employee. "County employee" includes any elected or appointed official of the County. A "relative" means parent, spouse, child, sibling, uncle, aunt, nephew, niece, first cousin, parent-in-law, child-in-law, sibling-in-law, or household member.

b. If any such potential conflict of interest exists, Contractor shall immediately disclose to County the name of any individuals with a potential conflict of interest so County may review the potential conflict. This duty to disclose any potential conflicts shall continue throughout the Term of this Contract and Contractor shall advise County immediately if any potential conflict of interest is discovered or arises. Contractor shall immediately remove the employee with the conflict from providing further services under the Contract.

c. Any violation of this section may be deemed a material breach of the Contract.

20. ETHICAL STANDARDS: Contractor represents that it has not: (a) provided an illegal gift 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 Code § 17-70-503 or Salt Lake County Code of Ordinances § 2.07; 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 state statute or Salt Lake County ordinance.

21. CAMPAIGN CONTRIBUTIONS: Contractor acknowledges that Salt Lake County Code of Ordinances § 2.72A limits campaign contributions by contractors to County candidates. Contractor represents that it will not violate those limitations on campaign contributions.

22. EARLY TERMINATION

a. **Termination for Breach.** County may terminate this Contract for breach by Contractor, effective upon written notice to Contractor stating County's intention to terminate this Contract.

b. **Force Majeure.** Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Contract for any failure or delay in fulfilling or performing any Term of this Contract when and to the extent such Party's (the "Impacted Party") failure or delay is caused by or results from the following unforeseen force majeure events ("Force

Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics (excepting COVID), or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Contract; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within fifteen (15) days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period in excess of thirty (30) consecutive days following written notice given by it under this section, either Party may thereafter terminate this Contract upon fifteen (15) days' written notice to the other Party. Termination of the Contract under this Force Majeure provision will be treated as a Termination for Convenience, consistent with Section 22.d, below.

c. **Non-Funding Clause.** Pursuant to Utah state law, County appropriations lapse at the end of each fiscal year. County appropriations may also be altered at any time during the fiscal year. Consequently, if funds are not appropriated for a succeeding fiscal year to fund performance by County under this Contract, or if appropriations are withdrawn or otherwise altered, Contract shall be terminated, effective upon written notice. Said termination shall not be construed as a breach of this Contract or any event of default under this Contract 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 Contract, or any portion thereof.

d. **Termination for Convenience.** This Contract may be terminated by County for any reason or for no reason, upon not less than thirty (30) days' prior written notice to Contractor delivered in accordance with Section 22.e, stating County's intention to terminate this Contract. Upon such termination, Contractor shall be paid for all services in compliance with this Contract up to the date of termination. Contractor agrees that County's termination for convenience will not be deemed a termination for breach nor will it entitle Contractor to any rights or remedies provided by law or this Contract for breach of contract by County or any other claim or cause of action.

e. **Termination Notices.** All notices required under this Section 22 shall be made in writing and shall be sent via email to the Parties at the following addresses:

COUNTY: slco-purchasing@saltlakecounty.gov

Notice shall be effective upon the next business day.

23. **NON-DISCRIMINATION:** Contractor and any agent of Contractor agree that they shall comply with all federal, state, and local laws, rules, and regulations governing discrimination and shall not discriminate in the engagement or employment of any person under this Contract.

24. **NOTICE TO RETIREES OF UTAH RETIREMENT SYSTEMS ("URS"):** County is a URS "participating employer." Entering into an 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 Utah Code §§ 49-11-101 through 1401. If Contractor, or an owner, operator, or principal of the Contractor, is a retiree of URS, Contractor is required to immediately notify County. 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.

25. **RECORDS:** Contractor shall maintain all records relating to this agreement for a period of seven (7) years from the completion of the performance of the Contract and shall provide County said records upon request, at no additional cost, within ten (10) business days.

26. **GOVERNMENT RECORDS ACCESS MANAGEMENT ACT:** Contractor acknowledges that County is a governmental entity subject to the Utah Government Records Access and Management Act ("GRAMA"), Utah Code §§ 63G-2-103 to -901. Any document submitted to County is considered a "public record" unless otherwise protected under state statute.

27. **CONFIDENTIALITY:** Contractor shall hold all information provided to it by County, whether provided in written or other form, in strict confidence, shall make no use thereof other than for the performance of the Contract, 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 Contract, 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 Contract shall also be held confidential by Contractor. County shall have the sole obligation or privilege of releasing such information.

28. **GEOGRAPHIC INFORMATION SYSTEM ("GIS") DATA:** If any GIS data is created or maintained under this Contract, Contractor agrees to comply with Countywide Policy 1013 – Standards for Geographic Information System.

29. **SUBCONTRACTING:** Contractor agrees that it shall not subcontract its duties or obligations under this Contract without the prior written approval of County, which may be withheld at County's sole discretion.

30. **NON-EXCLUSIVE PURCHASE:** This Agreement is non-exclusive. County reserves the right to purchase any good or service covered under this Agreement from other sources during the term of this Agreement.

31. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws of the State of Utah and the ordinances of Salt Lake County, both as to interpretation and performance, without regard to Utah's choice of law provisions. All actions, including but not limited

to court proceedings, administrative proceedings, and mediation proceedings, shall be commenced, maintained, adjudicated, and resolved within the jurisdiction of the State of Utah, within Salt Lake City, in the Third Judicial District Court for Salt Lake County.

32. ENTIRE CONTRACT: County and Contractor agree that this Contract 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 Contract. This Contract may not be enlarged, modified, or altered, except in writing, signed by the Parties. Only the Salt Lake County Mayor or designee by executive order (available on the County's website) can execute this Contract or any amendment on behalf of County.

33. SEVERABILITY AND SURVIVAL: If any provision of this Contract 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 Contract. Any provision of this Contract that imposes an obligation on a Party after termination or expiration of this Contract will survive the termination or expiration of this Contract and will be enforceable by the other Party.

34. FEDERAL PROVISIONS: Where the source of the funds, directly or indirectly for this Contract, is the Federal Government, Contractor agrees to the applicable provisions set out below. Contractor shall be responsible for determining which terms are applicable to its goods and/or services.

a. **Equal Employment Opportunity Compliance.** Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). Specifically, Contractor agrees to comply with the contractor's obligations described in 41 CFR 60-1.4(b), which clause is incorporated herein by reference.

b. **Davis-Bacon Act Compliance.** Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. §§ 3141 to 3148) as supplemented by Department of Labor regulations (29 CFR Part 5).

c. **Anti-Kickback Act Compliance.** Contractor agrees to comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (20 CFR Part 3).

d. **Contract Work Hours and Safety Standards.** Contractor agrees to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 to 3708), as supplemented by Department of Labor regulations (29 CFR Part 5).

e. **Rights to Inventions Made Under a Contract or Agreement.** Contractor agrees to comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements", and any supplemental implementing regulations.

f. **Clean Air and Water Requirements.** Contractor agrees to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. §§ 7401 to 7671q), and the Clean Water Act (33 U.S.C. §§ 1251 to 1387). Contractor agrees to report each violation of these requirements to County and understands and agrees that County will, in turn, report each violation as required to the appropriate EPA regional office.

g. **Energy Conservation Requirements.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the Utah Energy Efficiency and Conservation Plan issued in compliance with Utah Code § 63M-4-301.

h. **Suspension or Debarment.** Contractor certifies that neither its nor its principals or any of its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any Federal department or agency.

i. **Byrd Anti-Lobbying Amendment.** If the maximum contract amount exceeds \$100,000, Contractor hereby certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of an agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract or grant of any other award covered by 31 U.S.C. § 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.