REQUEST FOR PROPOSAL
FOOD SERVICE PROVIDER TO OPERATE THE
MATHESON COURTHOUSE CAFETERIA
Solicitation #AOC5010

PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The purpose of this request for proposal is to enter into a contract with a qualified firm or individual to operate the Matheson Courthouse Cafe (hereinafter referred to as Café) at the Scott M. Matheson Courthouse in downtown Salt Lake City. The Café needs to offer food of high quality with good variety and good value.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

ISSUING OFFICE AND RFP REFERENCE NUMBER

The State of Utah Administrative Office of the Courts (AOC) is the issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation # AOC5010. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP. All changes to this solicitation will be made through written addendum only.

BACKGROUND AND GENERAL INFORMATION

The Scott M. Matheson Courthouse (Courthouse) houses several entities including the Administrative Office of the Courts, Utah Supreme Court, Utah Court of Appeals, Utah State Law Library, Third District Court, Third District Juvenile Court, Office of Guardian ad Litem, staff of the Division of Facilities, Construction and Management and staff of the Salt Lake County Sheriffs' Office employing approximately 500 people in total.

Located at the west end of the Courthouse is the Courthouse Café. The dining area can be accessed without entering the secure area of the Courthouse. Two entrances are available. One entrance is from the garden area to the north of the building and the other is just inside the west entrance, just prior to entering the secure part of the Courthouse.

Access to paid underground parking is limited to the hours of 7:30 a.m. through 5:00 p.m. Those entering the underground parking must enter through security in order to access the dining area. Walk-in traffic from the west entrance of the building is not required to enter through the secure part of the building.

In addition to the dining area, the current food service provider operates nine (9) vending machines (two (2) candy/snack and seven (7) drink) located throughout the building. Some of these can possibly be bought from the current vendor.

The AOC will provide dining and food preparation space at no charge to the Contractor. The existing dining space is 2600 square feet and the existing food preparation space is 600 square feet. Tables and chairs for the dining area are provided. A list of the kitchen equipment provided and vending machines is attached. A dumpster is provided on Parking Level One for disposal of garbage and trash. The AOC will also provide one (1) underground parking stall and local telephone service. The AOC will not provide any other subsidy to the Contractor or make any guarantee of business. The Contractor will need to supply any other equipment/supplies necessary.

To ensure security of the Courthouse, all food service deliveries should be received on Parking Level One during normal working hours (7:30 a.m. to 5:00 p.m.).

SUBMITTING YOUR PROPOSAL

One (1) original and five (5) identical copies of your proposal must be received by **July 9, 2015 by 3:00 p.m.** Proposals received after the deadline will be late and ineligible for consideration. Proposals may be mailed to Administrative Office of the Courts, Attn: Dustin Treanor, PO Box 140241, Salt Lake City, Utah 84114-0241 or hand delivered to Dustin Treanor, Matheson Courthouse, Administrative Office of the Courts, Room N21, 450 South State, Salt Lake City. The RFP number AOC5010 and due date should be written on the outside of the envelope.

LENGTH OF CONTRACT

The Contract resulting from this RFP will be for a period of five (5) years. The contract may be extended beyond the original contract period for one additional five (5) year period at the AOC's discretion and by mutual agreement.

CONTRACT TERMS AND CONDITIONS

Any contract resulting from this RFP will include, but not be limited to, the attached terms and conditions.

PRE-PROPOSAL CONFERENCE AND WALK THROUGH

A pre-proposal conference and walk through will be held on Monday, June 22, 2015 at 3:30 p.m. in the Courthouse Café, Matheson Courthouse, 450 South State Street, Salt Lake City. The Café is at the West entrance to the building. While not mandatory, it is strongly recommended that interested offerors attend.

QUESTIONS

All questions should be directed to:

Dustin Treanor
Administrative Office of the Courts
PO Box 140241
Salt Lake City UT 84114-0241

Phone: 801-578-3842
Email: dustint@utcourts.gov

Answers to all substantive questions will become an addendum to this RFP and will be posted on the Courts website www.utcourts.gov/general/rfp.

PROTECTED INFORMATION

The Government Records Access and Management Act (GRAMA), Utah Code Ann., Subsection 63G-2-305, provides in part that:

> *the following records are protected if properly classified by a government entity:*
>
> *(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309 (Business Confidentiality Claims);*
>
> *(2) commercial information or non-individual financial information obtained from a person if:*
>
> *(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;*
>
> *(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and*
>
> *(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;*
>
> * * * * *
>
> *(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application or other information . . . .; ....*

GRAMA provides that trade secrets, commercial information or non-individual financial information may be protected by submitting a Claim of Business Confidentiality.

To protect information under a Claim of Business Confidentiality, the offeror must:

1. provide a written Claim of Business Confidentiality *at the time the information (proposal) is provided to the AOC*, and
2. include a concise statement of reasons supporting the claim of business confidentiality (63G-2-309(1)(a)(i)(B)).
3. submit a "redacted" (excluding protected information) copy of your proposal response. Copy must clearly be marked "Redacted Version."

A Claim of Business Confidentiality may be appropriate for information such as client lists and non-public financial statements. Pricing and service elements may not be protected. An entire proposal may not be protected under a Claim of Business Confidentiality. The claim of business confidentiality must be submitted with your proposal on the form which may be accessed at:
http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc

To ensure the information is protected, the offeror must clearly identify in the Cover Letter and in the body of the proposal any specific information for which an offeror claims business confidentiality protection as "PROTECTED".

All materials submitted become the property of the AOC. Materials may be evaluated by anyone designated by the AOC as part of the proposal evaluation committee. Materials submitted may be returned only at the AOC's option and the offeror's expense.

SCOPE OF WORK

Contractor will operate the Café between at least the hours of 7:00 a.m. and 3:30 p.m. (and no later than 5:00 p.m.) Monday through Friday, excluding holidays.

Contractor will have no right to use the premises except during those hours described above or as specifically permitted by the AOC.

Contractor will be responsible to hire and supervise its own employees as required to prepare and serve the food it provides, and will be in charge of all the day to day operations of the Café, including but not limited to, the ordering and preparation of food, oversight of the area where the food is to be consumed and daily cleaning of the food preparation area and the seating area.

Contractor will provide a basic menu of high quality, varied food and drinks to court employees and the general public including:

Breakfast service
Lunch service
Fountain drink service
Snack service

Contractor may provide catered meals which could include:

Continental breakfast service
Jury meals and breaks
Lunch service for meetings, both catered and box lunch
Light refreshments for special events, i.e. retirements, swearing in ceremonies for judges, etc.

Note: Meals catered for the Courts may not exceed the state per diem guidelines which currently provide for a maximum of $10.00 for breakfast, $14.00 for lunch and $4.00 for special events. (This is an optional service if the Contractor wants to offer it.)

Contractor will provide ice to court employees bringing their own container free of charge.

Contractor will provide vending services comparable to the variety and number of machines currently in the building (the current vendor may sell these machines to the new vendor).

Contractor will provide any equipment deemed necessary in addition to the AOC supplied equipment enumerated on the attached list.

Contractor will not make any modifications to the premises without prior written consent from the AOC.

Contractor will be responsible for required cleaning and maintenance of all equipment.

Contractor will provide all required dishware, flatware, paper goods and other utensils and appliances required for the serving and consumption of the menu items. Commercial quality paper/plastic ware for patrons use will be acceptable.

Contractor will obtain at its sole expense all local, state or federal licenses and /or approvals necessary for its operation and shall maintain such for the term of the contract.

Contractor will comply with all local, state and federal laws and ordinances in operating the café. All food code regulations will apply to this facility. (Salt Lake County Health Regulation #5 - http://www.slvhealth.org/envRegs/reg05foodSanitation.html).

Contractor must qualify for and obtain a Food Permit prior to opening for business.

Contractor will maintain a minimum of $2,000,000 in general liability insurance with the AOC named as an additional insured and workmen's compensation insurance covering any employees for the duration of the contract.

*Contractor and all employees must be able to successfully pass a BCI check prior to working in the Courthouse and annually thereafter.

PROPOSAL RESPONSE FORMAT

All proposals must include:

1. **Cover letter.** This must contain offeror's name, address, phone number, email address, federal tax ID number or Social Security number and State of Utah Sales Tax ID number. It should also contain the offeror's desire and ability to meet each requirement in the Scope of Work and may contain any other information not contained in the detailed response that would be helpful to the Evaluation Committee.

2. **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:

A. Experience and Qualifications.

1. History of organization and current operations, if you are currently operating a food service. (Preference will be given to current operators.)
2. Qualifications and food service experience.
3. Description of all food safety, management and/or preparations courses or programs including any certificates and degrees awarded.

B. Business plan.

1. Management and operation plan
   a. Proposed plan of operation in such areas as staffing level during peak and non peak periods, percentage of food prepared on and off site, delivery schedules, methods of displaying and serving food, etc.
   b. Include a schedule of routine cleaning on a daily, weekly and monthly basis and proposed maintenance to comply with the scope of work.

2. Financial plan
   a. Detailed projection of start up costs. Prior to award of a contract the offeror may be required to demonstrate the availability of sufficient capital to defray start up costs.
   b. Projected operating expenses in the categories of staff, food and staples, paper and other consumables and other routine operating expenses.
   c. Projected sales revenue with a detailed analysis to support the revenue projection.

C. Proposed Menu. Include a proposed menu with prices to be charged. The proposed menu shall include, at a minimum, the following categories of food in addition to grill items.

1. Coffee, tea, hot cocoa, milk, fruit juices, soft drinks
2. Bagels and muffins
3. At least 1 special hot entrée offered each day
4. Cold sandwiches, at least 2 of which shall be offered each day
5. Soups and salads, at least 2 shall be offered each day
6. Fresh fruit, yogurt
7. Desserts, i.e. frozen yogurt, ice cream, cookies, etc...

An alternate menu can be submitted by the offeror if they desire. The bid committee has the right to eliminate any offer that does so if it doesn't meet the needs of this courthouse.

D. References - provide complete contact information for a minimum of three individuals in a position to observe the offeror in related work.

PROPOSAL EVALUATION PROCESS AND CRITERIA

A committee will evaluate proposals against the following weighted criteria. Each area of the evaluation criteria must be addressed in detail in the proposal. Proposals will initially be classified as acceptable or unacceptable. A proposal must receive a minimum of 75% of the points available in each of these 3 categories to be acceptable.

- Experience and Qualifications
- Business Plan
- Sample Menu with pricing

Offerors whose proposals are acceptable will be invited to an interview and tasting, the purpose of which is to permit the evaluators to discuss the offeror's proposal in depth and to evaluate by tasting a representative sampling of the food being proposed. (Offerors of unacceptable proposals will be notified at this time.) The evaluation committee will then score based on the results of the interview and tasting as well as call the listed references and add those to the qualification scores to get a grand total score for each qualified offeror.

EVALUATION CRITERIA	POINTS
Pre-qualification phase:	
Experience and Qualifications	200
Business plan	200
Sample menu	200
2nd Phase to be added to initial phase: (for those who pre-qualify with a high enough score in phase 1)	
Taste Test/ Interview	300
References	100
TOTAL:	1000

AWARD OF CONTRACT

The contract will be awarded with reasonable promptness, by written notice, to the responsible offeror whose proposal is determined to be the most advantageous to the AOC, taking into consideration the evaluation factors set forth in the RFP. The AOC can reject any or all proposals, and it can waive any informality or technicality in any proposal received, if the AOC believes it would serve the best interests of the AOC.

CURRENT EQUIPMENT LIST ATTACHED

MATHESON COURTHOUSE CAFETERIA
Solicitation #AOC5010

EQUIPMENT LIST

Garland convection oven
Garland 6 burner range
Dean fryer w/fry station
5 foot grill w/ 2 burners / 2 ovens
Dishwasher set up w/ Powermite gas booster

Walk in cooler/freezer combination 8' x 10'
3 basin sink, 2 drain boards

Aero hot 3 compartment steam table
Hobart refrigerator, 1 door
Hobart slicer 1712P
Stainless table 30" x 60"
Stainless table 30" x 72"
Cold sandwich table – 5 feet
Bakers table w/riser & overhead shelf

Ice machine w/bin
Exhaust hood, fan & duct w/fire control system
Exhaust hood, fan & duct above dishwasher
Pot rack, wall mounted approximately 12' long
Hand sink w/soap station

Dining tables 36" x 36" (12 each)
Dining tables round (3 each)
Dining tables 30" x 60" (3 each)
Dining chairs (68 each)

List of vending machines and their location in the Courthouse:

First Floor - Jury Assembly (public area)
32 item (16 large, 16 small) generic snack machine
10 item generic drink machine
9 item Coke machine
Second Floor -
AOC Break room - 9 item Coke machine
Juvenile Court Break room - 9 item Coke machine
Third Floor -
AOC Break room - 9 item Coke machine
W310 - 9 item Coke machine
Fifth Floor -
12 item small generic snack machine
10 item generic drink machine

ATTACHMENT A: STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES

This is for a contract for services (including professional services), meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:

   a) "Confidential Information" means information that is deemed as confidential under applicable state and federal laws, including personal information. The State Entity reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.

   b) "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from the parties entering into this Contract.

   c) "Contract Signature Page(s)" means the State of Utah cover page(s) that the State Entity and Contractor sign.

   d) "Contractor" means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.

   e) "Services" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but not limited to, all of the deliverable(s) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.

   f) "Proposal" means Contractor's response to the State Entity's Solicitation.

   g) "Solicitation" means the documents used by the State Entity to obtain Contractor's Proposal.

   h) "State Entity" means the court, department, division, office, or other organization identified on the Contract Signature Page(s).

   i) "Subcontractors" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.

2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Services performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.

4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the State Entity to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah and federal auditors, and State Entity staff and agents, access to all such records.

5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.

   1. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

   2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.

   3. Contractor's failure to comply with this section will be considered a material breach of this Contract.

6. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State Entity or the State of Utah, unless disclosure has been made to the State Entity.

7. **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 State Entity or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization,

express or implied, to bind the State Entity or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the State Entity or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.

8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the State Entity and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the State Entity. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i)Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; (v) the Utah Antidiscrimination Act at Title 34A, Chapter 5 of the Utah Labor Code, and (vi) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by Contractor and any of Contractor's employees.

10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.

11. **DEBARMENT:** Contractor certifies that it is not presently nor has it ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.

12. **TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) days written termination notice being given to the other party. The State Entity and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

    Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the State Entity or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the State Entity, if the State Entity reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the State Entity's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act, action by the Utah Judicial Council or by order of the President or the Governor.

    If a written notice is delivered under this section, the State Entity will reimburse Contractor for the Services properly ordered until the effective date of said notice. The State Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the State Entity to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the State Entity.

15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the State Entity's funds and used in the exercise of the State Entity's essential functions as a State of Utah entity. Upon request, the State Entity will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the State Entity's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

16. **INSURANCE:** Contractor shall at all times during the term of this Contract, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than one million dollars ($1,000,000.00) per occurrence and three million dollars ($3,000,000.00) aggregate. Contractor shall provide proof of insurance to the State Entity within thirty (30) days of contract

award. Contractor must add the State of Utah as an additional insured with notice of cancellation. Failure to provide proof of insurance, as required, will be deemed a material breach of this Contract. Contractor shall not cancel or allow the insurance policy to expire unless written notice has been given to the State Entity at least thirty (30) days prior to the cancelation or expiration. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

16. **WORKERS COMPENSATION INSURANCE:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor must submit proof of certificate of insurance that meets the above requirements.

17. **ADDITIONAL INSURANCE REQUIREMENTS:** The following are minimum coverages that may be in addition to the required insurance requirements of this Contract:

    1. Professional liability insurance in the amount as described in the Solicitation for this Contract.
    2. Any other insurance, including Comprehensive Automobile Insurance, described in the Solicitation for this Contract.
    3. Any other type of insurance described in the Solicitation.
    4. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any statute, rule, or regulation

    These additional insurance requirements shall be Contractor's responsibility and shall be provided at Contractor's expense. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Within thirty (30) days of contract award, Contractor and/or Contractor's subcontractors must submit proof of certificate of insurance that meets the above requirements. Contractor shall not cancel or allow the insurance policy to expire unless written notice has been given to the State Entity at least thirty (30) days prior to the cancelation or expiration. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the Utah Rules of Judicial Administration (URJA). Contractor gives the State Entity and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with the URJA. Except for sections identified in writing by Contractor and expressly approved by the State Entity, all of which must be in accordance with the URJA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under the URJA. The State Entity and the State of Utah are not obligated to inform Contractor of any requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.

19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the State Entity, except as to latent defects or fraud.

20. **ACCEPTANCE AND REJECTION:** The State Entity shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the State Entity.

    If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the State Entity. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the State Entity will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The State Entity has the right to adjust or return any invoice reflecting incorrect pricing.

22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or the State of Utah's Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the State Entity, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the State Entity within ten (10) business days of receipt of final payment, shall release the State Entity and the State of Utah from all claims and all liability to the Contractor. The State Entity's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the State Entity or the State of Utah may have against Contractor.

23. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the State Entity and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor's failure to timely perform the Services required under this Contract.

24. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.

25. **PERFORMANCE EVALUATION:** The State Entity may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.

26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services, which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the State Entity and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (i.e. another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

27. **REVIEWS:** The State Entity reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the State Entity.

29. **REMEDIES:** Any of the following events will constitute cause for the State Entity to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The State Entity may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the State Entity may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the State Entity or the State of Utah; or (v) demand a full refund of any payment that the State Entity has made to Contractor under this Contract for Services that do not conform to this Contract.

30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party's reasonable control. The State Entity may terminate this Contract after determining such delay will prevent successful performance of this Contract.

31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the State Entity of any potential or actual misuse or misappropriation of Confidential Information.

    Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the State Entity and the State of Utah, including anyone for whom the State Entity or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

    Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the State Entity or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the State Entity for written approval all advertising and publicity matters relating to this Contract. It is within the State Entity's sole discretion whether to provide approval, which must be done in writing.

33. **CONTRACT INFORMATION:** Contractor shall provide information regarding job vacancies to the State of Utah Department of Workforce Services, which may be posted on the Department of Workforce Services website. Posted information shall include the name and contact information for job vacancies. This information shall be provided to the State of Utah Department of Workforce Services for the duration of this Contract. This requirement does not preclude Contractor from advertising job openings in other forums throughout the State of Utah.

34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the State Entity and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the State Entity or the State of Utah for infringement of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability such limitations of liability will not apply to this section.

35. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The State Entity 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. All deliverables, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically created or manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the State Entity.

36. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

37. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.

38. **PROCUREMENT ETHICS**: Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

39. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The State Entity, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the State Entity appoints such an expert or panel, State Entity and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

40. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limits the rights of the State Entity or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.

41. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the State Entity's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.

42. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.

43. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revision date: 17 March 2015)